

Disciplinary Actions

The following is a list of attorneys who have been publicly disciplined. The orders have been edited. Administrative language has been removed to make the opinions more readable.

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Supreme Court				
Ava Maureen Sawyer	Reston	Revocation	April 20, 2001	1
Robert Allen Williams	Martinsville	6 Month Suspension	May 1, 2001	2
Disciplinary Board				
Gene Piero Belardi	Sterling	Revocation	May 25, 2001	5
Michael Alan Ceballos	Jacksonville, FL	Suspension	June 29, 2001	--
Lawonna Daves	York, SC	Revocation	March 23, 2001	6
Michael Dana Eberhardt	Suffolk	30 Day Suspension w/ Terms	September 1, 2001	9
Bridgette Miriam Harris	Washington, DC	Suspension	June 29, 2001	--
Dana Wilbur Johnson	Ft. Washington, MD	Revocation	May 25, 2001	11
Robert B. Machen	Annandale	Public Reprimand	April 11, 2001	13
Vendel Julius Matis	Redlands, CA	Revocation	May 24, 2001	14
Jeffrey Peter O'Connell	Fairfax	Summary Suspension	June 29, 2001	15
Madeleine Marie Reberkenny	Alexandria	24 Month Suspension	June 26, 2001	15
William Burton Talty	Hanover	Cost Suspension	April 10, 2001	--
Walter Cornelius Whitt, Jr.	Yorktown	Summary Suspension	April 27, 2001	16
District Committee				
William August Boge	Manassas	Public Reprimand	April 18, 2001	16
Walter Ballard Harris	Lynchburg	Public Reprimand	May 7, 2001	17
R. Larry Lambert	Virginia Beach	Public Reprimand w/Terms	June 13, 2001	18
Steven Morton Oser	Windsor	Public Reprimand w/Terms	April 12, 2001	20
Robert Michael Short	Fairfax	Public Reprimand w/Terms	May 10, 2001	22

Surrenders with Disciplinary Charges Pending

The following is a list of attorneys who have surrendered their licenses with disciplinary charges pending.

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
James Charles Dewees	Richmond	Disciplinary Board	June 8, 2001
Raymond Charles Nugent	Virginia Beach	Disciplinary Board	June 11, 2001
Anthony Fitzroy Reid	Alexandria	Disciplinary Board	June 22, 2001
Jane Laury Freedlund Wagner	Glen Echo, MD	Disciplinary Board	June 8, 2001

Supreme Court

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 6th day of February, 2001.

VIRGINIA STATE BAR, Appellee
v.
AVA MAUREEN SAWYER, Appellant
Record No. 001720
VSB Docket No. 95-052-1280

Upon an appeal of right from a judgment rendered by the Virginia State Bar Disciplinary Board on the 16th day of November, 1999.

Ava Maureen Sawyer appeals from the order of the Virginia State Bar Disciplinary Board finding that Sawyer violated Disciplinary Rule (DR) 1-102(A)(3), DR 1-102(A)(4), DR 2-105(C), DR 9-102(A)(2), and DR 9-102(B)(4) of the former Code of Professional Responsibility, now Rules of Professional

Conduct 8.4(B), 8.4(c), 1.5(c), 1.15(a)(2), and 1.15(c)(4), respectively, and imposing the sanction of licensure revocation.

On appeal, this Court "make[s] an independent examination of the whole record, giving the factual findings of the Disciplinary Board substantial weight and viewing them as prima facie correct. While not given the weight of a jury verdict, those conclusions will be sustained unless it appears they are not justified by a reasonable view of the evidence or are contrary to law." *Blue v. Seventh Dist. Comm. Of Virginia State Bar*, 220 Va. 1056, 1061-62, 265 S.E.2d 753, 757 (1980).

Although Sawyer claims that she did not receive proper notice of the disciplinary charges pending against her, Sawyer admittedly made herself unavailable for five years in order to avoid being arrested on a capias. Sawyer further admitted that, although she knew she was required to keep a current, valid address on file with the Virginia State Bar, she did not reside at the address provided and only checked her mail approximately once per month. Thus, any alleged lack of notice was caused by Sawyer's own conduct and cannot form the basis of an

attack on the Board's authority to adjudicate the disciplinary charges.

Sawyer further contends that she did not commit a crime or other deliberately wrongful act that reflects adversely on her fitness to practice law, in violation of DR 1-102(A)(3), because the final decree of the Circuit Court of Frederick County in the styled *Conner v. Sawyer*, Chancery No. 93 149, (Va. Cir. Aug. 26, 1994), directing her to disburse funds to her former client and to her co-counsel, is void *ab initio*. However, Sawyer's mere assertion that the decree is void *ab initio* does not justify her admitted failure to abide by its terms. Furthermore, the Disciplinary Board based its finding that Sawyer violated DR 1-102(A)(3) not only on her failure to obey the court's decree, but also on her avoidance of the *capias* and the disbursement of disputed trust funds, without her client's consent or knowledge.

Thus, upon consideration of Sawyer's arguments and assignments of error, the record, and briefs, as well as argument of counsel for appellee, the Court is of the opinion that there is no error in the proceedings and order of the Virginia State Bar Disciplinary Board. Accordingly, the order of the Virginia State Bar Disciplinary Board is affirmed. The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,
Teste:
David B. Beach
Clerk



In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 2nd day of March, 2001.

Virginia State Bar, Appellee,
v.
ROBERT ALLEN WILLIAMS, Appellant,
Record No. 002286
VSB Docket No. 93-090-1833

Upon an appeal of right from a judgment rendered by the Virginia State Bar Disciplinary Board on the 23rd day of June, 2000.

For reasons stated in writing and filed with the record, the Court is of the opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant shall pay to the appellee thirty dollars damages.

The appellant's suspension shall begin on May 1, 2001. The appellant shall notify, by certified mail, all clients for whom he is currently handling matters and all opposing attorneys and presiding judges in litigation. The appellant shall make appropriate arrangements for the disposition of these matters presently in his care, in conformity with the wishes of his clients.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,
Teste:
David B. Beach
Clerk



Present: Carrico, C.J., Lacy, Keenan, Koontz, Kinser, and Lemons, Jr.

ROBERT ALLEN WILLIAMS
v. Record No. 002286
VIRGINIA STATE BAR
OPINION BY JUSTICE BARBARA MILANO KEENAN
March 2, 2001

FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

This case presents an appeal of right from a ruling of the Virginia State Bar Disciplinary Board (the Board). Robert Allen Williams challenges the Board's decision suspending his license to practice law in the Commonwealth for a period of six months based on its finding that Williams failed to comply with the terms of an agreed disposition order.

The following facts are undisputed. On March 27, 1998, Williams appeared before the Board in response to charges that in 1993, he mishandled client funds in violation of Disciplinary Rules 9-102(A)¹, 9-102(B)², and 9-103(B)³ of the former Code of Professional Responsibility (CPR)⁴, now Rules 1.15(a), 1.15(c), and 1.15(f), respectively, of the Rules of Professional Conduct. The Board found by clear and convincing evidence that Williams's actions constituted misconduct in violation of these Rules. Before the hearing, Williams, Williams's counsel, and counsel for the Virginia State Bar (Bar counsel) negotiated an agreed disposition that provided, in relevant part:

Upon consideration whereof, THE FOLLOWING DISPOSITION IS ORDERED:

1. Six Months Suspension of Mr. Williams[s] license to practice law in the Commonwealth of Virginia suspended for a period of One Year, running from the date of the entry of the opinion order in this matter, upon the following terms and conditions:

. . . .
2. That during said year Mr. Williams shall, at his cost, obtain the services of a certified public accountant who shall provide four quarterly written certifications to the Virginia State Bar that the trust account(s) of Mr. Williams are in compliance with Canon 9 of the current CPR. If said trust account(s) are not in compliance, the certified public accountant shall so state in his certification(s) and explain the existence of the noncompliance.
3. It shall be the sole responsibility of Mr. Williams to insure that these terms are fulfilled.
4. Any failure to fulfill the terms herein shall automatically result in the imposition of the Six Months Suspension of license. If any hearing is held upon a failure to fulfill terms, the sole issue shall be whether or not a failure to fulfill terms occurred.

On June 26, 1998, based on its finding of Williams's misconduct, the Board entered an order incorporating the agreed disposition (the agreed disposition order).

In September 1998, Williams engaged William White, Sr., a certified public accountant (CPA), to audit Williams's trust accounts and to provide certifications to the Bar that the accounts were in compliance with Canon 9 of the former CPR as required by the terms of the agreed disposition order. In December 1999, nearly 18 months after the agreed disposition order was entered, Williams delivered his trust account records to White for the period from June 26, 1998 through June 30, 1999, and requested that White begin his review. White testified that his office was closed from just prior to Christmas through the end of the year, and that he did not begin work on Williams's records until early in 2000.

On December 22, 1999, about one week after Williams delivered his records to White, Bar counsel sent a letter to Williams's counsel that stated in relevant part:

I am unaware that Mr. Williams has fulfilled [terms 2 and 3 of the agreed disposition order] and therefore seek proof of same from Mr. Williams.

FOOTNOTES

- 1 Former Disciplinary Rule 9-102(A) provided as follows:
 - (A) All funds of clients paid to a lawyer or law firm, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- 2 Former Disciplinary Rule 9-102(B) provided in pertinent part as follows:
 - (B) A lawyer shall:
 - (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.
- 3 Former Disciplinary Rule 9-103(B) provided in pertinent part as follows:
 - (B) Required Trust Accounting Procedures: The following minimum trust accounting procedures are applicable to all trust accounts maintained by attorneys practicing in Virginia.
 - (3) Deposit of mixed fiduciary and nonfiduciary funds other than fees and retainers: Mixed fiduciary and nonfiduciary funds shall be deposited intact to the trust account. The nonfiduciary portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.
 - (4) Periodic Trial Balance: A regular periodic trial balance of the subsidiary ledger shall be made at least quarterly annually, within 30 days after the close of the period and shall show the trust account balance of the client or other person at the end of each period.
 - (a) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the period and deducting the total of trust monies disbursed for the period.
 - (b) The trial balance shall identify the preparer and be approved by the attorney or one of the attorneys in the firm.
 - (5) Reconciliations:
 - (a) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the trust account check book balance, and the trust account bank statement balance.
- 4 The Rules quoted above were effective February 1, 1993.

I shall tickle this file for January 24, 2000, in order to give you a chance to contact Mr. Williams and let me know something.

On January 24, 2000, Williams's counsel sent to Bar counsel a copy of a letter from White, which stated in part that "during the year of June 26, 1998 through June 25, 1999, Robert Allen Williams, Esquire, obtained my services to provide four quarterly written certifications to the Virginia State Bar." No quarterly certifications were provided with this letter.

On February 17, 2000, Bar counsel filed a notice to show cause alleging that Williams had failed to comply with terms 2 and 3 of the agreed disposition order, and a motion to impose the six-month suspension under term 4 of the order on the ground of non-compliance. A show cause hearing was scheduled for March 24, 2000. Williams filed a motion requesting a continuance, which was granted, and the hearing was rescheduled for April 28, 2000.

