

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				
Dominick Anthony Pilli	Fairfax	Public Reprimand	February 16, 2001	30
Circuit Court				
Barry L. Flora	Roanoke	30 Day Suspension w/Terms	February 24, 2001	31
Stephen Lee Shelnett	Arlington	6 Month Suspension	February 28, 2001	31
Disciplinary Board				
Turman Curtis Bobbitt	Durango, CO	1 Year, 1 Day Suspension	April 28, 2001	35
Lawonna Daves	York, SC	Revocation	March 23, 2001	
Kieran Thomas Grennan	Richmond	5 Year Suspension w/Terms	February 22, 2001	37
Vendel Julius Matis	Redlands, CA	Suspension	March 1, 2001	
William Ralph Palmer	Raleigh, NC	Suspension	April 10, 2001	
Bruce Alton Sanders	Woodbridge	2 Year Suspension w/Terms	March 21, 2001	39
Andrew Robert Sebok	Virginia Beach	10 Month Suspension	February 23, 2001	42
David Thomas Steckler	Fredericksburg	Revocation	March 14, 2001	46
William Burton Talty	Hanover	Cost Suspension	April 10, 2001	
Lawrence Douglas Wilder, Jr.	Richmond	Public Reprimand w/Terms	March 9, 2001	49
Rickey Gene Young	Martinsville	18 Month Suspension on Appeal (appealed to VA Supreme Court)	January 26, 2001	50
District Committee				
William B. Allen, III	Woodstock	Public Reprimand w/Terms	February 6, 2001	55

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
John Daniel Reaves	Falls Church	Disciplinary Board	February 27, 2001

Supreme Court

IN THE SUPREME COURT OF THE CITY OF RICHMOND

VIRGINIA STATE BAR, Appellee
v.
DOMINICK ANTHONY PILLI
Record No. 001990
VSB Docket No. 99-051-0023

Upon consideration of the record, briefs, and argument of counsel, the Court if of the opinion that there is no error in the judgment of the Virginia State Bar Disciplinary Board ("Board").

Dominick Pilli ("Pilli") contends that the Board erred in finding that it had no discretion in dismissing his appeal of a Public Reprimand issued by the Fifth District Section 1 Committee for failure to file a transcript in accordance with Part 6, §IV, ¶13.B(10)(b) of the Rules of the Supreme Court of Virginia. Pilli claims to have presented clear and convincing evidence that he ordered the transcript in a timely manner and that it was not his fault that the transcript was not filed within forty days of his notice of appeal.

Formerly, ¶13B.(10)(b) provided "Except as provided in Paragraph 13.D.(1), failure of the Appellant to make a Transcript a part of the record as specified herein shall result in dismissal of the appeal and affirmance of the sanction imposed by the District Committee."

After amendment in 1998, ¶13.B.(10)(b) reads, in part, as follows:

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.

Removal of the phrase "Except as provided in Paragraph 13.D.(1)" at the beginning of this sentence in the current rules renders Pilli's reliance upon ¶13.D.(1) untenable.

Accordingly, the Court holds that the Board did not err in granting the Virginia State Bar's motion to dismiss and denying Pilli's request for an extension to file the transcript. Pursuant to ¶13.B.(10)(b), when Pilli failed to file a transcript within forty days of the filing of his notice of appeal, the Board had no choice but to dismiss his appeal. The Court affirms the judgment of the Virginia State Bar Disciplinary Board. The appellant shall pay to the appellee thirty dollars damages.

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

A Copy,
Teste:
David B. Beach, Clerk



Circuit Court

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

VIRGINIA STATE BAR EX REL
EIGHTH DISTRICT COMMITTEE,

Complainant,
v.

BARRY L. FLORA

Respondent
Chancery No. 00-1064

ORDER OF SUSPENSION

This matter came to be heard on February 23, 2001 upon an Agreed Disposition between the Virginia State Bar, the Respondent, Barry L. Flora, and the Respondent's counsel, William B. Hopkins, Jr., Esquire.

The matter was previously scheduled to be heard in open court on February 22, 2001 by a duly-convened, Three-Judge Court, appointed pursuant to Section 54.1-3935, Code of Virginia, as amended. The case was called; however, because of inclement weather, only the Respondent, his counsel, and the Honorable James C. Roberson, Judge, were present. The matter was continued to February 23, 2001, and heard at that time by the full Three-Judge Court in a telephone conference call. The Respondent, Barry L. Flora, was present throughout the proceedings with his counsel, William B. Hopkins, Jr., Esquire. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the decision of this Court to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent and his counsel are attached hereto and incorporated herein.

Accordingly, it is **ORDERED** that the license of Barry L. Flora to practice law in the Commonwealth of Virginia be, and the same is, hereby **SUSPENDED** for a period of thirty days, effective the 24th day of February, 2001, subject to the following terms and conditions:

The Respondent, Barry L. Flora, is placed on probation for a period of one (1) year, said period to begin on the date of the entry of this Order. Mr. Flora will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during the probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of an additional one year and 11-month suspension of his license to practice law as an alternate sanction. The alternate sanction will not be imposed while Mr. Flora is appealing any adverse decision which might result in a probation violation.

The imposition of the alternate sanction will not require a hearing before the three-judge court on the underlying charges of misconduct stipulated herein 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 the Agreed Disposition or this Order 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.

ENTER: February 24, 2001

J. Michael Gamble, Chief Judge, Three Judge Court
James C. Roberson, Judge
Charles L. McCormick, III, Judge



IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

VIRGINIA STATE BAR, *ex. rel.*,
FIFTH DISTRICT, SECTION ONE, COMMITTEE,
Complainant/Petitioner,

v.

STEPHEN LEE SHELNUTT,
Defendant/Respondent
Chancery No. CH010029

AGREED DISPOSITION

On this 28th day of February, 2001, come the Virginia State Bar by Peter A. Dingman, Esquire, Special Assistant Bar Counsel, and Respondent, Stephen Lee Shelnut, Esquire, by his counsel, C. Russell Twist, Esquire, and tender the following Agreed Disposition:

A. STIPULATION OF FACTS (VSB DOCKET NO. 93-051-1322):

1. At all time relevant hereto, and continuing to the present time, Respondent, was licensed to practice law in the Commonwealth of Virginia; however, from June 26, 1992, through February 1993, Respondent was an Associate member of the Virginia State Bar, a membership status by which Respondent, under the rules of the Virginia State Bar, was not authorized to practice law in the Commonwealth of Virginia.
2. Margaret Blackledge ("Blackledge") owned a condominium in Falls Church, Virginia, against which there were two deeds of trust on which Blackledge was behind in her payments to the noteholders. Blackledge's son had co-signed the second deed of trust note.
3. On or about July 28, 1992, Blackledge signed a Contract of Employment (the "Contract") by which she retained Respondent to represent her in a Chapter 7 bankruptcy "to discharge a note on a parcel of real property" and in a

Chapter 13 bankruptcy “to reaffirm the existing deed of trust at the current fair market value of the property”. The Contract stated fees of \$350.00 for the Chapter 7 bankruptcy and \$375.00 for the Chapter 13 bankruptcy.