On April 4, 2000, more than 21 months after entry of the agreed disposition order, Williams submitted to the Bar four quarterly certifications prepared by White based on his audit of Williams's trust accounts. The quarterly certifications included the time periods of (1) June 26, 1998 through September 30, 1998, (2) October 1, 1998 through December 31, 1998, (3) January 1, 1999 through March 31, 1999, and (4) April 1, 1999 through June 30, 1999. Each of the four certifications stated that Williams's trust accounts were in compliance with Canon 9 of the former CPR.

The Board held a show cause hearing on April 28, 2000. Bar counsel argued that the six-month suspension specified in the agreed disposition order should be imposed because Williams violated terms 2 and 3 of the order by not providing the required certifications within one year from the date of the order.

Williams asserted in response that he had complied with the agreed disposition order based on his interpretation of term 2, which he contended was ambiguous. Williams argued that he understood term 2 to require only that he retain the services of a CPA within a year from the date of the order. He contended that if term 2 were read to require that he submit the quarterly certifications to the Bar within one year, compliance would be impossible because records for the last quarter would not be available for audit until after the year had ended.

Given the impossibility of full compliance for all four quarters, Williams contended that term 2 should be interpreted to require only that he retain the services of a CPA within a year, and that he submit the required certifications within a reasonable time after the end of that year. Williams accordingly asserted that he complied with the agreed disposition order because his submission of the certifications, on April 4, 2000, was done within a reasonable time after the year following entry of the order, which ended on June 25, 1999.

The Board concluded that Williams had failed to comply with terms 2 and 3 of the agreed disposition order, and entered an order imposing the six-month suspension of Williams's license in accordance with the terms of the agreed disposition order. This Court stayed execution of the order suspending Williams's law license pending the outcome of this appeal.

On appeal, Williams raises the same arguments that he raised in his show cause hearing before the Board, and con-

tends that he fully complied with the conditions set forth in the agreed disposition order. We disagree.

In reviewing the Board's decision in a disciplinary proceeding, we conduct an independent examination of the entire record. *El-Amin v. Virginia State Bar*, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); *Myers v. Virginia State Bar*, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984). We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the Board proceeding. *El-Amin*, 257 Va. at 612, 514 S.E.2d at 165; *Gunter v. Virginia State Bar*, 238 Va. 617, 619, 385 S.E.2d 597, 598 (1989). We give the Board's factual findings substantial weight and view them as prima facie correct. *El-Amin*, 257 Va. at 612, 514 S.E.2d at 165; *Myers*, 226 Va. at 632, 312 S.E.2d at 287. While we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears they are not justified by a reasonable view of the evidence or are contrary to law. *Id.*

We first consider whether the Board erred in concluding that Williams failed to comply with the terms of the agreed disposition order. In a show cause proceeding before the Board, the burden of proof is on the respondent to show by clear and convincing evidence that he complied with the terms imposed under an agreed disposition order. Virginia State Bar Disciplinary Board Rules of Procedure, Rule IV (D)(11) (2000).

In this case, the agreed disposition order suspended the six-month suspension of Williams's license to practice law "for a period of One Year, running from the date of the entry of the opinion order," subject to certain terms. As indicated above, term 2 states that "during said year Mr. Williams shall . . . obtain the services of a [CPA] who shall provide four quarterly written certifications to the [Bar]." The Board found that Williams failed to comply with term 2 because he did not submit the required certifications "during said year," and because he "failed to demonstrate by clear and convincing evidence sufficient cause to explain his failure to comply [with that condition]."

The record before us supports the Board's findings. As indicated above, the agreed disposition order states that the six-month suspension of Williams's license is suspended for a period of one year, provided that Williams "shall" retain a CPA to audit his accounts and submit certifications to the Bar "during said year." Williams's construction of this language, that a CPA must be retained but none of the certifications need be submitted "during said year," would render meaningless the order's provision that Williams's law license suspension be suspended for one year only. The order's use of the imperative "shall" indicates that Williams was required to comply fully with the conditions of this one-year suspension of the Board's action within that year to satisfy the terms of the order.

We find no merit in Williams's argument that since he was unable to submit the final quarterly certification "during said year," he should have been allowed to submit all the certifications within a reasonable time after the one-year period had expired. An inability to comply with one portion of an agreed disposition order does not excuse compliance with its remaining terms and conditions. Although Williams would not have been able to submit the fourth quarterly certification "during said year," he made no attempt to have any of the other three quarterly certifications prepared and submitted during that year

In addition, when Williams was asked what he thought would have been a reasonable time for compliance after the one-year period expired, Williams stated that an additional six-month period would have been reasonable. The record shows, however, that Williams failed to comply with his own definition of a reasonable time for compliance. As stated above, Williams did not submit the required quarterly certifications until over nine months after the end of the one-year period provided in the agreed disposition order.

Williams next argues that the Board's imposition of the six-month suspension of his law license is unduly harsh and should be set aside by this Court. He notes that the quarterly certifications of his trust account records showed no violation of Canon 9 of the former CPR, that the public was not harmed by his untimely submission of the certifications, and that he has had no prior disciplinary record in his 30 years of law practice. We are not persuaded by Williams's arguments.

On appeal, we will view the penalty imposed by the Board as prima facie correct, and will not disturb the penalty unless we determine, on our independent review of the record, that the penalty was not justified by the evidence or was contrary to law. *Gay v. Virginia State Bar*, 239 Va. 401, 407, 389 S.E.2d 470, 473 (1990); *Tucker v. Virginia State Bar*, 233 Va. 526, 534, 357 S.E.2d 525, 530 (1987). Our Rules give the Board broad discretion to impose a suspension of up to five years for any finding of misconduct. Rules of Supreme Court of Virginia, Pt. 6, § IV, Para. 13 (C)(6) (2000); *Gay*, 239 Va. at 407, 389 S.E.2d at 473.

While the required quarterly certifications showed that Williams's trust accounts were in compliance with Canon 9 of the former CPR for the year following the agreed disposition order, the Board's order finally suspending Williams's license was based on its finding in 1998 that Williams had mishandled client funds. By his counsel's endorsement of the agreed disposition order, Williams acknowledged the accuracy of this finding. The Board's suspension of its sanction in the agreed disposition order "during said year" did not reflect any modification of the Board's finding of misconduct, but was made in mitigation of the penalty imposed by the Board based on Williams's agreement to comply with the terms of the agreed disposition order.

When the Board determines that a respondent has failed to comply with the terms of an agreed disposition order within the specified time period, the alternative disposition set forth in the order shall be imposed. Virginia State Bar Disciplinary Board Rules of Procedure, Rule IV (D)(11). The plain language of term 4 of the agreed disposition order states that "[a]ny failure" to fulfill its terms "shall automatically result in the imposition of the Six Months Suspension of license."

The record reflects that the Board considered Williams's arguments before concluding that he had failed to comply with the terms of the agreed disposition order. After making its finding of noncompliance, the Board properly imposed the alternative disposition of a six-month suspension of Williams's license as provided under the terms of the agreed disposition order. As we have observed, Williams participated in negotiating the terms of the agreed disposition order and his counsel endorsed the order. In addition, Williams has identified no evidence from which we may conclude that the Board abused its discretion in imposing the six-month suspension.

A contrary result would undermine the purpose of the agreed disposition order entered in this case. That purpose was to allow Williams to maintain his license to practice law by agreeing to take certain remedial actions "during said year," which he substantially neglected to do. A failure to uphold the Board's decision also could undermine in future cases the deterrent effect of imposing remedial terms as part of agreed disposition orders.

Accordingly, we will affirm the Board's order suspending Williams's license to practice law in this Commonwealth for six months. Because Williams's suspension had been stayed during the pendency of this appeal, the suspension shall begin on May 1, 2001. Williams shall notify, by certified mail, all clients for whom he is currently handling matters and all opposing attorneys and presiding judges in litigation. Williams shall make appropriate arrangements for the disposition of these matters presently in his care, in conformity with the wishes of his clients.

Affirmed.
JUSTICE KOONTZ, dissenting.
A Copy,
Teste:
Clerk



ROBERT ALLEN WILLIAMS
v. Record No. 002286
VIRGINIA STATE BAR
JUSTICE KOONTZ, dissenting.

I respectfully dissent. I do so because the majority permits the Virginia State Bar Disciplinary Board (the Board) to suspend Robert Allen Williams' license to practice law in this Commonwealth for a period of six months upon a finding that he failed to fully comply with the terms of an agreed disposition order that is patently impossible to be fully performed as written. In my view, no lawyer should be required to forfeit his or her license to practice law under that circumstance.

As related by the majority, term 2 of the Board's order under consideration provides, in pertinent part, that "during said year [of June 26, 1998 through June 25, 1999] Mr. Williams shall, at his cost, obtain the services of a certified public accountant who shall provide four quarterly written certifications to the Virginia State Bar that the trust account(s) of Mr. Williams are in compliance with Cannon 9 of the current [Code of Professional Responsibility]." (Emphasis added). Presumably, the majority would have to agree that a certified public accountant cannot conduct a proper and meaningful final audit of a bank account for a specific period of time until that period of time has ended. Thus, in this case, there should be no dispute that it was impossible before June 26, 1999 for Mr. Williams' accountant to provide "four quarterly" certifications to the Virginia State Bar that Mr. Williams' trust accounts were properly maintained for the specified year ending on June 25, 1999, as required by term 2 of the Board's order. To avoid that impossibility, it necessarily must follow that the phrase "during said year" specifies the period within which Mr. Williams was required to obtain the services of a certified public accountant, which he did, and not the period within which that accountant was required to provide the four quarterly certifications regarding Mr. Williams' trust accounts.

Nevertheless, the majority reasons that because Mr. Williams "made no attempt to have any of the other three quarterly certifications prepared and submitted during [the year in question]" and he "did not submit the required quarterly certifications until over nine months after the end [of that year]," the Board properly exercised its discretion to suspend Mr. Williams' law license. Clearly, the majority has identified conduct that may be properly characterized as a lack of due diligence by Mr. Williams to timely comply with the "spirit" of the Board's order, but this reasoning does not resolve the patent defect in the Board's order. Moreover, for purposes of guidance in resolving future similar cases that may arise, the practicing bar is left to speculate whether a different result would have obtained in this case had Mr. Williams' accountant provided the Virginia State Bar with one, two, or three certifications "during" the year specified or had he provided all four quarterly certifications within one, twenty, or thirty days after that year ended. That reasonable speculation about what would constitute clear and convincing evidence to establish sufficient cause to explain a failure to comply with a similar order prompts my dissent in this case.

I have no doubt that the Board did not intend to impose an impossible condition upon Mr. Williams by the terms of its order. Nor do I defend Mr. Williams' attempts to comply with that order. Nevertheless, the record shows that the Board ultimately ensured that Mr. Williams properly maintained his trust accounts for the required one year and, yet, the Board gave little, if any, weight to the defect in its order in determining to suspend his license to practice law for six months. When the record in this case is so viewed, I am of opinion that this suspension was unduly harsh.

For these reasons, I would reverse the decision of the Board in this case.

A Copy,
Teste:
Clerk



Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GENE PIERO BELARDI
VSB DOCKET: 01-000-2538

ORDER

On May 25, 2001, this matter came on for hearing upon the Show Cause Order and Order of Suspension and Hearing, dated April 27, 2001, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of John A. Dezio, Acting Chair, Werner H. Quasebarth, lay member, Theophlise L. Twitty, Deborah A. J. Wilson, and D. Stan Barnhill.