4. In the Contract, Respondent represented to Blackledge that he had “undertaken sufficient investigation and is sufficiently familiar with the intricacies of the needed procedures to ascertain a reasonable basis for this procedure”. Complainant represented that she had equity in her property described in Stipulation Number 3.
5. In the Contract, Respondent also agreed, as an officer of the court but not as an attorney, to seek a stay of foreclosure proceedings scheduled for July 30, 1992, on the basis of the Soldiers’ and Sailors’ Civil Relief Act of 1940.
6. Blackledge paid Respondent the following amounts by check as indicated:

<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo Notation</u>
July 27, 1992	\$125.00	Cash	S Shelnutt
July 28, 1992	\$725.00	Steve Shelnutt	Fee 7/27–Chap’s 7&13
Aug. 7, 1992	\$ 22.55	Steve Shelnutt	7-30-92 Bill

7. On or about July 29, 1992, Respondent filed a Chapter 7 bankruptcy petition on behalf of Blackledge in the United States Bankruptcy Court, Eastern District of Virginia, Alexandria Division, Case No. 92-13663.
8. On or about July 29, 1992, Respondent filed in the Blackledge bankruptcy a Motion for Stay under 50 U.S. C. App. 523. In the Motion, Respondent stated that he was filing the Motion on behalf of Blackledge’s son, but not as his attorney. In the Motion, Respondent sought a stay of the pending foreclosure proceedings based upon the fact that Blackledge’s son was an active duty member of the U.S. Coast Guard. Respondent signed the Motion and indicated his Virginia State Bar membership number on the pleading.
9. By letter dated August 20, 1992, the U.S. Department of Housing and Urban Development (“HUD”) accepted the assignment of the first deed of trust loan, instructed Blackledge to contact HUD to discuss a payment plan based upon her ability to pay. The letter also stated that “HUD will now become your lender and you will be able to stay in your home”.
10. On or about September 23, 1992, Respondent filed a Motion for Sanctions under 11 U.S.C. 362(h), and Points and Authorities, based upon contact by the second deed of trust noteholder with Blackledge after the filing of the Chapter 7 bankruptcy. Respondent failed to indicate his Virginia State Bar number on the Motion. Counsel for the noteholder filed a Response and Memorandum on October 21, 1992. The docketing sheet of the Bankruptcy Court indicates that the Motion was scheduled for hearing on November 3, 1992; that on November 2, 1992, a hearing was again requested. No hearing on the Motion occurred on November 3, 1992.
11. On or about September 23, 1992, the second deed of trust noteholder filed with the Bankruptcy Court a Motion for Relief from Stay asserting, *inter alia*, that there was no equity in the subject property available for unsecured creditors. According to the Certificate of Service on the

Motion, it was mailed to Blackledge and Respondent. The Motion was heard on October 9, 1992, and continued to October 21, 1992. On October 21, 1992, the Motion was granted by default order effectively allowing the second deed of trust noteholder to proceed to enforce his deed of trust and note against Blackledge.

12. Respondent did not appear at either the October 9, 1992, or October 21, 1992, hearing dates on the Motion for Relief from Stay. He also did not file an answer or assert a defense by either hearing date. Blackledge came to court on both dates, but did not enter the courtroom since Respondent did not appear with her.
13. On or about October 7, 1992, the Bankruptcy Court issued a Notice of Commencement of Case which included notification of an October 29, 1992, meeting of creditors. Respondent was informed of the October 29, 1992 meeting of creditors on July 29, 1992 at the initial filing. Respondent had a medical disability suspension September 27, 1990 until June 26, 1992.
14. On or about October 26, 1992, Respondent filed with the Bankruptcy Court a “Defendant’s Response to Plaintiff’s Motion to Lift Automatic Stay” and “Points and Authorities”. Respondent argued, *inter alia*, that there was equity in the subject property due to what were Blackledge’s interest-only payments. He also argued that the Chapter 7 bankruptcy filing was the first of two serial filings and that the subject property would be required for an effective reorganization under the yet-to-be-filed Chapter 13 bankruptcy. Respondent indicated his Virginia State Bar membership number on the Response.
15. The Certificate of Service for Respondent’s response to the Motion for Relief from Stay represents that it was mailed to counsel for the second mortgage noteholder on October 7, 1992, two days prior to the first hearing date on the Motion and fourteen days prior to the second hearing date. However, the pleading was filed in the Bankruptcy Court five days after the entry of the Order granting the Motion.
16. Blackledge appeared with Respondent at the meeting of creditors on October 29, 1992. This was the last date on which Blackledge had any contact with Respondent.
17. On or about October 30, 1992, Respondent filed a Motion to Vacate Default Judgment claiming that he had been unable to file a timely answer to the Motion for Relief from Stay filed by the second deed of trust noteholder due to back spasms. The Certificate of Service indicated that the Motion was mailed on October 26, 1992. Respondent indicated his Virginia State Bar membership number on the Motion.
18. The Trustee in the bankruptcy filed a Report of No Distribution on or about November 1, 1992, indicating that there was no property available for distribution from the estate of Blackledge, the debtor.
19. On or about November 2, 1992, Respondent filed a Motion for Continuance of a November 5, 1992, hearing date for one week, and to set his Motion for Stay under the Soldiers’ and Sailors’ Civil Relief Act concurrently, asserting medical disability. The Certificate of Service indicated that Respondent mailed the Motion to the attorney for the second deed

- of trust noteholder on November 2, 1992. The Bankruptcy Court's docket sheet contained no hearing entry with respect to November 5, 1992. Respondent indicated his Virginia State Bar membership number on the Motion.
20. On or about November 12, 1992, counsel for the second deed of trust noteholder filed a response to the Motion for Continuance indicating no knowledge of any hearing scheduled for November 5, 1992, and asserting that Blackledge did not come under the purview of the Soldiers' and Sailors' Civil Relief Act.
 21. Counsel for the second deed of trust noteholder filed a response to Respondent's Motion to Vacate the Default Judgment in which he indicated that he had received a Motion for Continuance from Respondent just prior to the October 9, 1992, scheduled first hearing date on the Motion for Relief from Stay based upon Respondent's back spasms.
 22. On or about November 6, 1992, counsel for the first deed of trust noteholder filed a Motion for Relief from Stay which was set for preliminary hearing on December 2, 1992.
 23. On or about November 9, 1992, the Bankruptcy Court Clerk issued a Confirmation of Request for Hearing indicating that December 1, 1992, had been scheduled for Respondent's Motion for Sanctions and Motion to Vacate Default Judgment. The Confirmation also indicated that Respondent had to send a notice of hearing to applicable parties and file the notice with a certificate of service within five days or the hearing would be stricken from the docket. The Bankruptcy Court docket sheet contains no indication of a hearing having taken place on December 1, 1992.
 24. On or about November 13, 1992, foreclosure by the second deed of trust noteholder of Blackledge's residence occurred.
 25. On or about December 2, 1992, an order was entered granting the Motion for Relief from Stay filed by the first deed of trust noteholder. The face of the Order indicates that no appearance was made by Respondent.
 26. On or about December 4, 1992, Blackledge fired Respondent.
 27. On or about January 13, 1993, the Bankruptcy Court issued a Discharge of Debtor Order.
 28. On or about January 15, 1993, counsel for the second deed of trust noteholder filed a Motion to Dismiss for Want of Prosecution with respect to Respondent's Motion for Sanctions and Motion to Vacate Default Judgment. On March 17, 1993, Agreed Orders of Dismissal were entered with respect to each of said Motions. The agreed orders were signed by Blackledge and her new attorney, Darrell M. Allen, Esq.
 29. An Order Closing Case was entered in the bankruptcy on February 5, 1993.
 30. During the course of the representation, Blackledge received no written communication from Respondent other than the Contract of Employment.
 31. During the course of the representation, Respondent did not take any action to convert the bankruptcy from a Chapter 7 to a Chapter 13 bankruptcy.
 32. Respondent did not obtain the bankruptcy Court's authority to withdraw from the representation of Blackledge.
 33. If called to testify in this matter, Respondent would testify that, at all times relevant to this matter, he believed, in good faith, that, having once been duly admitted to practice before the United States Bankruptcy Court for the Eastern District of Virginia, Respondent was entitled to continue practice before that Federal Court, even while under suspension or on associate status with the Virginia State Bar, unless and until the Federal Court should take affirmative action to suspend or disbar Respondent. Respondent would testify that his belief was premised, among other things, upon his understanding of the holdings of the United States Supreme Court in the following cases: *In Re: Snyder*, 472 U.S. 634, 105 S.Ct. 2874 (1985); and *Theard v. United States*, 354 U.S. 278, 77 S.Ct. 1274 (1957). Further, Respondent would testify that his belief in this regard was also premised upon his reading of Local Rule 7(M), Federal Rules of Disciplinary Enforcement, of the Local Rules of Practice for the United States District Court for the Eastern District of Virginia (effective date February 15, 1989). Respondent would concede that he did not take affirmative steps to advise the United States District Court of either his suspension status and/or his associate status. The Federal Court did not take action pursuant to Local Rule 7 regarding Respondent's status as a member of the bar of that Court. Respondent did not inform the Court of the medical suspension because he interpreted the Local Rule 7 requiring notification of the court of public discipline as requiring notification of imposition of disciplinary public reprimands, suspensions and disbarments and not medical disability suspensions.
 - B. The United States Bankruptcy Court conducted no disciplinary hearing on any of the allegations in the Blackledge matters under the Local Rules of the Bankruptcy Court of the Eastern District of Virginia.
 - C. The United States Bankruptcy Court made no finding of bar membership status of the Respondent under the Local Rules of the Bankruptcy Court of the Eastern District of Virginia
 - D. All matters in both the Mbakpuo and the Blackledge matter took place more than 90 days after September 27, 1990, and all of the events in the Blackledge matter took place before the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division.
 - E. Part VI, Section IV, Paragraph 13K of the Rules of the Virginia State Bar imposes a duty on suspended attorneys to provide notice to courts of their suspension and to furnish proof of such notice within 60 days of such suspension to the Virginia State Bar.
 - F. Respondent complied with this notice provision in respect to the United States District Court for the Eastern District of Virginia and the United States Bankruptcy Court for the Eastern District of Virginia from September 27, 1990 through November 27, 1990.

disciplinary actions

G. At all times relevant hereto, Respondent worked in a shared office and does not recall receiving any of the documents described in Stipulations 1 through 33.

B. STIPULATION OF FACTS (VSB DOCKET NO. 93-051-0240):

1. At all relevant times, to the present, Respondent has been licensed to practice law in Virginia, but from September 27, 1990, until June 26, 1992, his license was suspended owing to a disability. From June 26, 1992, through the dates relevant to these events, Respondent maintained an Associate membership in the Virginia State Bar, a status which did not authorize him to practice law in this Commonwealth.
2. On April 6, 1992, Respondent signed a five count complaint on behalf of Plaintiff, Christopher E. Smith ("Smith"), against U.S. Sprint, et al., in the United States District Court for the Eastern District of Virginia, Alexandria Division, Civil Action 92-478-A. Smith's principal counsel was C. Victor Mbakpuo ("Mbakpuo"), an attorney not licensed to practice law in Virginia. Respondent served as local counsel and moved for the admission of Mbakpuo pro hac vice. On the date the complaint was filed, Respondent was not a member in good standing of the Virginia State Bar.
3. Respondent failed to include his Virginia Bar license number on the complaint and other subsequent pleadings, as required by local rule.
4. Respondent did not advise the Court of his suspended status and, subsequently, of his Associate status, but instead, at least by implication, represented to the Court that his license to practice in Virginia was in force. Despite such failure, the pleadings were accepted. Respondent had no active cases or clients when he entered into his medical suspension.
5. Respondent's participation in the federal litigation was irregular. He failed to endorse pleadings as local counsel as required by local rule. He failed to attend a deposition. He failed to respond to discovery on multiple occasions, resulting in imposition of sanctions by Magistrate Judge Leonie M. Brinkeman (now United States Federal Judge Brinkeman). At the time, then-Magistrate Judge Brinkeman imposed sanctions for repeated failure to respond to discovery, she put counsel on notice that, if further days were experienced, she would recommend Smith's case be dismissed with prejudice. Respondent would testify that: (i) Mr. Mbakpuo would not listen to the guidance of the Respondent; (ii) Mr. Mbakpuo failed to inform the Respondent of the discovery until sanctions had been imposed; (iii) Mr. Mbakpuo received all pleadings in this case; (iv) Mr. Mbakpuo failed to inform the Respondent of the deposition; and (v) Mr. Mbakpuo was informed of the date of the pretrial conference but did not inform Respondent of the pretrial conference. Mr. Mbakpuo interfered with Respondent's ability to prepare list of witnesses and list of exhibits. Once sanctions had been imposed, Respondent attempted to obtain control of the case from Mr. Mbakpuo, however, Mr. Mbakpuo refused to turn control of the case to him.. It was too late for Respondent to comply with the discovery requirements.
6. Thereafter, Respondent (and Mbakpuo) failed to appear at the pre-trial conference, failed to file lists of witnesses and lists of exhibits, and failed to comply, in all respects, with the earlier order of Judge Brinkeman concerning discovery and related matters. Accordingly, Judge Brinkeman recommended the dismissal of the case with prejudice and appropriate disciplinary action against Smith's counsel.
7. Faced with the likely dismissal of his client's case, Respondent filed a motion to withdraw his endorsement of Mbakpuo on a pro hac vice basis. Respondent did not comply with the long overdue discovery requirements and he apparently made no effort to withdraw his own appearance as counsel for Smith. The client dismissed the Respondent at the time when Respondent attempted to withdraw Mr. Mbakpuo's endorsement.
8. The case was dismissed with prejudice on July 31, 1992, by a United States District Judge, solely because of the repeated and unexcused failure to comply with discovery and other pre-trial procedures.
9. Respondent understood his duties to be subordinate to those of Mbakpuo and, by the time he discovered that Mbakpuo had not attended to pre-trial matters satisfactorily it was too late for him to personally attend to the matter. Mbakpuo not only failed to meet his own responsibilities in the matter, but even interfered with Respondent's attempts to contact Smith and to see the papers and documents which would have permitted Respondent to respond to some of the discovery himself. The Respondent was a complainant against Mr. Mbakpuo in Ohio. Mr. Mbakpuo was subsequently disbarred in the state of Ohio.
10. A. If called to testify in this matter, Respondent would testify that, at all times relevant to this matter, he believed, in good faith, that, having once been duly admitted to practice before the United States District Court for the Eastern District of Virginia, Respondent was entitled to continue practice before that Federal Court, even while under suspension or on associate status with the Virginia State Bar, unless and until the Federal Court should take affirmative action to suspend or disbar Respondent. Respondent would testify that his belief was premised, among other things, upon his understanding of the holdings of the United States Supreme Court in the following cases: In Re: Synder, 472 U.S. 634, 105 S.Ct. 2874 (1985); and Theard v. United States, 354 U.S. 278, 77 S.Ct. 1274 (1957). Further, Respondent would testify that his belief in this regard was also premised upon his reading of Local Rule 7(M), Federal Rules of Disciplinary Enforcement, of the Local Rules of Practice for the United States District Court for the Eastern District of Virginia (effective date February 15, 1989). Respondent would concede that he did not take affirmative steps to advise the United States District Court of either his suspension status and/or his associate status. The Federal Court did not take action pursuant to Local Rule 7 regarding Respondent's status as a member of the bar of that Court.
 - B. The United States District Court conducted no disciplinary hearing in the federal court on any of the allegations in the Mbakpuo matters under its Local Rules.
 - C. The United States District Court made no finding of bar membership status of the Respondent under its Local Rules.