The Respondent, Gene Piero Belardi, did not appear in person, nor was he represented by counsel. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

The purpose of the hearing was for the Board to determine whether to order suspension or revocation of the Respondent's license as a result of Respondent's three felony convictions entered by the United States District Court for the District of Columbia.

The Bar initially introduced into evidence an affidavit by Diana L. Balch, custodian of the membership records for the Bar, which affirmed that Respondent was an active member of the Bar. The Bar thereafter introduced into evidence a plea agreement entered into by the Respondent in the United States District Court for the District of Columbia whereby the Respondent plead guilty to three violations of 18 U.S.C. § 1001, knowingly and willfully making material false written statements on three occasions to the Federal Communications Commission ("FCC"). Such violations constituted three separate felonies under applicable federal law. The Respondent admitted in the plea agreement that he knowingly made the fraudulent and misleading statements in question in the context of his representation of a client seeking to retain a permit granted by the FCC.

In Respondent's absence from the hearing, the Bar introduced into evidence a letter written by Respondent to the Board indicating that he was unable to attend the hearing and asking the Board to consider certain statements during its deliberations. In particular, the Respondent asked the Board to consider the following:

1. The federal judge who accepted Respondent's plea acknowledged from the bench that Respondent did not personally benefit from the filing of the false statements.
2. No parties were financially harmed by the false statements.
3. The FCC and the federal government suffered no financial losses.
4. The Respondent was not ordered to pay restitution.
5. The Board of Professional Responsibility for the District of Columbia Court of Appeals has held that filing a false statement with a federal agency does not inherently involve moral turpitude.

In addition, the Respondent admitted in his letter to the Bar that in making the false statements he "wrongfully put the interests of my client . . . before my professional and ethical duties."

Respondent provided a copy of the transcript of his sentencing hearing with his letter. The transcript reveals that Respondent's criminal attorney acknowledged that entry of the plea agreement would result in loss of the Respondent's license to practice law.

Based on the exhibits presented during the hearing, the Board finds by clear and convincing evidence that Respondent upon entry of the guilty plea was convicted of three felonies involving false and fraudulent representations in the course of his representation of a client. Upon such finding, the Board ORDERS, pursuant to Part 6, Section IV, paragraph 13E(2)(b) of the Rules of the Supreme Court of Virginia, that the license of the Respondent, Gene P. Belardi, should be, and is hereby, revoked, effective May 25, 2001.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, paragraph 13(K)(10) of the aforesaid rules.

ENTERED this Order this 22nd Day of June 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By John A. Dezio, Acting Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
LAWONNA DAVES

VSB Docket: 98-031-3005
99-031-2796
99-031-2839

ORDER OF REVOCATION

This cause came to be heard the 23rd day of March 2001, on a Certification from the Third District Committee, Section I, before a duly convened panel of the Virginia State Bar Disciplinary Board composed of Henry P. Custis, Jr., Chair presiding, Bruce T. Clark, Chester J. Cahoon, Jr., Robert L. Freed, and Deborah A. Wilson. Charlotte P. Hodges ("Assistant Bar Counsel") appeared as Counsel to the Virginia State Bar ("VSB"). Lawonna Daves, ("Respondent") did not appear.

All legal notice of the date and place were timely sent by the Clerk of the Disciplinary System, in the manner prescribed by law.

The case was called three times; Respondent neither answered the docket call nor appeared to defend her interest. The Chair opened the hearing by polling the Board members to ascertain whether any member had a conflict of interest that would preclude him or her from serving. There were no conflicts and the hearing proceeded as scheduled.

Bar Counsel proffered the Bar's case to the Board and offered into evidence various exhibits. Virginia State Bar Exhibits Nos.1-63, docket numbers 98-031-3005, 99-031-2796 and 99-031-2839, respectively, were admitted into evidence, without objection.

FINDINGS OF FACT APPLICABLE
TO VSB DOCKET NO: 98-031-3005
(Complainant, Janet Grubbs)

Having considered the facts proffered by Assistant Bar Counsel, Charlotte P. Hodges, all exhibits introduced into evidence by Bar Counsel, without objection, as well as arguments by Bar Counsel, the Board finds by clear and convincing evidence that:

1. At all times relevant hereto the Respondent, Lawonna Daves, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In the matter of VSB Docket No. 98-031-3005 (Janet Grubbs), Janet Grubbs ("Complainant") hired Respondent to complete an adoption of Complainant's unborn infant.

3. Grubbs alleged that Respondent quoted a fee of \$1,800-2,000, including the Guardian *ad Litem* fee. This assertion is disputed by VSB Exhibit 16, a letter dated August 15, 1997, written by Respondent and addressed to Assistant Bar Counsel, Dorothy M. Pater, wherein Respondent indicates a range of \$2,000 to \$2,500 for an adoption without complications, billing at an hourly rate \$100.00 plus costs.
4. No written retainer agreement or contract was executed by the parties hereto.
5. The child, scheduled for adoption by Complainant, was born on March 7, 1997.
6. Complainant received a bill for services rendered May 31, 1997 in the amount of \$2,397.80.
7. By letter dated August 28, 1997, Complainant terminated Respondent's services, *inter alia*, due to a fee dispute.
8. Respondent, neither acknowledged or responded to Complainant's letter terminating services, and continued to perform services on behalf of Complainant.
9. On March 23, 1998, Complainant filed, *pro se*, a Final Order of Adoption with the Prince Edward Circuit Court.
10. The Order filed, *pro se*, by Complainant was not entered by the Prince Edward Circuit Court, as Respondent was still counsel of record.
11. Complainant contacted Respondent on May 1, 1998, and requested that she formally withdraw from the case. Respondent did not file a Motion to Withdraw; instead, she sent letters to the Prince Edward Circuit Court and Henrico Juvenile & Domestic Relations District Court stating that she was withdrawing as counsel for "nonpayment of legal fees and costs."
12. In June of 1998, Complainant was served with notice of a July 8, 1998, hearing in the Henrico County Juvenile & Domestic Relations District Court.
13. Complainant was not successful in her attempts to reach Respondent to discuss the matter and contacted a clerk in the Henrico County Juvenile Court.
14. Complainant discovered that a hearing was held on April 8, 1998, regarding the final adoption and neither Complainant nor Respondent appeared.
15. Complainant did not appear at the April 8, 1998 hearing because Respondent failed to provide her with notice of the hearing.
16. Respondent failed to attend the hearing, although she had notice.
17. At the time of the April 8, 1998 hearing, Respondent was still counsel of record; she failed to attend the hearing, continue the matter or take steps to ascertain whether new counsel had been substituted.
18. On May 20, 1998, Respondent submitted a proper Motion to Withdraw to the Prince Edward Circuit Court, after

having been advised by Complainant that her prior letter to the court was not a proper withdrawal.

19. Respondent, in her Motion to Withdraw, falsely represented to the Prince Edward Circuit Court that she was engaged in litigation against Complainant, pending in the Henrico County General District Court, for unpaid legal fees.
20. Respondent never filed a Warrant in Debt against Complainant and was not involved in any litigation at the time of her representation to the court.

NATURE OF MISCONDUCT APPLICABLE
TO VSB DOCKET NO: 98-031-3005

The Board unanimously finds that Respondent violated the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

- DR 1-102 (A)(4)
- DR 2-108 (A)(3) and (D)
- DR 6-101 (B)
- DR 7-102 (A)(5) & (8)

FINDINGS OF FACT APPLICABLE
TO VSB DOCKET NO: 99-031-2839
(Complainant, James H. Nunnery)

21. Complainant, James H. Nunnery, contacted Respondent in the fall of 1997 to discuss pursuing a wrongful death action either on his behalf and/or that of the decedent's sisters.
22. Complainant met with Respondent in November of 1997 and provided her with all of the decedent's medical records.
23. Although no fee agreement was signed, it was agreed that Respondent would be paid on the basis of a contingency fee.
24. Following the November, 1997 meeting it was Complainant's belief that Respondent had agreed to handle the case.
25. Between November 1997 and the spring of 1998, Complainant and Respondent spoke several times regarding the wrongful death matter. Respondent always responded that she was, "looking into it."
26. In early 1998, there was no contact between Complainant and Respondent for a period of approximately three months, notwithstanding repeated attempts by Complainant to contact Respondent.
27. In June 1998, Complainant spoke with Respondent regarding the statute of limitations in the wrongful death matter and was told that a year remained to file the action.
28. Commencing June, 1998 and continuing until on or about March or April 1999, Complainant left several telephone messages for Respondent that were unanswered and shortly thereafter received a recording stating that the phone had been disconnected.

29. On April 28, 1999, Complainant sent Respondent a certified letter that was returned, unclaimed, to him.
30. Complainant received the decedent's medical records from the Respondent, following the filing of his Complaint with the Virginia State Bar.
31. Following receipt of decedent's medical records, approximately five weeks remained before the tolling of the statute of limitations in the wrongful death action.

NATURE OF MISCONDUCT APPLICABLE
TO VSB DOCKET NO: 99-031-2839
 (Complainant, James H. Nunnery)

Prior to the deliberation by the Board, the Bar withdrew allegations that Respondent violated DR 7-101 (2). The Board unanimously finds that Respondent violated the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

- DR 2-108 (D)
- DR 6-101 (B) (C) and (D)
- DR 7-101 (A) (1) and (3)

FINDINGS OF FACT APPLICABLE
TO VSB DOCKET NO: 99-031-2796
 (Complainant, Clyde E. Wilson and Arienne A. Boyer)

32. On or about March 3, 1999, Complainants, Clyde Wilson and Arienne Boyer, hired Respondent to initiate a divorce action on behalf of Complainant, Wilson, a resident of the Commonwealth of Virginia.
33. On or about March 3, 1999, Complainants paid Respondent, via money order, the sum of \$600.00 to represent Wilson in this matter.
34. No written contract or fee agreement was executed by the parties.
35. The funds were deposited into an account, other than a trust account, at a time when some or all of the fee had not been earned.
36. Respondent informed Complainants that it would be necessary for her to research issues, as she had never filed a divorce in South Carolina.
37. A few weeks later following Respondent's review of the facts presented to her by Complainants, Respondent contacted the client. She, apparently, determined that the appropriate jurisdiction for filing Wilson's divorce action was South Carolina and not Virginia. She advised Complainant that she was also licensed in that state and could assist in the matter. She stated that she would prepare work and immediately begin the process.
38. Two weeks passed and Complainants did not hear from Respondent, despite attempts to contact her. They later learned that her business phone had been disconnected and had no way of contacting her.
39. For approximately three weeks, following Complainant's knowledge that Respondent's phone had been

disconnected, they unsuccessfully attempted to contact her via telephone and mail.