- D. All of the proceedings in the Mbakpuo matter occurred before the United States District Court for the Eastern District of Virginia, Alexandria Division.
- E. Respondent did not inform the United States District Court of the medical suspension because he interpreted the Local Rule requiring notification of the court of public discipline as requiring notification of imposition of disciplinary public reprimands, suspensions and disbarments.

C. STIPULATION OF MISCONDUCT (VSB DOCKET NOS. 93-051-1322 and 93-51-0240):

- 1. As to VSB Docket No. 93-051-1322 (Blackledge), the aforementioned conduct on the part of Respondent constitutes a violation of the following Disciplinary Rule(s) of the Virginia Code of Professional Responsibility:
 - DR 1-102. (A)(3) and (4) * * *
 - DR 2-108. (A)(1) and (3), (B)(1), and (C) * * *
 - DR 6-101. (B) and (C)
 - DR 7-101. (A)(1), (2) and (3) * * *
 - DR 7-102. (A)(5) * * *
 - DR 7-105. (C)(5) * * *
- 2. As to VSB Docket No. 93-051-0240 (Mbakpuo), the aforementioned conduct on the part of Respondent constitutes a violation of the following Disciplinary Rule(s) of the Virginia Code of Professional Responsibility:
 - DR 1-102. (A)(3) and (4) * * *
 - (A) A lawyer shall not:
 - DR 6-101. (B) * * *
 - DR 7-101. (A)(1) and (3) * * *

D. FACTORS IN MITIGATION/ENHANCEMENT:

This Court has further taken into consideration the following factors in mitigation of the misconduct found by this Court:

- (1) Absence of a significant prior disciplinary record;
- (2) Respondent's cooperative attitude toward these proceedings; and
- (3) A significant delay in these proceedings from the original misconduct to the date of this hearing.

E. IMPOSITION OF SANCTIONS:

In consideration of the foregoing, it is, by this Court, ORDERED that the license to practice law in the Commonwealth of Virginia heretofore issued to Respondent be, and the same hereby is, suspended for a period of six (6) months from the date hereof to and including August 31, 2001; and

FURTHER ORDERED that Respondent shall promptly give notice of this Suspension to each and all of his clients in all active files for which he is in any way a responsible lawyer and shall further give notice of this Suspension to the assigned

Presiding Judge, or, in default thereof, to the Chief Judge of any court in which Respondent is currently an attorney of record in any active pending matter; and

SO ORDERED THIS 28TH DAY OF FEBRUARY, 2001.

David T. Stitt
Designated Chief Judge

William L. Winston
Judge, 17th Judicial Circuit, Retired

James C. Roberson
Judge, 13th Judicial Circuit, Retired



Disciplinary Board

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
TURMAN CURTIS BOBBITT
VSB Docket # 00-000-2167

ORDER AND OPINION OF SUSPENSION

This matter came to be heard on April 28, 2000 in the matter of Turman Curtis Bobbitt, VSB Docket No. 00-000-2167 before a panel of the Virginia State Bar Disciplinary Board convened in Hearing Room A of the Virginia Supreme Court, 100 N. Street, Richmond, VA 23219 and composed of Carl Eason, Chair, Donna A. DeCorleto, John A. Dezio, Janipher W. Robinson and Anthony J. Trenga. There was no appearance by the Respondent, Turman Curtis Bobbitt, or counsel on his behalf. Harry Hirsch, Esq., Assistant Bar Counsel, appeared as counsel to the Virginia State Bar. Based on the evidence presented, the Board suspended the license of Respondent for one year and one day, effective April 28, 2000 and in support of the suspension issues the following opinion and findings:

- 1. Respondent was licensed to practice law within the Commonwealth of Virginia on September 26, 1980, and in Colorado in 1983.
- 2. In response to a disciplinary action taken against him in Colorado, Respondent executed a Stipulation Agreement for conditional admission of misconduct with respect to his representation of a certain criminal defendant and his deficiencies in connection therewith, all as set forth in the *En Banc* opinion of the Supreme Court of the State of Colorado, No. 99SA58, issued May 10, 1999, a copy of which is attached.
- 3. As a result of the cited conduct and his past disciplinary record, Respondent was suspended from the practice of law in the State of Colorado for a period of one year and a day effective June 9, 1999.
- 4. The disciplinary action of the Supreme Court of Colorado constituted a final decision.
- 5. By Show Cause Order and Order of Suspension and Hearing dated March 30, 2000, a copy of which is attached, Respondent's license to practice law in Virginia was imme-

diately suspended pursuant to Rules of Conduct, Part Six, Section IV, Paragraph 13(A) and Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on April 28, 2000 to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked. He was further ordered pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, to give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation and to make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of clients and to give notice within fourteen (14) days of the effective date of that suspension order and make such arrangements as required within forty-five (45) days of the effective date of the suspension order. He was further ordered to provide proof to the Bar within sixty (60) days of the effective date of the suspension order that such notices and arrangements had been given and made.