40. Complainants were contacted by Respondent on or about April 19, 1999, provided with a South Carolina phone number, and informed that she was visiting in South Carolina.
41. Respondent returned a call to Complainants on April 21, 1999 and stated that she had filed a Complaint, a few days prior; she also stated that a copy had been mailed to them.
42. Complainants tried contacting Respondent, commencing April 26, 1999, through May 17, 1999, to inform her that they had not received the Complaint and summons. Complainants reached Respondent on two occasions and were told that the documents would again be mailed. On May 17, 1999, Complainant, Boyer, left a message with Respondent's mother terminating Respondent's representation in the case.
43. On May 17, 1999, Boyer contacted the Family Court in Spartanburg and was informed by Anna Lancaster, an employee in the clerk's office, that no complaint had been filed.
44. On May 19, 1999, Complainants sent a certified letter to Respondent formally terminating her representation in the case. A request was also made for return of monies paid, as Respondent had not performed the work for which she was hired.
45. On May 20, 1999, Respondent personally signed the receipt acknowledging the certified letter sent by Complainants, terminating her representation.
46. On May 21, 1999, Respondent sent Complainants copies of a Complaint, Settlement Agreement and two bills for services.
47. The summons and complaint were filed and stamped by the court on May 21, 1999 and not April 21, 1999.
48. Documents contained in Respondent's file appear to have been altered or fabricated to reflect that work had been done as represented by Respondent to Complainants.
49. Complainant Wilson's complaint was eventually dismissed and removed from the court's docket for failure to prosecute.
50. Respondent failed to cooperate with the Virginia State Bar's investigative efforts to obtain documentation relating to her trust account records in this case; the Bar was forced to seek the desired information through the assistance of the South Carolina Bar.

Upon conclusion of the Bar's proffer in VSB Docket No: 99-031-2796, Board Member, Bruce Clark, raised the issue of jurisdiction, as the action before the Board involved a divorce action that was initiated in state of South Carolina.

The Bar argued that Complainants lived in the Commonwealth of Virginia and hired Respondent because she was a Virginia lawyer. The fact that she was a South Carolina attorney

was an added bonus and did not form the basis of the initial attorney client relationship. Moreover, the evidence proffered by the Bar established that Respondent was not confident that she would be able to initiate a divorce action in South Carolina and stated that she would have to research the issue. Complainants formally engaged Respondent on March 3, 1999, in her Virginia office, with the understanding that she would be practicing in the Commonwealth of Virginia. It was following the establishment of the attorney client relationship in Virginia that Respondent announced that she would file the divorce action in South Carolina.

Supreme Court Rule 8:5 (a) provides in relevant part that:

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.

The Board finds that Respondent, as a member of the Virginia State Bar, is properly before the Board and is subject to the disciplinary authority of this jurisdiction. The Bar has satisfactorily proven its case by clear and convincing evidence and Respondent is subject to the sanction(s) imposed by this Board, herein.

NATURE OF MISCONDUCT APPLICABLE
TO VSB DOCKET NO: 99-031-2796

(Complainant, Clyde E. Wilson and Arienne A. Boyer)

The Board unanimously finds that Respondent violated the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

- DR 1-102 (A) (1)(3) and (4)
- DR 2-105 (A)
- DR 2-108 (D)
- DR 6-101 (A)(1)(2); (B) (C)
- DR 7-101 (A) (2)
- DR 7-102(A) (5)(6)(8)
- DR 9-102 (A)(2) and (B)(3)(4)
- DR 9-103 (A)(1)(2)(3) and (4)
- Rule 8:1 (c) and (d)

IMPOSITION OF SANCTIONS

The Board took into consideration the instant matter, as well as, Virginia State Bar Docket Nos: 98-031-3005 and 99-031-2839.

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to **LAWONNA DAVES**, Esquire, be and the same is hereby **REVOKED**, effective March 23, 2001.

IT IS FURTHER ORDERED pursuant to the provisions of Part Six, Section IV, Paragraph 13 (K)(1) of the *Rules of the Supreme Court of Virginia*, that Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of her license to practice law in the Commonwealth of Virginia, to all clients for whom she is currently handling matters and to all opposing counsel and presiding judges in pending litigation in which she is involved. The Attorney shall also

make appropriate arrangements for the disposition of matters then in her care conforming to the wishes of her clients. The Attorney shall give such notice within fourteen days of the effective date of the revocation order, and shall make such arrangements, as are required herein within forty-five (45) days of the effective date of the revocation order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the revocation order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this paragraph. **FURTHER ORDERED** that Respondent, Lawonna Daves, shall furnish true copies of all notice letters sent to all persons notified of the revocation, with the original return receipts for said notice letters to the Clerk of the Disciplinary System, on or before May 22, 2001.

FURTHER ORDERED that the Clerk of the Disciplinary System send an attested and true copy of this Opinion Order to Respondent, Lawonna Daves, by certified mail, return receipt requested, at her address of record with the Virginia State Bar, and to Charlotte P. Hodges, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, § IV, ¶ 13(K)(10) of the Rules of the Virginia Supreme Court.

ENTER THIS ORDER THIS 23rd DAY OF March, 2001
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Henry P. Custis, Jr.
Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
MICHAEL DANA EBERHARDT
VSB Docket No. 00-010-0625

ORDER OF SUSPENSION

This matter came for hearing on March 23, 2001 upon the certification of the First District Committee pursuant to Part 6, Section IV, Paragraph 13(B)(7)(d) of the Rules of the Supreme Court of Virginia.

The Respondent, Michael Dana Eberhardt, appeared in person with his counsel, William R. Savage, III. Edward L. Davis, Assistant Bar Counsel, appeared for the Virginia State Bar.

The Virginia State Bar Disciplinary Board Panel consisted of Karen A. Gould, Dennis P. Gallagher, Lay Member, Robert E. Eicher, Richard J. Colten, and Michael A. Glasser, Acting Chair, Presiding.

Prior to the hearing, the Respondent, his counsel, and the Virginia State Bar entered into the following stipulations of Fact and Rule Violations and tendered the same to the Board:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Michael Dana Eberhardt (hereinafter Respondent or Mr. Eberhardt), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On December 20, 1996, the Circuit Court for the City of Suffolk sentenced Complainant Latourey Urquhart to a net sentence of eighteen years to serve on various felony convictions. His court-appointed counsel was Mr. Eberhardt. Mr. Urquhart advised Mr. Eberhardt of his desire to appeal his case to the Supreme Court of Virginia if unsuccessful at the Court of Appeals.
3. Mr. Eberhardt timely noted an appeal to the Court of Appeals of Virginia. On August 26, 1997, the Court of Appeals denied Mr. Urquhart's petition for appeal, and Mr. Eberhardt promptly notified his client. He then filed a petition for appeal to the Supreme Court of Virginia, but failed to file a notice of appeal with the Court of Appeals as required by Rule 5:14(a) of the Rules of the Supreme Court of Virginia. Mr. Eberhardt would say that he filed the Notice of Appeal, but with the wrong court. Accordingly, the Supreme Court of Virginia dismissed the petition for appeal on October 21, 1997.
4. Mr. Eberhardt did not notify his client about the dismissal. Mr. Eberhardt would say that this was because the Supreme Court of Virginia never notified Mr. Eberhardt about the dismissal. Mr. Urquhart would say that during February, 1999, he contacted Mr. Eberhardt's office where a receptionist told him that they had heard nothing about his appeal. Having heard nothing further from Mr. Eberhardt, Mr. Urquhart wrote to the Supreme Court of Virginia himself in August of 1999 and learned for the first time that the case had been dismissed because of Mr. Eberhardt's procedural error. He then lodged a complaint with the Virginia State Bar. Mr. Urquhart would also say that on November 11, 1999, he wrote to Mr. Eberhardt requesting a copy of his file, and that Mr. Eberhardt did not respond. According to Mr. Eberhardt, he did not receive the letter.
5. According to Mr. Eberhardt, he did not receive the complaint that Mr. Urquhart filed with the Virginia State Bar, and did not know that the Supreme Court of Virginia had dismissed the appeal until he spoke with the Virginia State Bar investigator on December 15, 1999. On February 11, 2000, he sent Mr. Urquhart appropriate *habeas corpus* materials, and prepared the case file for mailing.
6. Mr. Eberhardt provided the Virginia State Bar investigator with a copy of a cover letter from Mr. Eberhardt to Mr. Urquhart, dated February 14, 2000, enclosing a copy of the case file and trial transcripts. Mr. Urquhart, however, never received the letter (VSB Exhibit 4), and Mr. Eberhardt did not deliver the file to Mr. Urquhart until the day of the hearing in this matter before the First District Committee on June 1, 2000, when Mr. Eberhardt hand delivered the file to Mr. Urquhart during a recess. According to Mr. Eberhardt, this was due to an oversight.

II. STIPULATION AS TO MISCONDUCT

The parties agree that the foregoing facts could give rise to violations of the following Disciplinary Rules:

DR 6-101. Competence and Promptness.

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

The Board found that the evidence was sufficient to find by clear and convincing evidence that the Respondent had violated the following Disciplinary Rules specified in the Stipulation:

DR 6-101(B) and (C)

Thereupon, the Board heard evidence as to what sanctions should be imposed. The bar offered copies of the Respondent's prior disciplinary record consisting of one Dismissal with Terms, two Private Reprimands with Terms, and one Public Reprimand. Three of the prior dispositions involved misconduct similar to the case before the Board.

The Respondent offered his own testimony regarding the factual situation that surrounded the incident of misconduct, and his hiring of a Virginia State Bar Risk Manager to review his office procedures. The Respondent also offered affidavits from other attorneys concerning his reputation in the community, and a report from the Risk Manager. The Respondent explained that he was carrying far too many cases during the time in question and that because of this and the accompanying stress, he did not attend to certain matters. He explained that he removed himself from the court-appointed attorneys' list as a result of the bar complaints, and reduced his practice. He hired the Risk Manager at the suggestion of the Virginia State Bar after the instant complaint.

Following the presentation of evidence and the findings of misconduct set forth above, the parties entered into an Agreed Disposition as to the sanctions to be imposed. Upon consideration of the evidence, the Board accepted the Agreed Disposition as to sanctions that was presented to the Board by the Virginia State Bar, the Respondent, and his counsel.

WHEREFORE, the Board hereby ORDERS as follows:

The Respondent's license to practice law in the Commonwealth of Virginia is **SUSPENDED** for a period of thirty (30) days, effective September 1, 2001, subject to the following terms:

1. The Respondent is placed on probation for a period of one year beginning September 1, 2001. The Respondent will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during this probationary period. Any final determination of misconduct 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 these terms and conditions and will result in the imposition of a **one-year suspension** of his license to practice law as an alternate sanction. The alternate sanction will not be imposed while the Respondent is appealing any adverse decision which might result in a probation violation.

2. The Respondent will ensure that Risk Manager Janean Johnston prepares two additional reports at six-month intervals concerning the operation and management of his law practice, and that she furnishes a copy of each report to the Virginia State Bar. The first report must be filed with the Virginia State Bar by March 1, 2002, and the second by September 1, 2002.

The imposition of the alternate sanction will not require a hearing before the Board on the charges of misconduct from the case currently before the Board 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 Order of Suspension without legal justification or excuse. The imposition of the alternate sanction shall be in addition to any other sanctions imposed for misconduct during the probationary period.

Pursuant to Part Six, Section IV, Paragraph 13(K)(10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD
Enter this 28th day of March, 2001
By Michael A. Glasser, Acting Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
DANA WILBUR JOHNSON
VSB Docket: 01-000-2639

ORDER OF REVOCATION

This cause came to be heard the 25th day of May 2001, on a Rule to Show Cause and Order of Suspension entered by the Virginia State Bar Disciplinary Board on May 4, 2001. The May 4, 2001 Order required the Respondent to appear before the Board on May 25, 2001, "to show cause why his license to practice law in the Commonwealth should not be suspended or revoked."

On May 25, 2001, this cause was heard by a duly convened panel of the Virginia State Bar Disciplinary Board composed of John A. Dezio, Chair presiding, D. Stan Barnhill, Karen A. Gould, Werner H. Quasebarth, and Theophlise L. Twitty. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as Counsel for the Virginia State Bar ("VSB"). Dana Wilbur Johnson ("Respondent") failed to appear.

The Chair opened the hearing by polling the Board members to ascertain whether any member had a conflict of interest that would preclude him or her from serving. There were no conflicts, and the hearing proceeded as scheduled.

The Virginia State Bar Exhibits 1 and 2 were admitted into evidence, without objection. Respondent did not submit any exhibits.

The evidence adduced at the hearing was that Respondent had been disbarred from the practice of law in Maryland by the Maryland Court of Appeals. Respondent had been charged with violations of the Maryland disciplinary rules regarding conflict of interest, candor toward a tribunal, the unauthorized practice of law, communications concerning a lawyer's services, misrepresentations regarding firm names and letterheads, and misconduct. He was found guilty of all charges, except for misrepresentation regarding firm names and letterheads. The Court found that Respondent had "made false statements to a tribunal, and he acted against the interests of [clients] during and after the sale of their home to him." Maryland Disbarment Order at 33-34, VSB Exhibit 2. The Maryland Court concluded that the appropriate sanction was disbarment.

The burden of proof was on Respondent in this show cause proceeding. The burden was on Respondent to persuade this Board that reciprocal recognition of the April 12, 2001 Disbarment Order entered by the Maryland Court of Appeals should not be granted. Respondent failed to put on any proof or argument that the Maryland Order should not be given reciprocal recognition. The Board adopts the findings of the Maryland Court of Appeals and finds that the Maryland Order should be given reciprocal recognition.

All procedural requirements have been complied with in terms of notification of the opportunity to be heard. Subsection (G), governing *Disbarment or Suspension in Another Jurisdiction*, provides in relevant part that: "[T]he Board shall forthwith serve upon the Respondent by certified mail (a) a copy of such certificate, (b) a copy of such order, and (c) a notice fixing the time and place of a hearing to determine what action should be taken by the Board." The Bar complied with this Rule by forwarding a certified letter dated May 4, 2001, together with attachments from the Clerk of the Disciplinary System, see VSB Exhibit No. 2. Although the letter was sent by certified mail, Respondent maintains that he was not at home when the Post Office attempted to serve the certified letter. He also did not read the additional copy he received of the Show Cause Order and Hearing notice, although it was in his office May 21st, because he was stressed by involvement in a criminal matter. See Respondent's Motion to Vacate, Para. 9. According to his Motion to Vacate, he read the Bar's Rule to Show Cause of and Order of Suspension and Hearing on May 25th, the date of the hearing. See Respondent's Motion to Vacate, Para. 9.

Subsection (G) further provides that, within fourteen days of the date of mailing, Respondent **shall** file a written response, which **shall** be confined to allegations that:

- (1) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking notice or opportunity to be heard as to constitute a denial of due process; or
- (2) the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or
- (3) the same conduct would not be grounds for disciplinary action or for the same discipline in this state.

Respondent did not file any response as required by subsection (G) within the fourteen-day period challenging the Maryland disciplinary proceeding.

Upon consideration of the matters before this panel of the Disciplinary Board, it is hereby

ORDERED that, pursuant to Part 6, § IV, ¶ 13c. (3) of the Rules of the Virginia Supreme Court, the license of Respondent, Dana Wilbur Johnson, to practice law in the Commonwealth of Virginia be, and the same hereby is, revoked, effective May 25, 2001.

This matter also came to be heard on the 7th day of June 2001, on Respondent's Motion to Vacate the Show Cause Order and Order of Suspension entered by the Virginia State Bar Disciplinary Board on May 4, 2001. A duly convened panel of the Virginia State Bar Disciplinary Board composed of John A. Dezio, Chair presiding, D. Stan Barnhill, Karen A. Gould, Werner H. Quasebarth, and Theophlise L. Twitty, considered the matters raised by Respondent's Motion to Vacate, the Bar's Response to Respondent's Motion to Vacate and the Respondent's Reply to the Bar's Response, and the Bar's Reply to Respondent's Reply to Bar's Response to Respondent's Motion to Vacate and Request for hearing.

Rule XII of the VSB Disciplinary Rules of Procedure provides that a respondent may file a motion for reconsideration within ten days of the hearing before the Board. The Board will consider Respondent's Motion to Vacate as a motion for reconsideration under this Rule. The Rule further provides that

[s]uch motion shall be considered only to prevent manifest injustice upon the ground of

- a. illness, injury or accident which prevent the respondent or a witness from attending the hearing and which could not have been made known to the Board within a reasonable time prior to the hearing, or
- b. evidence which
 - (1) was not known to the Respondent at the time of the hearing and could not have been discovered prior to, or produced at, the hearing in the exercise of due diligence and
 - (2) would have clearly produced a different result if the evidence had been introduced at the hearing.

Accordingly, since Respondent's motion was filed within the requisite ten-day period, the Board still has jurisdiction of this matter, the memorandum opinion not yet having been entered, and will consider Respondent's motion.

Respondent's Motion to Vacate is denied for failure of the Respondent to produce the record upon which he relies to support the allegation that the Maryland proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process, as required by Rule 13(G)(3). The Bar argued in its Response to Respondent's Motion to Vacate that this allegation was totally lacking in merit for the following reasons:

On the issue of notice and opportunity to be heard in the disbarment proceedings in Maryland, the Respondent was noticed for an Inquiry Panel hearing involving these matters on October 23, 1998. The hearing was continued to February 11, 1999 at the Respondent's request, and the Respondent appeared and was heard at the February 11, 1999 hearing by the Inquiry Panel (See VSB Exhibit #4).

The Inquiry Panel found the Respondent had violated various Maryland disciplinary rules. The Maryland Review Board agreed with the Inquiry Panel's findings and directed the Attorney Grievance Commission of Maryland to file charges against the Respondent. The Attorney Grievance Commission did so in the Court of Appeals of Maryland (See VSB Exhibit #5). The matter was referred to a trial judge in the Circuit Court of Montgomery County. After a three-day hearing commencing September 18, 2000, at which the Respondent appeared and testified, the court made certain findings of fact and recommendations (See VSB Exhibit #6). The Respondent filed exceptions to certain of the trial court findings of fact and recommendations. On February 5, 2001, there was oral argument before the Maryland Court of Appeals on the Respondent's various exceptions to the trial court's rulings. On April 15, 2001, the Court of Appeals of Maryland filed its opinion in the matter disbarring the Respondent from practicing law in Maryland (See VSB Exhibit #2). The record shows the Respondent had at least two full evidentiary hearings in this case, and told his side of the story upon each occasion. There was certainly no lack of notice or opportunity to be heard in the Maryland proceedings.

Bar's Response to Motion to Vacate, Para. 4. The Exhibits cited in the Bar's Response and filed with the Clerk are incorporated herein by reference and are deemed to be filed in this proceeding.

The Board agrees with the Bar, based upon the evidence, that Respondent has failed to produce proof that he was denied notice and an opportunity to be heard in the Maryland disciplinary proceedings. Respondent carried the burden of proof on this issue and failed to adduce any proof, other than a bald statement that there was a denial of due process. His only argument was that the Virginia Supreme Court Rules envisioned a hearing and not reliance upon the record. Respondent's Reply at Para. 4. The Board does not agree with this proposition. Rule 13(G)(3) states that "[t]he Respondent shall have the burden of producing the record upon which he relies to support [his] allegations."

Even after being confronted with the facts as outlined in paragraph 4 of the Bar's Response to Respondent's Motion to Vacate, Respondent failed in his Reply to that Response to address the facts or arguments raised regarding the due process issue. Based upon the record produced by the Bar, the Respondent did have adequate due process notice and opportunity to be heard in the Maryland proceedings. The Board also finds that the misconduct found in the Maryland proceedings would warrant the same sanction in Virginia. Accordingly, the Board finds that the Respondent has failed to adduce proof that there was evidence that would have produced a different result at the hearing, and Respondent's Motion to Vacate is denied.

Pursuant to the Board's ruling that the Respondent's license be revoked, it is FURTHER ORDERED that pursuant to the provisions of Part 6, § IV, ¶ 13 (K)(1) of the *Rules of the Supreme Court of Virginia*, as applicable, 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 any and all clients for whom he is currently handling matters and to all opposing counsel and presiding judges in any pending litigation in which he is involved. Respondent shall make appropriate arrangements,

as applicable, for the disposition of matters then in his care conforming to the wishes of his clients.

Respondent shall give notice within fourteen days of the effective date of the revocation order, and shall make such arrangements, as are required herein within forty-five days of the effective date of the revocation order that such notices have been timely given and such arrangements for the disposition of matters made; all issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Board; and it is

FURTHER ORDERED that Respondent, Dana Wilbur Johnson, shall, as appropriate, furnish true copies of all letters noticing the revocation of his license to practice law, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before July 24, 2001; and it is

FURTHER ORDERED that the Clerk of the Disciplinary System send an attested and true copy of this Opinion and Order to Respondent, Dana Wilbur Johnson, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, and to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, § IV, ¶ 13(K)(10) of the Rules of the Virginia Supreme Court.

ENTER THIS ORDER THIS 18th DAY OF June, 2001
VIRGINIA STATE BAR DISCIPLINARY BOARD
By John A. Dezio, Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
ROBERT B. MACHEN, ESQUIRE
VSB Docket No. 99-051-1704

**ORDER DISMISSING APPEAL AND AFFIRMING
DISTRICT COMMITTEE SANCTION**

This matter came before the Virginia State Bar Disciplinary Board on the Virginia State Bar's Motion to Dismiss Appeal Upon Failure to File Transcript Within Specified Time and respondent's Motion for an Enlargement of Time to File Transcript and Opposition to Motion for Dismissal by telephone conference call on April 11, 2001. This matter was heard by William M. Moffet, First Vice Chair. The Virginia State Bar was represented by Seth M. Guggenheim, Assistant Bar Counsel. The respondent was represented by Stephen A. Armstrong. Also participating was the respondent, Robert B. Machen.

FACTS

The facts are as follows:

1. The Fifth District Committee, Section I, issued a public reprimand to the respondent. The public reprimand was served upon the respondent together with a letter advising

him that if he wished to appeal the reprimand, a notice of appeal had to be filed within ten days and a transcript of the District Committee proceedings had to be filed in the clerk's office within 40 days of the filing of the notice of appeal.

2. The respondent filed a timely notice of appeal.
3. The respondent did not file the transcript of the District Committee proceedings within 40 days of the filing of the notice of appeal.
4. Counsel for respondent has stated in his motion the circumstances which led to the late filing of the transcript.
5. The Virginia State Bar filed a Motion to Dismiss Appeal Upon Failure to File Transcript Within Specified Time.
6. The respondent responded by filing a Motion for an Enlargement of Time to File Transcript and opposition to Motion for Dismissal.
7. The Virginia State Bar opposes the Motion for Enlargement of Time to File Transcript.

Opinion

Part 6, Section IV, Paragraph 13.B(10)(b) of the Rules of the Supreme Court of Virginia state that the transcript must be received in the office of the Clerk of the Disciplinary System within 40 days after the filing of the notice of appeal. This rule goes on to state:

Failure of the Respondent to make the transcript a part of the Record as specified herein shall result in dismissal of the appeal by the Disciplinary Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed by the District Committee.