6. On April 3, 2000, pursuant to this Board's Show Cause Order and Order of Suspension and Hearing, Respondent was provided with notice of the hearing on April 28, 2000, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 2227 Delwood Avenue, Durango, CO 81301. The Clerk of the Disciplinary System received on April 7, 2000 the return receipt showing receipt of the notice at Respondent's address of record.
7. Part Six, Section IV, Paragraph 13(G) of the Rules of this Court provide:

Disbarment or Suspension in Another Jurisdiction:

Whenever there shall be filed with the Clerk of the Disciplinary System evidence that an Attorney admitted to practice in this State has been disbarred or suspended from practice in another jurisdiction and that such disciplinary action has become final, the Board shall forthwith enter an order suspending the license of the Attorney and directing the Attorney to show cause why the same sanction that was imposed in the other jurisdiction should not be imposed by the Board. The 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 hearing shall be set not less than twenty-one nor more than thirty days after the date of the order. Within fourteen days of the date of mailing, the 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 in 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 ground for disciplinary action or for the same discipline in this State.

The Respondent shall have the burden of producing the record upon which he relies to support allegations (1), (2), or (3) above, and he shall be limited at the hearing to reliance upon the allegations of his written response. Except to the extent the allegations of the Respondent's written response are established, the findings in the other jurisdiction shall be conclusive of all matters for purposes of the proceeding before the Board.

If at the time fixed for hearing the Respondent has not filed a written response or shall not appear or if the Board, after hearing, shall determine that the Respondent has failed to establish the allegations of his written response, the Board shall impose the same discipline that was imposed in the other jurisdiction. If the Board shall determine that the Respondent has established the allegations of his written response, it shall, in its discretion, dismiss the proceeding or impose a lesser discipline than was imposed in the other jurisdiction. A copy of any order imposing a sanction shall be served upon the Respondent by certified mail. Any such order shall be final and binding subject only to appeal as hereinafter provided.

8. On April 28, 2000, a panel of the Virginia State Bar Disciplinary Board was duly convened in accordance with the Show Cause Order and Order of Suspension and Hearing entered on March 30, 2000 and the notice given to Respondent. Respondent failed to appear and otherwise respond as required. He provided no evidence or other reason not to suspend his license and based on the certification of the disciplinary action in Colorado, the license for Thurman Curtis Bobbitt is required to be suspended. Accordingly, by Order dated April 28, 2000, his license to practice law within the Commonwealth of Virginia was suspended for a period of one year and one day, effective April 28, 2000. Respondent was further ordered pursuant to the provisions of Part Six, Section IV, Paragraph 13 (K)(1) of the Rules of the Supreme Court of Virginia, to give notice by certified mail of the suspension to all clients for whom he is currently handling matters and all opposing attorneys and presiding judges in pending litigation and make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of the client. Such notice was to be given within fourteen (14) days of the effective date of the Suspension Order and such arrangements within forty-five (45) days from the effective date of the Suspension Order and to provide proof to the Bar within sixty (60) days that such notices and arrangements had been made and given. A copy of the Order is attached hereto.
9. On June 22, 2000, the Clerk of the Disciplinary System received an affidavit dated June 16, 2000, by the Respondent providing proof that the notice and client arrangements previously ordered have been effected.

Whereupon it is:

ORDERED pursuant to Part Six, Section IV, Paragraph 13 (G) of the Rules of the Virginia Supreme Court that the license of Respondent, Thurman Curtis Bobbitt to practice law in Virginia be, and the same hereby is, suspended for a period of one year and one day, effective April 28, 2000, as set forth in

the Board's Order dated and entered April 28, 2000, attached hereto; it is

ENTER THIS ORDER THIS 7TH DAY OF MARCH, 2001
VIRGINIA STATE BAR DISCIPLINARY BOARD

By John A. Dezio



BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
KIERAN THOMAS GRENNAN
VSB Docket Nos. 99-033-2136, 01-033-0074, 01-033-0100 and
01-033-0179

ORDER

These matters came on February 22, 2001, to be heard on the Agreed Disposition of the Virginia State Bar and the respondent Kieran Thomas Grennan, based upon the Certification of the Third District Committee, Section III. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Donna A. DeCorleto, Robert L. Freed, Michael A. Glasser, Anthony J. Trenga and Henry P. Custis, Jr., presiding.

The Virginia State Bar, by Bar Counsel Barbara Ann Williams, presented an Agreed Disposition endorsed by the respondent Kieran Thomas Grennan.

Having considered the Certification and the Agreed Disposition, it is this board's decision to accept the Agreed Disposition, and the board finds by clear and convincing evidence as follows:

Stipulations of Fact and Disciplinary Rule Violations

**I. VSB Docket No. 99-033-2136
(Complainant: The Honorable Angela E. Roberts)**

A. Stipulations of Fact

1. At all times relevant to this matter, Mr. Grennan was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On January 22, 1999, the judges of the Juvenile and Domestic Relations District Court for the City of Richmond removed the respondent from the court's list of lawyers for appointment as counsel in misdemeanor and civil cases and relieved him as court appointed counsel in all pending cases.
3. In the six months before this action was taken, the respondent failed to appear in the Richmond Juvenile and Domestic Relations District Court at least ten times, was late once and unprepared on another occasion.
4. The respondent received written and verbal warnings, as well as two show cause notices and counseling, before he was removed from the court appointed list and relieved of his duties as

court appointed counsel in all cases pending in the Juvenile and Domestic Relations District Court for the City of Richmond.

5. On or about March 5, 1999, on behalf of all the judges of the Richmond Juvenile and Domestic Relations District Court, Chief Judge Angela Edwards Roberts filed a complaint with the Virginia State Bar against Mr. Grennan.
6. The respondent did not respond to the bar's demands for information concerning Judge Roberts' complaint.

B. Disciplinary Rule Violations

Bar Counsel and the respondent agree that the above factual stipulations could give rise to a finding of violation of the following Disciplinary Rules:

DR 6-101. (A)(1) and (2) and (B) * * *

**II. VSB Docket No. 99-033-0074
(Complainant: Paul Beverly)**

A. Stipulations of Fact

1. Mr. Grennan's law license was administratively suspended on October 14, 1999, for non-compliance with MCLE requirements.
2. On November 10, 1999, Mr. Grennan's dues check, which was over four months late, bounced.
3. On November 29, 1999, Mr. Grennan received an additional administrative suspension for failure to pay dues and failing to tender his professional liability certification.
4. Mr. Grennan failed to pay his dues for fiscal year 2001, which were due on July 1, 2000.
5. In June 1999, Paul Beverly retained Mr. Grennan to initiate divorce proceedings and paid him \$250.
6. Mr. Beverly advised Mr. Grennan that he needed to obtain the divorce in an expeditious manner.
7. Mr. Grennan never initiated the divorce action, even after Mr. Beverly inquired about the status of the matter.
8. Mr. Beverly last spoke to Mr. Grennan in April 2000.
9. Mr. Grennan never advised Mr. Beverly that he was suspended from the practice of law and never refunded Mr. Beverly's \$250.
10. Mr. Grennan did not respond to the bar's demands for information concerning Mr. Beverly's complaint.

B. Disciplinary Rule Violations

Bar Counsel and the respondent agree that the above factual stipulations could give rise to a finding of violation of the following Disciplinary Rules:

DR 1-102. (A)(4) * * *

DR 6-101. (B) and (C) ***

DR 7-101. (A)(2) ***

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

* * *

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation

**III. VSB Docket Nos. 01-033-0100
(Complainant: William R. Marshall, Jr.)
and 01-033-0179
(Complainant: Theodore Tondrowski)**

A. Stipulations of Fact

1. Mr. Grennan's law license was administratively suspended on October 14, 1999, for non-compliance with MCLE requirements.
2. On November 10, 1999, Mr. Grennan's dues check, which was over four months late, bounced.
3. On November 29, 1999, Mr. Grennan received an additional administrative suspension for his failure to pay dues and failing to tender his professional liability certification.
4. Mr. Grennan failed to pay his dues for fiscal year 2001, which were due on July 1, 2000.

5. On or about July 17, 2000, Mr. Grennan appeared in the Circuit Court of the City of Richmond, sat at counsel table and successfully moved on behalf of the defendant, Benjamin Johns, to continue a hearing involving an appeal from a protective order.
6. Before appearing in court, Mr. Grennan telephoned William R. Marshall, counsel for the plaintiff, and Patricia Barnett, the defendant's guardian ad litem, and advised them that he represented Mr. Johns.
7. Following the hearing, Mr. Grennan said that he did not have a business card and gave Mr. Marshall and Ms. Barnett his telephone number; in his remarks, Mr. Grennan never indicated that anyone else represented Mr. Johns.
8. Mr. Marshall subsequently advised Ms. Barnett, Theodore Tondrowski and the court by letter dated July 18, 2000, that Mr. Grennan was suspended from the practice of law.
9. By letter to the Virginia State Bar dated July 20, 2000, Mr. Tondrowski advised the bar that he represented Benjamin Johns and had engaged Mr. Grennan to appear on Mr. Johns' behalf at the July 17 hearing due to a scheduling conflict.
10. Mr. Tondrowski's letter to the bar states that although he knew in October 1999 that Mr. Grennan's license to practice law had been suspended for failure to comply with MCLE requirements and non-payment of dues, Mr. Grennan had subsequently assured Mr. Tondrowski and others that he had remedied the problems and was on full active status as a member of the bar.
11. Mr. Marshall passed away on August 7, 2000.
12. Mr. Grennan did not respond to the bar's demands for information concerning the complaint filed by Mr. Marshall (VSB Docket No. 01-033-0100) or the complaint subsequently filed by Mr. Tondrowski (VSB Docket No. 01-033-0179).

B. Disciplinary Rule Violations

Bar Counsel and the respondent agree that the above factual stipulations could give rise to a finding of violation of the following Disciplinary Rules:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation

Upon consideration whereof, it is **ORDERED** that the respondent shall receive effective February 22, 2001, a **Five Year Suspension with Terms**. It is hereby **ORDERED** that as a condition of reinstatement the respondent shall comply with the following terms:

- 1. The respondent shall comply with the requirements of Part Six, Section IV, Paragraph 13.J.(2) of the Rules of the Virginia Supreme Court governing reinstatement after suspension for more than one year.
2. Before applying for reinstatement, the respondent shall contact the Lawyers Helping Lawyers Program Director and obtain a referral for assessment by a licensed clinical professional at the respondent's expense.
3. The Lawyers Helping Lawyers Program Director must designate or approve the licensed clinical professional who assesses the respondent.
4. The respondent must execute any and all releases necessary for the licensed clinical professional and Lawyers Helping Lawyers to obtain any and all medical records deemed pertinent to the assessment.
5. The respondent must execute any and all releases necessary for the licensed clinical professional and Lawyers Helping Lawyers to share all information and conclusions reached during the course of the assessment with the Virginia State Bar.
6. Only upon satisfactory proof that the respondent has completed the five year suspension, fully complied with the terms of this Agreed Disposition and the Rules of the Virginia Supreme Court, and written certification by the licensed clinical professional that the respondent is fit to practice law, shall the respondent be reinstated to the practice of law in the Commonwealth of Virginia.
7. If an issue arises about the respondent's conduct during the course of the five-year suspension, including but not limited to the unauthorized practice of law, his compliance with the terms of this Agreed Disposition, or his fitness to practice law, at the request of Bar Counsel or the respondent, the Disciplinary Board may conduct a hearing as to whether the respondent has fulfilled the terms of this Agreed Disposition and is entitled to be reinstated. The respondent shall have the burden of proof at any such hearing.

VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Henry A. Custis, Chair



BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRUCE ALTON SANDERS
VSB Docket Nos. 98-022-1131, 98-022-2514 and 99-022-0435

ORDER

These matters came on March 21, 2001, to be heard on the Agreed Disposition of the Virginia State Bar and the respondent Bruce Alton Sanders, based upon the Certification of the Second District Committee, Section II. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of D. Stan Barnhill, Michael A. Glasser, Karen A. Gould, Deborah A. Wilson and Henry P. Custis, Jr., presiding.

The Virginia State Bar, by Bar Counsel Barbara Ann Williams, presented an Agreed Disposition endorsed by the respondent Bruce Alton Sanders.

Having considered the Certification and the Agreed Disposition, it is this board's decision to accept the Agreed Disposition, and the board finds by clear and convincing evidence as follows:

I. Findings of Fact Common to Each Docket

- 1. From May 17, 1979, until August 6, 1998, Mr. Sanders was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
2. On August 6, 1998, Mr. Sanders changed his bar membership to associate status.

II. VSB Docket No. 98-022-1131

A. Findings of Fact

- 1. In January 1997, Theresa A. Gay retained Mr. Sanders to file a divorce action.
2. Ms. Gay paid Mr. Sanders a \$200 retainer by check number 1248, payable to Mr. Sanders and dated January 15, 1997.
3. On January 16, 1997, Mr. Sanders deposited Ms. Gay's check into Central Fidelity Bank account number 0900032673, his law firm's general account.
4. On or about January 17, 1997, Mr. Sanders initiated the divorce action, which proceeded by order of publication because Ms. Gay did not know her husband's whereabouts.
5. The publication order required Mr. Gay to appear on or before May 13, 1997; Mr. Gay did not file an answer or enter an appearance.
6. A commissioner's hearing was conducted on June 9, 1997.
7. Mr. Sanders advised Ms. Gay that the divorce would be final within three to four weeks after the commissioner's hearing.
8. About eight weeks after the commissioner's hearing, Ms. Gay tried to contact Mr. Sanders and learned that he had moved to Baltimore, Maryland, without notifying her.

9. When Ms. Gay finally reached Mr. Sanders by telephone in Baltimore in the middle of August 1997, Mr. Sanders assured Ms. Gay that he would rush to finalize her divorce.
10. Despite his assurances to Ms. Gay, Mr. Sanders did not act expeditiously.
11. On or about September 25, 1997, Ms. Gay filed a bar complaint against Mr. Sanders.
12. Mr. Sanders subsequently acknowledged in a letter to bar counsel dated December 31, 1997, that the delay in completing Ms. Gay's divorce after the commissioner's hearing in July 1997, was his fault, noting that between June and December 1997, he moved from Virginia Beach to Baltimore, closed his law practice, took a non-law related job, managed a major non-work related project and got married.
13. The Final Decree was entered in Ms. Gay's divorce action on December 31, 1997.