This rule leaves the Board with no discretion in situations such as this. In fact, in a virtually identical factual situation, the Virginia Supreme Court recently affirmed the action of the Board in dismissing an appeal under similar circumstances and in doing so stated, "the Board had no choice but to dismiss his appeal." *Dominick Anthony Pilli v. Virginia State Bar*, Record No. 001990 (Feb. 16, 2001). Accordingly, it is hereby ORDERED that the Bar's motion to dismiss the appeal is granted and respondent's motion for enlargement of time is denied. It is FURTHER ORDERED that the public reprimand issued by the District Committee is hereby AFFIRMED, effective April 11, 2001.

It is FURTHER ORDERED that the Clerk of the Disciplinary System send an attested copy of this Order to respondent Robert B. Machen by certified mail, return receipt requested, and to his counsel, Stephen A. Armstrong, and delivered to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar.

ENTERED this 12th day of April, 2001
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
By William M. Moffet, First Vice Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
VENDEL JULIUS MATIS
Docket No. 01-000-1884

ORDER OF REVOCATION

This matter came to be heard on May 24, 2001, upon a Rule to Show Cause and Order of Suspension and Hearing that was entered March 1, 2001 (the "Order of Suspension"), against and duly served on Vendel Julius Matis ("Respondent").

This matter was heard by a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of John A. Dezio, presiding, Robert E. Eicher, Janipher W. Robinson, Dennis P. Gallagher, and Robert L. Freed. Respondent was present in person and represented by his counsel, Michael L. Rigsby, Esquire, Midkiff, Hiner & Ross, P.C. Barbara Ann Williams, Esquire, appeared on behalf of The Virginia State Bar.

* * *

Each member of the panel stated on the record that there was no business or financial interest and no personal bias that would impair his or her ability to hear the matter fairly and impartially.

Findings of Fact

1. On July 26, 1968, Respondent became an active member of the Virginia State Bar duly licensed to practice law in the Commonwealth of Virginia.
2. In 1982, Respondent became and was, until March 1, 2001, an associate member of the Virginia State Bar. As an associate member of the Virginia State Bar, Respondent is not required to maintain CLE requirements as is required of active members of the Virginia State Bar and is not permitted to practice law in the Commonwealth of Virginia, pursuant to Part Six, Section IV, Paragraph 3(b) of the Rules of the Supreme Court of Virginia.
3. Prior to 1983 Respondent moved to and became a resident of the State of California.
4. On June 13, 1983, Respondent entered pleas of guilty to and was convicted in the United States District Court for the Central District of California, Docket No. CR 82-1006(A)-CHH of two counts of mail fraud in violation of 18 U.S.C. § 1341 incident to a fraudulent investment scheme.
5. Respondent currently resides in the State of California. He is not a member of the California State Bar. Respondent is not licensed to practice law in any jurisdiction.
6. Respondent has engaged in the following conduct even though he does not have a license from any jurisdiction that authorizes him to practice law:
 - a. In a motion to reduce his sentence filed February 17, 1988, Respondent represented that he was a "member of the legal profession," that his actions had cost him "the ability to practice his profession as an attorney,"

and that he was "unable to continue his profession as an attorney."

- b. Respondent's business letterhead and facsimile cover sheets represent him to be a "Tax Attorney" and identify him as "Ven Matis, Esq. & Associates" despite the fact that Respondent is not licensed to practice law in any jurisdiction and Respondent has no associates.
- c. Paragraph 2 of Respondent's "Retainer/Representation Agreement" implies that Respondent renders legal services if "they concern the tax matter which is at issue."
- d. Respondent has a business tax certificate from the City of Redlands, California, indicating that he is an "attorney-at-law."
- e. Respondent regularly represents clients before the Internal Revenue Service ("IRS"). On March 14, 2000, Respondent signed and filed with the IRS, a Power of Attorney, IRS Form 2848, indicating that he was an attorney in the Commonwealth of Virginia. Pursuant to the Regulations governing practice before the IRS, 31 C.F.R. Part 10, Section 10.3(a) of Circular 230 provides "... an attorney may practice before the [IRS] upon filing with the [IRS] a written declaration that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts." Section 10.2(a) of Circular 230 defines "attorney" as "any person who is a member in good standing of the bar of the highest court of any State" Section 10.2(a) of Circular 230 makes it clear that the term "member in good standing" is not modified by "associate," "inactive," "retired," or any word or phrase commonly used to indicate a limitation on an attorney's eligibility to practice law. By Declaration dated May 16, 2001, Earl Prater, Supervisory Attorney, Office of Director of Practice, Internal Revenue Service, declared that Respondent's declaration on a Form 2848 dated March 14, 2000, that he was a "member in good standing of the bar" is false.
- f. On March 23, 2001, the Clerk of the United States Tax Court certified that Respondent "was duly admitted to practice before this Court, as attorney at law, on May 9, 1988, and is of this date in good standing as a member of the bar of this Court." Respondent was required to file an Application for Admission to practice before the Tax Court incident to his admission to practice on May 9, 1988, and Respondent falsely responded in that application that he had not been convicted of an indictable crime.
- g. On April 1, 2001, and pursuant to this Board's order of March 1, 2001, Respondent filed a Motion to Withdraw as Counsel requesting the Tax Court to relieve Respondent as "Counsel for Petitioners."
7. This Board's Order of March 1, 2001, required Respondent to give certain notices to clients, other attorneys, and judges, and Respondent has failed to comply with such requirements.

Decision of the Board

This Board, by clear and convincing evidence, finds that Respondent has been found guilty of a crime as defined in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, and it is the decision of the Board to revoke Respondent's license to practice law in the Commonwealth of Virginia.

Orders

It is **ORDERED** that, pursuant to Part Six, Section IV, Paragraph 13(E)(2)(b) of the Rules of the Supreme Court of Virginia, the license of Respondent, Vendel Julius Matis, to practice law in the Commonwealth of Virginia be, and the same is, hereby revoked effective May 24, 2001.

It is further **ORDERED** that a copy of the Judgment and Probation/Commitment Order from the United States District Court for the Central District of California, Docket No. CR 82-1006(A)-CHH be attached to this Order of Suspension and made a part hereof.

It is further **ORDERED** that, pursuant to Part Six, Section IV, Paragraph 13(K)(10) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that the Clerk of the Disciplinary System send an attested true copy of this Order to Respondent, Vendel Julius Matis, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, and to Michael L. Rigsby, Respondent's Counsel, and by hand-delivery to Barbara Ann Williams, Bar Counsel, Virginia State Bar.

ENTER: 22nd day of June, 2001
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: John A. Dezio, 2nd Vice Chair



BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

In the Matter of
JEFFREY PETER O'CONNELL, ESQUIRE
 VSB Docket Nos. 01-051-0573
 01-051-1211
 01-051-2101
 01-051-2547
 01-051-2913

**ORDER OF EXPEDITED HEARING
 AND SUMMARY SUSPENSION**

It appearing to the Virginia State Bar Disciplinary Board that Senior Assistant Bar Counsel Noel D. Sengel has filed with the Board a Petition for Expedited Hearing and Summary Suspension pursuant to Part 6, §IV, ¶13(C)(5)(b)(I) of the Rules of the Supreme Court of Virginia averring that Respondent, Jeffrey Peter O'Connell, Esquire, has engaged in misconduct which is likely to result in continued injury to, or loss of property of, one or more of the Respondent's clients or other persons and that the continued practice of law by the Respondent poses an imminent danger to the public,

It is **ORDERED** that the license to practice law of the Respondent, Jeffrey Peter O'Connell, Esquire, is hereby summarily suspended until further Order of this Board, and

It is further **ORDERED** that the Respondent, Jeffrey Peter O'Connell, Esquire, appear before the Virginia State Bar Disciplinary Board for a hearing on July 27, 2001, at 9:00 a.m., in Courtroom B of the State Corporation Commission, Tyler Building, 2nd Floor, 1300 Main Street, Richmond, Virginia 23219, to determine whether Misconduct has occurred as set forth in the Petition for Expedited Hearing, attached hereto and incorporated herein by reference, and to determine whether the imposition of an immediate sanction is reasonable and necessary, as provided for in Part 6, §IV, ¶13(C)(5)(b)(I), *et seq.*

It is hereby **ORDERED** that an attested copy of the Petition for Expedited Hearing and Summary Suspension and an attested copy of this Order be mailed by certified mail, return receipt requested, to the Respondent, Jeffrey Peter O'Connell, Esquire.

ENTER this ORDER this 29th day of June, 2001
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By William M. Moffet, Chair



BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

IN THE MATTER OF:
MADELEINE MARIE REBERKENNY
 VSB Docket No. 01-000-0323

ORDER OF SUSPENSION

This matter came on to be heard on October 27, 2000, before a duly convened panel of the Virginia State Bar Disciplinary Board upon the Virginia State Bar's Motion and Notice of Show Cause Proceeding to Impose Revocation or Suspension; upon the Order entered by the Virginia State Bar Disciplinary Board on May 26, 2000, in the matter of Madeleine Marie Reberkenny, VSB Docket Nos. 94-042-0640, 94-042-2171, and 94-042-2558; and upon timely and proper notice to respondent Madeleine Marie Reberkenny. The panel of the Virginia State Bar Disciplinary Board in the proceeding consisted of John A. Dezio, presiding, Robert L. Freed, Anthony J. Trenga, Dennis P. Gallagher, and Robert E. Eicher.

Deputy Bar Counsel, Harry M. Hirsch, appeared on behalf of the Virginia State Bar ("Bar Counsel"). The respondent did not appear in person or by counsel and did not file any pleadings.

Upon consideration of the documentary exhibits presented by Bar Counsel and admitted into evidence without objection, the argument of Bar Counsel, and the provisions of Virginia State Bar Disciplinary Board Rule of Procedure IV.D(11), requiring respondent to prove by clear and convincing evidence that she has complied with paragraph 13K(1) of Section IV, Part Six of the Rules of the Supreme Court of Virginia as ordered in the May 26, 2000, order of the Virginia State Bar Disciplinary Board, the Virginia State Bar Disciplinary Board finds by clear and convincing evidence, as follows:

- (1) At all times relevant to this matter, respondent Madeleine Marie Reberkenny was a member of the Virginia State Bar;
- (2) By order entered on May 26, 2000, in VSB Docket Nos. 94-042-0640, 94-042- 271, and 94-042-2558, the Virginia State Bar Disciplinary Board suspended respondent's license to practice law in Virginia for a period of thirteen (13) months effective May 26, 2000, and ordered that respondent comply with the provisions of paragraph 13K(1) of Section IV, Part Six of the Rules of the Supreme Court of Virginia;
- (3) More than sixty (60) days have elapsed from the May 26, 2000, order of the Virginia State Bar Disciplinary Board order suspending respondent's license to practice law and ordering her compliance with paragraph 13K(1) of Section IV, Part Six of the Rules of the Supreme Court of Virginia, and respondent has failed to present proof to the Virginia State Bar, or to this Disciplinary Board, of her compliance with paragraph 13K(1) of Section IV, Part Six of the Rules of the Supreme court of Virginia; and
- (4) Respondent Madeleine Marie Reberkenny has violated the Virginia State Bar Disciplinary Board's order entered on May 26, 2000, and violated the requirements of paragraph 13K(1) of Section IV, Part Six of the rules of the Supreme Court of Virginia.

Accordingly, it is ORDERED that respondent Madeleine Marie Reberkenny's license to practice law in Virginia be and hereby is further SUSPENDED for a period of twenty-four (24) months effective June 26, 2001.

IT IS FURTHER ORDERED that an attested copy of this Order be mailed to respondent Madeleine Marie Reberkenny by certified mail, return receipt requested, at her Virginia State Bar address of record.

The Clerk of the Disciplinary System shall assess costs pursuant to Part Six, § IV, ¶ 13.K (10) of the Rules of the Supreme Court of Virginia.

ENTER THIS ORDER THE 27th day of April, 2001.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: John A. Dezio, Second Vice Chair



BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matter of
WALTER CORNELIUS WHITT, JR.
 Respondent
 VSB Docket Nos. 00-010-0904
 00-010-1226
 00-010-1649
 00-010-2506
 00-010-2637
 00-010-1719
 00-010-2210
 00-010-2304
 00-010-2309
 00-010-2310

ORDER OF SUMMARY SUSPENSION

It appearing that the Virginia State Bar has filed a Petition for an Expedited Hearing in the above-referenced matters, and

It appearing that at the time of the said filing, the Respondent, Walter Cornelius Whitt, Jr., was the subject of an order then in effect by a circuit court pursuant to Section 54.1-3936 of the Code of Virginia appointing a receiver for his accounts, a copy *teste* of which is attached to the said petition, and

It appearing appropriate to do so,

The license of Walter Cornelius Whitt, Jr. To practice law in the Commonwealth of Virginia is hereby summarily SUSPENDED in accordance with Paragraph 13(C)(5)(b)(iv), Part Six, Section IV of the Rules of the Supreme Court of Virginia until the Board enters its order upon such hearing.

A certified copy of this Order shall be served upon the Respondent, Walter Cornelius Whitt, Jr., by Certified Mail, Return Receipt Requested.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD
 By Howard P. Custis, Jr.
 Chair



District Committees

BEFORE THE FIFTH DISTRICT, SECTION II SUBCOMMITTEE
 OF THE VIRGINIA STATE BAR

In the Matter of
WILLIAM AUGUST BOGE, ESQ.
 VSB Docket No. 00-053-2105

**SUBCOMMITTEE DETERMINATION
 PUBLIC REPRIMAND**

On April 8, 2001, a meeting in this matter was held before a duly convened Fifth District, Section III Subcommittee consisting of H. Jan Roltsch-Anoll, Esquire, Dr. Theodore Smith, and John D. Primeau, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the Rules of the Supreme Court of Virginia, the Fifth District, Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand as set forth below:

I. FINDINGS OF FACT

1. At all times relevant hereto, William August Boge, Esq., (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about March 16, 1999, Ms. Karen L. Nelson (hereafter "Complainant") engaged Respondent to file suit against a storage firm and auctioneer in connection with their handling and disposal of Complainant's personal property.
3. When Respondent did not take prompt action on Complainant's behalf, Complainant left voice mail messages and sent a letter to Respondent requesting return of her file.

4. Respondent did not respond to Complainant's messages, and on December 16, 1999, she filed a Complaint against Respondent with the Virginia State Bar.
5. On January 10, 2000, an Assistant Intake Counsel at the Virginia State Bar sent a letter to Respondent requesting that he respond to Complainant and that he notify the bar within ten days following the date of the letter, in writing, of action he had taken.
6. When Respondent did not respond as requested to the bar's January 10, 2000, letter, intake counsel again wrote to Respondent via letter dated February 7, 2000. Although Respondent thereafter contacted the Virginia State Bar by telephone, he did not otherwise respond to the bar in the manner requested, nor did he return the Complainant's file in response to intake counsel's efforts.
7. The bar thereafter opened an active investigation file, and on March 3, 2000, Bar Counsel wrote to Respondent, enclosing a copy of the bar complaint, and requesting a written answer within twenty-one (21) days following the date of the letter. Respondent did not answer Bar Counsel's letter.
8. A Virginia State Bar investigator retrieved Complainant's file from Respondent on April 18, 2000, made appropriate copies, and furnished Complainant with the file materials to which she was entitled, by mail, on April 19, 2000.

II. NATURE OF MISCONDUCT

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

DR 2-108. Terminating Representation.

- (D) Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by applicable law.

RULE 1.16 Declining or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents

prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

RULE 8.1 Bar Admission and Disciplinary Matters

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

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

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, William August Boge, Esquire, and he is so reprimanded.

FIFTH DISTRICT, SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By John D. Primeau
Chair/Chair Designate
Certified April 18, 2001



BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
WALTER BALLARD HARRIS
VSB Docket No. 00-090-2305 (Pompper)

**Subcommittee Determination
(Public Reprimand)**

On April 20, 2001, a meeting in this matter was held before a duly convened Ninth District Subcommittee, consisting of Charles G. Butts, Jr., Esquire, Dr. Nancy K. Young, lay member, and Paul J. Feinman, Esquire, Chair presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(5) and Council Rule of Disciplinary Procedure IV(B), the Ninth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Walter Ballard Harris, the following Public Reprimand.

I. Findings of Fact

1. At all times material to these allegations, the Respondent, Walter Ballard Harris, hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about February 10, 1998, Richard and Joyce Pompper, *pro se*, moved for and were granted a non-suit in the matter of *Richard Wayne Pompper and Joyce Pompper v. Hammersley Motors, Incorporated*, in the Circuit Court for the City of Lynchburg. The matter had arisen from the purchase of used automobile on or about April 24, 1997.
3. During the month of February, 1998, the Pomppers retained the Respondent to re-commence their claim against Hammersley Motors, Incorporated. The Pomppers paid him \$500.00.
4. From March through June, 1998, Respondent investigated the Pompper's claims, presented them to defense counsel, and made an unsuccessful demand for settlement.
5. On or about September 3, 1999, the Pomppers wrote to Respondent requesting the status of the matter after Respondent had failed to return their telephone calls and respond to one or more letters of inquiry. Notwithstanding the letter, the Respondent failed to communicate with the Pomppers.
6. On December 3, 1999, Respondent wrote a letter to Hammersley counsel Katherine C. Londos, a copy of which Respondent sent to the Pomppers, indicating that he would set the case for trial at the January docket call. Notwithstanding the letter, the Respondent failed to take any formal action with the Pomppers' claims.
7. Respondent thereafter failed to advise the Pomppers about the legal status of their claims, including the statute of limitations.

II. Nature of Misconduct

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 6-101. Competence and Promptness

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

III. Imposition of Public Reprimand

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, Walter Ballard Harris, and he is so reprimanded.

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Paul J. Feinman
Chair Presiding
Certified May 7, 2001



BEFORE THE SECOND, SECTION II DISTRICT
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

In the Matter of
R. LARRY LAMBERT
VSB Docket Nos. 99-022-0899
99-022-3024
00-022-2237
00-022-2475

**SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)**

On May 31, 2001, a meeting in this matter was held before a duly convened Second, Section II District Subcommittee consisting of Kevin E. Martingayle, Jon F. Sedel and Sharon S. Goodwyn, Chair, presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(5) and Council Rule of Disciplinary Procedure IV(B), the Second, Section II District Subcommittee of the Virginia State Bar hereby serves upon the Respondent, R. Larry Lambert, the following Public Reprimand with Terms.

I. Findings of Fact

1. At all times material to these matters, the Respondent, R. Larry Lambert (Lambert) was an attorney duly licensed to practice law in the Commonwealth of Virginia.
2. In 1990, Lambert permitted a longtime friend, Peggie Bridgers (Bridgers) to work in his law office as a real estate paralegal. Bridgers had real estate experience, but Lambert had little or no real estate experience.
3. In the Spring of 2000, several bar complaints were pending against Lambert. All involved delay in the payoff of seller's mortgages following the sale of mortgaged property and a closing conducted by Bridgers in Lambert's office. Bridgers had handled all of the relevant transactions and offered explanations for the delays; however, the explanations she offered failed to comport with the statements of other witnesses and related evidence. The pending complaints are briefly summarized as follows:

99-022-0899 Kerr complaint; payoff late by five days. Investigation revealed other attorneys had similar experiences with Respondent's office, but loans were paid. Bridgers said an office fire in September of 1998 claimed many files and prevented her from commenting further. The Bar and Lambert now suspect Bridgers may have set that fire.

99-022-3024 McKay complaint; payoff late by sixty-five days. Again, there were no records due to

the fire. Bridgers claimed some problem with UPS delivering the payoff check. Loan was paid with interest.

00-022-2237 VSB complaint; several payoffs apparently not made.

00-022-2475 Clark-Hansen; payoff of seller's mortgage delayed about 20 days; Bridgers claimed to seller that seller's bank would not accept the payoff check.

4. On the morning of March 8, 2000, Bridgers left Lambert's office, ostensibly to go to the bank to obtain funds to stop a foreclosure. Bridgers left a note to Lambert suggesting a bookkeeper she claimed she used for trust account work was stealing, and then drove to the oceanfront and committed suicide. After investigation, the bar and Lambert do not believe the bookkeeper referenced in the note exists.
5. Following the events related in paragraph 4 above, and after the extent of Bridgers' defalcations was fully realized, Lambert went through no small personal sacrifice to pay all outstanding claims out of his own pocket. These claims were in excess of \$800,000.00. Lambert was required to sell his personal assets in order to be able to cover these losses. Although Lambert believed he had malpractice insurance to cover these losses, he learned Bridgers (whom he relied upon to renew the insurance) was apparently converting the premiums and altering the date on the insurance certificate each year. He also learned that, although Bridgers had presented him with the forms necessary to register with the bar as an attorney conducting residential real estate closings under the Consumer Real Estate Settlement Protection Act, those documents had never been sent to or received by the bar.
6. The parties do not dispute Lambert had no knowledge of Bridgers' improper activities. The parties also do not dispute Lambert failed to adequately supervise Bridgers, failed to require her to perform the mandatory reconciliations and record keeping on the matters she handled, and erred in permitting her to sign his name on trust account checks. Lambert also should have investigated the complaints about the real estate practice sooner, although the fire in 1998 undoubtedly hampered him in that regard.

II. Nature of Misconduct

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:
DR 3-104. Nonlawyer Personnel.

- (C) A lawyer or law firm that employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility. The initial and the continuing relationship with the client must be the responsibility of the employing attorney.
- (D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing attorney

and will be merged into the lawyer's completed product. The lawyer shall examine and be responsible for all work delegated to nonlawyer personnel.

DR-9102. Preserving Identity of Funds and Property of Clients.

(A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.
- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
- (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

DR 9-103. Record Keeping Requirements.

(A) Required Books and Records: As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.

- (1) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for fiduciary and nonfiduciary funds, then the consolidated cash receipts journal shall contain separate columns for fiduciary and nonfiduciary receipts.
- (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
- (3) Subsidiary ledger: A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.
- (4) Computerized and marketed manual accounting systems: Where an attorney or firm of attorneys maintains computerized records or a manual accounting system, such system must produce the records and information required by this rule.