B. Findings of Misconduct

The above facts establish violations of the following provisions of the Code of Professional Responsibility:

DR 6-101. (B) and (C) ***

DR 9-102. (A)(1) and (2) ***

III. VSB Docket No. 98-022-2514

A. Findings of Fact

1. On April 30, 1996, Onni Harjou died in Chesapeake, Virginia, without leaving a will.
2. On May 30, 1996, Bernice F. Allen qualified as administratrix of Mr. Harjou's estate, which had an estimated value of \$83,625.
3. Ms. Allen was Mr. Harjou's long-time companion; when she qualified as administratrix, Ms. Allen was 75 years old.
4. Because she felt that she did not have the necessary expertise to administer Mr. Harjou's estate, Ms. Allen retained Mr. Sanders to assist her.
5. Ms. Allen sold Mr. Harjou's car and donated his clothes to the Salvation Army; the only remaining assets in Mr. Harjou's estate were investments.
6. Ms. Allen gave Mr. Sanders the estate checkbook and all the other estate records, and forwarded all estate bills that she received to Mr. Sanders.
7. The first check written on First Virginia Bank of Tidewater account number 1145102-1080 for the Estate of Onni Harjou was for \$225, dated October 23, 1996, and made payable to Mr. Sanders.
8. On or about December 2, 1996, John W. Brown, Commissioner of Accounts issued a notice of delinquency,

advising Ms. Allen that the inventory for Mr. Harjou's estate was due on September 30, 1996, and had not been filed.

9. As a result of the delinquency, Ms. Allen was fined \$15 and warned that failure to comply with the Commissioner's Notice of Delinquency would result in further proceedings against her.
10. On December 6, 1996, the inventory was filed with the circuit court.
11. On December 26, 1996, a check in the amount of \$4,750 made payable to Mr. Sanders was written from Mr. Harjou's estate account.
12. In January 1997, a partial disbursement was made from the estate account to pay undertakers' fees.
13. Mr. Sanders subsequently advised Ms. Allen that they had to wait one year to close out the estate and disburse the remaining assets in case unexpected bills or contestants appeared.
14. As of the statement closing date of April 21, 1997, a balance of \$16,821.95 remained in the estate account; a deposit of \$52,602.08, from the final sale of Mr. Harjou's stocks, was made into the estate account on May 8, 1997.
15. Ms. Allen contacted Mr. Sanders in July 1997 about closing the estate, but he again advised her that they needed to wait awhile longer before closing out the estate.
16. Mr. Sanders also informed Ms. Allen that he was moving to Baltimore to manage a friend's political campaign but assured her that he would continue to work on the estate matter from Maryland.
17. Ms. Allen was hospitalized in September and October 1997, and recuperated in New York until January 1998.
18. While she was recuperating, Ms. Allen unsuccessfully attempted to reach Mr. Sanders.
19. When Ms. Allen returned to Virginia and finally reached Mr. Sanders in January 1998, he assured her that in ten days she would receive a final check to be presented to Mr. Harjou's daughter, the sole beneficiary of the estate.
20. The check did not arrive as promised, and since January 1998, Ms. Allen has been unable to reach Mr. Sanders.
21. On February 12, 1998, the Commissioner issued a notice of delinquency against Ms. Allen.
22. The notice advised that Ms. Allen had failed to file the first accounting of all assets of Mr. Harjou's estate within sixteen months of her appointment as administrator, as required by law.
23. The Commissioner assessed a \$25 fine against Ms. Allen for failure to file the accounting in a timely manner.

24. On or about February 24, 1998, Kimberly P. Holt, an attorney retained by Mr. Harjou's daughter and sole beneficiary of his estate, wrote Mr. Sanders at his Virginia Beach address, inquiring whether he still represented Ms. Allen.
25. On or about February 26, 1998, Ms. Holt forwarded a copy of her February 24th letter to Mr. Sanders at an address in Baltimore, Maryland.
26. On or about March 18, 1998, Ms. Allen filed a bar complaint against Mr. Sanders.
27. By letter dated March 19, 1998, Mr. Sanders advised Ms. Holt that he was preparing the accounting and would express mail it to the Commissioner the next day, and that he would mail the first distribution from the estate to Mr. Harjou's daughter.
28. By letter dated March 19, 1998, Mr. Sanders advised the Commissioner that he was preparing the accounting for Mr. Harjou's estate and that he would express mail it to the Commissioner the next day for filing, along with a personal check for the \$25 late fee assessed against Ms. Allen.
29. Mr. Sanders did not mail a check for Mr. Harjou's daughter, submit the accounting or mail a check for the late fee.
30. After Mr. Sanders failed to submit the accounting and the check for the late fee to the Commissioner, Mr. Brown wrote him on April 14, 1998, advising that if the accounting were not filed immediately he would issue a summons to Ms. Allen for non-compliance.
31. On May 4, 1998, the Commissioner issued a summons requiring Ms. Allen to file a settlement of accounts within thirty days of service.
32. A show cause order was subsequently issued requiring Ms. Allen to appear in circuit court on August 19, 1998, to explain why no accountings were filed.
33. On January 29, 1999, with no objection, Ms. Allen was removed as administratrix of Mr. Harjou's estate, and Ms. Holt was substituted as administratrix.
34. Ms. Holt discovered that the estate funds had been deposited in a non-interest bearing account, and she had to pay the bank about \$100 for copies of statements necessary to file the accounting, since Ms. Allen had given or forwarded all of the estate records to Mr. Sanders.
35. A Distribution Order was entered on April 12, 1999, and Ms. Holt filed the first and final accounting on May 12, 1999.

B. Findings of Misconduct

The above facts establish violations of the following provisions of the Code of Professional Responsibility:

DR 6-101. (B) and (C) ***

DR 7-101. (A)(2) and (3) ***

IV. VSB Docket No. 99-022-0435

A. Findings of Fact

1. In August 1996, Earl Whitehurst retained Mr. Sanders to file a divorce action.
2. On or about August 30, 1996, Mr. Whitehurst paid Mr. Sanders \$354 via check number 775, drawn upon the Navy P.W.C. Norva Federal Credit Union.
3. On or about October 8, 1996, Mr. Sanders deposited Mr. Whitehurst's check into Central Fidelity Bank account number 0900032745, a trust account maintained by Mr. Sanders.
4. On or about October 10, 1996, Mr. Sanders filed a Bill of Complaint on Mr. Whitehurst's behalf.
5. On or about January 6, 1997, Mr. Whitehurst paid Mr. Sanders \$224 via money order number 036512 drawn upon the Navy P.W.C. Norva Credit Union.
6. Mr. Sanders deposited the money order into Central Fidelity Bank account number 0900032673, his law firm's general account, on January 16, 1997.
7. On or about March 17, 1997, the Honorable Russell Townsend entered a Decree of Reference, referring the matter to James M. Walton, Commissioner in Chancery.
8. On June 18, 1997, the Commissioner in Chancery filed his report.
9. Mr. Whitehurst understood that Mr. Sanders was going to set a court date for the final decree to be entered in December 1997.
10. Mr. Sanders has not contacted Mr. Whitehurst since June 1997, and Mr. Whitehurst has not been able to contact Mr. Sanders.
11. On July 11, 1998, Mr. Whitehurst filed a bar complaint against Mr. Sanders.
12. Mr. Sanders finally hired attorney George Minor and paid him \$150 to finalize the divorce.
13. The divorce decree was entered on August 18, 1999.