III. Imposition of Public Reprimand with Terms

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of these complaints by a Public Reprimand with terms. The following terms shall be met within six (6) months of the date of this Determination:

1. Respondent shall not at any time in the future represent any party in any real estate matter unless and until he has fully registered under CRESPA and obtained appropriate insurance covering error, omissions and fraud in regard to any such real estate practice.
2. Within the next six (6) months, Respondent shall submit to a review of his trust account and record-keeping practices by an agent of the Bar to ensure he is in compliance with Rule of Professional Conduct 1.15 (former DR 9-103).
3. Within the next six (6) months, Respondent shall formulate and submit to Bar Counsel a written office policy regarding supervision of staff in his office designed to aid in compliance with Rule 5.3 of the Rules of Professional Conduct.

Upon written proof these terms have been satisfied, the Respondent shall be given a Public Reprimand with Terms and this matter shall be closed. If, however, Respondent fails to meet these terms within the time specified, Respondent agrees

that the Second, Section II District Committee shall certify these cases for hearing before the Virginia State Bar Disciplinary Board as an alternative sanction.

SECOND, SECTION II DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By Sharon S. Goodwyn
Chair Presiding
Certified June 13, 2001



BEFORE THE FIRST DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR

In the Matter of
STEPHEN MORTON OSER
VSB Docket No. 99-010-2011

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On April 5, 2001, a hearing in this matter was held before a duly convened First District Committee panel consisting of J. Wayne Sprinkle, Esquire, H. Taylor Williams, IV, Esquire, William H. Monroe, Esquire, Robert L. Bailey, lay member, and Michael S. Mulkey, Esquire, Chair, presiding.

The Respondent appeared in person with his counsel, J. Samuel Glasscock, Esquire. Edward L. Davis, Assistant Bar Counsel, appeared for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶13(B)(7) of the Rules of the Supreme Court, the First District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Steven Morton Oser, (hereinafter Respondent or Mr. Oser) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In December 1996, Mark Ryles was injured in an automobile accident. Thereafter, he hired Mr. Oser to represent him in his personal injury claim. On or about December 10, 1996, he began treatment for his injuries with Dr. Burt H. Rubon of Peninsula Chiropractic.
3. Mr. Ryles continued his treatment with Dr. Rubon until March 5, 1997. At that time, the unpaid balance on his account with Dr. Rubin was \$3,124.50. To protect himself, Dr. Rubin sent Mr. Oser a lien agreement. Mr. Ryles executed the agreement on December 10, 1996 and Mr. Oser executed it on March 3, 1997. The lien agreement stated in part:

"I hereby authorize and direct you, my attorney, to pay directly to said doctor such sums as may be due and owing him for medical service rendered me both by reason of this accident and by reason of any other bills including interest on the unpaid balance of my account, that are due his office and to withhold such sums from any settlement, judgement or verdict as may be necessary to adequately protect said doctor . . ."

4. On or about January 5, 1998, Mr. Oser settled Mr. Ryles' claim. The settlement statement he prepared, however, did not provide for Dr. Rubin's bill to be paid in full in accordance with the lien agreement. Instead, it provided for Dr. Rubin to be paid the statutory amount of \$500.00. Mr. Ryles executed the statement on January 5, 1998 and received his check from Mr. Oser. Mr. Oser also paid himself his attorney's fees and costs. He did not, however, disburse to Dr. Rubin until about eleven months later on December 16, 1998, although he had the funds. He sent the payment with a cover letter explaining that he was not paying the bill in full because Mr. Ryles instructed him not to pay anything over \$500.00.
5. When Dr. Rubin demanded payment in full, Mr. Oser sent him another letter on January 3, 1999, apologizing for having to "stiff" him. In the same letter, he told Dr. Rubin that Mr. Ryles had lied to him on repeated occasions, and referred to his client as a "classic dead beat debtor" and scum.
6. Mr. Oser delegated the responsibility for managing and reconciling his attorney trust account to members of his staff. He did not, however, review their work. The client subsidiary ledger for the Ryles case is completely blank, although Mr. Oser received and disbursed a total of \$8,000 in client funds for Mr. Ryles. Neither he nor his staff conducted periodic trust account reconciliations during the time in question.

II. MISCONDUCT

The Committee finds that Virginia State Bar has proven violations of the following Disciplinary Rules by clear and convincing evidence:

DR 3-104. Nonlawyer Personnel.

- (D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing attorney and will be merged into the lawyer's completed product. The lawyer shall examine and be responsible for all work delegated to nonlawyer personnel.

DR 4-101. Preservation of Confidences and Secrets of a Client.

- (B) Except as provided by DR 4-101(C) and (D), a lawyer shall not knowingly:

- (1) Reveal a confidence or secret of his client.

DR 6-101. Competence and Promptness.

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

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

- (B) A lawyer shall:
 - (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or

other properties in the possession of the lawyer which such person is entitled to receive.

DR 9-103. Record Keeping Requirements.

- (A) Required Books and Records: As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.
 - (3) Subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.

The Committee finds that the bar has not proven violations of the following Disciplinary Rules by clear and convincing evidence, or that the Rules unnecessarily duplicate other Disciplinary Rule violations sustained, and they are dismissed accordingly: DR 4-101(A), DR 4-101(B)(2), (3) and (4), DR 6-101(A), DR 9-102(B)(3), and DR 9-103(B)(4) and (5).

III. PUBLIC REPRIMAND WITH TERMS

Upon consideration of the evidence and the Respondent's prior disciplinary record, it is the decision of the committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this Complaint. The terms and conditions shall be met by the times set forth below.

1. Within sixty (60) days of today's hearing, or June 4, 2001, the Respondent shall engage at his own expense a malpractice risk manager approved by the Virginia State Bar to perform an audit of his office.
2. The Respondent will comply with any recommendations made by the malpractice risk manager.
3. The Respondent shall ensure that the risk manager submits a written report to the Virginia State Bar, in care of Edward L. Davis, Assistant Bar Counsel, within six months of the first audit.
4. The Respondent will also ensure that the risk manager submits a second written report to the Virginia State Bar within six months of the first audit, indicating whether the Respondent has complied with any recommendations.

5. Within twelve (12) months of the date of this hearing, or April 5, 2002, the Respondent will attend one Continuing Legal Education Course on the subject of trust account management, or a course with a substantial portion devoted to trust account management, for no annual CLE credit. The Respondent will certify his attendance at the course and forward it to the Virginia State Bar, in care of Edward L. Davis, by April 5, 2002.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified above, this Committee shall certify the matter for hearing before the Virginia State Bar Disciplinary Board.

Pursuant to Part Six, Section IV, (13)(K)(10), the Clerk of the Disciplinary System shall assess costs.

FIRST DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR
By Michael S. Mulkey, Chair
Certified April 12, 2001



BEFORE THE FIFTH DISTRICT SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
ROBERT MICHAEL SHORT, ESQ.
VSB Docket No. 01-052-1365

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS**

On the 9th day of May, 2001, a meeting in this matter was held before a duly convened Fifth District subcommittee consisting of Fred Haden, Esq., Brian E. McGrath, and Donald Francis King, Esq., presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the rules of the Supreme Court, the Fifth District Section II Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. Findings of Fact

1. At all times relevant hereto, the Respondent, Robert Michael Short, Esq. (Hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On February 6, 1993, Mr. Oscar Ramon Ramos was struck and killed by an automobile. A wrongful death suit was filed in Arlington County Circuit Court, Law No. 96-1400, by the Respondent on behalf of Mr. Ramos' estate and Mr. Ramos' minor daughter, Jennifer Jamile Ramos, against the driver of the vehicle, Edward Alexander Wilson.
3. The settlement amount was \$15,000. The Final Order required the Administrator of the Estate to make the following distributions: \$5,637.50 to the Respondent for legal fees; and, \$9,362.50 to the Clerk of the Circuit Court of Fairfax County on behalf of the minor child Jennifer

Jamile Ramos, to be held in an interest-bearing account for the maintenance, education and support of the child until she was eighteen (18) years old. The Administrator of the Estate forwarded the payment to the minor child's attorney, the Respondent, for deposit with the Fairfax Circuit Court.

4. On or about November 24, 1998, the Respondent attempted to deposit a check in the amount of \$9,362.50 with the Clerk of the Fairfax County Circuit Court, but learned he had to place the matter before the Fairfax County Circuit Court to obtain an Order requiring the Clerk to accept the funds. The Respondent placed the check in the client file and failed to take further action.
5. In early 1999, Jennifer's mother, Beatriz Davila, asked the Respondent where the money for Jennifer had been deposited. The Respondent informed Ms. Davila that he would deposit the money with the Circuit Court of Fairfax County. Thereafter, Mr. Davila inquired at the Clerks' Offices of both Arlington County Circuit Court and Fairfax County Circuit Court and was informed by both that they had no record of the settlement money being deposited with them.
6. On October 17, 2000, Ms. Davila sought legal advice from the Complainant, a staff attorney with Legal Services of Northern Virginia. That day, the Complainant mailed a letter to the Respondent inquiring as to the location of the settlement funds. The Complainant spoke with the Respondent by telephone on November 13, 2000, and the Respondent informed him that he still had the check in the file. The Respondent told the Complainant that he would deposit the funds with the Circuit Court of Fairfax County.
7. Having not heard from the Respondent since their November 13, 2000, inquiring again as to the status of the settlement funds. As of December 20, 2000, the date of his complaint letter to the Bar, the Complainant had not received a response from the Respondent.
8. On January 26, 2001, the Respondent was interviewed by a Virginia State Bar investigator and promised to take the necessary steps to pay the money into the Court. The Virginia State Bar investigator called the Respondent once on February 2, 2001, once on February 5, 2001, twice on February 6, 2001, once on February 7, 2001, and once on February 8, 2001, to ask what steps the Respondent had taken to deposit the funds with the Court. The Respondent failed to return any of the investigator's telephone calls or otherwise inform the investigator of the status of the funds. Only after being contacted by Senior Assistant Bar Counsel in March of 2001 did the Respondent file a petition with the Fairfax County Circuit Court requesting that the Court order the funds be deposited with the Clerk of the Court, and after obtaining the Order, deposit a check with the Clerk of the Court.

II. Nature of Misconduct

The Subcommittee finds that the following Disciplinary Rules have been violated:

DR 6-101. Competence and Promptness.

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

RULE 8.1 Bar Admission and Disciplinary Matters

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

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

III. Public Reprimand with Terms

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by June 15, 2001, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with terms. The terms and conditions which shall be met by June 15, 2001, are:

1. The Respondent shall pay interest on \$9,362.50 for the period from November 6, 1990 to March 9, 2001, totaling \$519.72, into the bank account opened by the Circuit Court of the County of Fairfax on behalf of the minor Jennifer Jamile Ramos, In Chancery No. 171239.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms

shall then be imposed, and this matter shall be closed. If, however, the terms and conditions have not been met by June 15, 2001, the case shall be certified to the Disciplinary Board of the Virginia State Bar upon a stipulation of the facts and violations of the Virginia Disciplinary Rules and the Rules of Professional Conduct as set forth and cited in this Agreed Disposition, and the sole purpose of the hearing before the Virginia State Bar Disciplinary Board shall be to determine what alternative sanction shall be imposed by the Virginia State Bar Disciplinary Board.

FIFTH DISTRICT SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By Donald Francis King
Chair/Chair Designate
Certified May 10, 2001