B. Findings of Misconduct

The above facts establish violations of the following provisions of the Code of Professional Responsibility:

DR 6-101. (B) and (C) ***

DR 7-101. (A)(2) and (3) ***

DR 9-102. (A)(1) and (2) ***

Upon consideration whereof, it is **ORDERED** that the respondent shall receive effective March 21, 2001, a **Two Year Suspension with Terms**. It is hereby **ORDERED** that as a

condition of reinstatement the respondent shall comply with the following terms:

1. The respondent shall comply with the requirements of Part Six, Section IV, Paragraph 13.J.(2) of the Rules of the Virginia Supreme Court governing reinstatement after suspension for more than one year.
2. No later than March 20, 2002, the respondent shall reimburse Karen Keating, the sole beneficiary under Onni Harjou's will, the sum of \$4,916.00, including \$4,750.00 that was paid to Mr. Sanders from estate funds for his services and \$166.00 for fees the estate incurred for researching and copying bank statements required because Mr. Sanders did not return the original bank records that Bernice F. Allen entrusted to him.
3. No later than March 20, 2002, the respondent shall deliver written certification to Bar Counsel that he has reimbursed Karen Keating the sum of \$4,916.00 and, if requested by Bar Counsel, shall promptly furnish evidence of the payments.

Upon satisfactory proof that the respondent has met all the terms and conditions of the Agreed Disposition, and successfully completed the two year suspension, this matter shall be closed. The respondent's failure to comply with any one or more of the agreed terms and conditions will result in the imposition of the alternative sanction of a **five year suspension**.

If the Virginia State Bar discovers that the respondent has failed to comply with any of the agreed terms or conditions, the Virginia State Bar shall issue and serve upon Mr. Sanders a Notice of Hearing to Show Cause why the alternative sanction should not be imposed. The sole factual issue will be whether the respondent has violated one or more of the terms and conditions of the Agreed Disposition without legal justification or excuse. The imposition of the alternative sanction shall not require any hearing on the underlying misconduct charges.

Enter this Order this 30th 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
ANDREW ROBERT SEBOK

VSB DOCKET NUMBERS: 98-022-0677
98-022-1378
98-022-1502
99-022-0319
99-022-0351
99-021-0520
99-022-1480
99-021-2082
99-022-2913
00-021-0306

ORDER

THIS MATTER came to be heard on February 22 and 23, 2001, before a duly convened panel of the Virginia State Bar

Disciplinary Board, consisting of William M. Moffet, Chair presiding, Robert E. Eicher, Janipher W. Robinson, Werner H. Quasebarth, Lay Member, and Bruce T. Clark. The Respondent, Andrew Robert Sebok, was present and was represented by James C. Roberts and Matthew M. Farley. Charlotte P. Hodges, Assistant Bar Counsel, appeared on behalf the Virginia State Bar.

All matters heard came before the Board on certification of the Second District Subcommittee.

Donna T. Chandler, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, phone number 804/730-1222, having been duly sworn by the chairman presiding, reported the proceedings.

The chairman of the panel inquired of each panel member at the outset of the hearing whether there was any conflict of interest, personal or financial, that would disqualify any member from serving on the panel, and each of the panel members and chairman stated for the record that no such conflict of interest existed.

At all relevant times hereto, the Respondent, Andrew Robert Sebok, was an attorney licensed to practice law in the Commonwealth of Virginia.

Following a two-day hearing, the Virginia State Bar Disciplinary Board made the following findings by clear and convincing evidence.

VSB DOCKET # 99-022-0351 (DEMETRIUS D. BAKER)

1. On or about June 22, 1998, the Complainant, Demetrius D. Baker (hereinafter Baker) hired Respondent and paid him \$200.00 to have his probation modified so he could join the United States Marine Corps.
2. Respondent advised Baker that he would charge him \$400.00 to handle the matter for him. No written agreement, contract or engagement letter was signed.
3. On July 5, 1998, Baker gave the Respondent an additional \$200.00.
4. Respondent deposited the \$400.00 in his personal account. At the time he did so, some or all of the fee remained unearned.
5. Respondent did nothing on the client's case until August 1998, despite promises in July 1998 that he would begin working on the case right away.
6. On August 10, 1998, Respondent sent a letter to Judge Edward W. Hanson, Jr., of the Circuit Court of the City of Virginia Beach, requesting that the remainder of Baker's sentence be commuted. Judge Hanson advised Respondent to contact the Commonwealth's Attorney in the original matter.
7. Respondent contacted the Commonwealth's Attorney and was advised as to the proper procedure for docketing his motion and having it heard by the judge.
8. Respondent obtained the relief sought by Order entered on March 25, 1999.

Based upon the evidence presented and the Respondent's own answer to the certification and testimony that he did not deposit unearned fee in a trust account, the Board finds by clear and convincing evidence violation of the following Disciplinary Rule of the Code of Professional Responsibility:

DR 9-102. (A)(1) and (2) * * *

Based upon the testimony and exhibits presented, the Board finds that allegations that Respondent violated DR 2-105 (A), DR 2-108 (D), DR 6-101 (B), DR 6-101 (C), and DR 6-101 (D) were not proven by clear and convincing evidence.

VS B DOCKET # 98-022-1378 (YUKIMASA WATANABE)

9. The Respondent was retained by Yukimasa Watanabe (hereinafter Watanabe), a Japanese citizen. At the time the Respondent met with Watanabe, Watanabe was in the United States on a non-immigrant visa. Watanabe wished to obtain an immigrant visa so as to allow him the ability to establish a business in the United States, specifically a professional wrestling business.
10. The Respondent advised Watanabe that he needed to establish an actual business in the United States and suggested that it be incorporated and that subsequently the Respondent could apply for an H1-B visa.
11. Subsequently, the Respondent did file Articles of Incorporation for the United Nations Wrestling U.S.A. business entity on behalf of Watanabe.
12. There were no witnesses called by the Bar to support the allegations set out in the certification.

Based upon the testimony and exhibits presented, the Board finds that the allegations that Respondent violated Code of Professional Responsibility DR 2-108(D), DR 9-102(A) and DR 9-102(B) were not proven by clear and convincing evidence.

**VS B DOCKET # 99-021-0520
(MICHAEL & CARMEN LOFTIN)**

13. In January 1998, the Complainants, Michael and Carmen Loftin (hereinafter the Loftins) hired the Respondent to handle an immigration matter for Carmen Loftin.
14. The Respondent charged the Loftins \$2,500.00 to represent them. The Loftins paid the Respondent the \$2,500.00 in three increments: \$1,000.00 by money order on or about February 20, 1998; \$500.00 by money order on March 9, 1998; and, \$1,000.00 by money order on March 10, 1998. No written retainer agreement, contract or engagement letter was signed.
15. The Respondent immediately placed the money into his personal checking account. At the time he did so, some or all of the \$2,500.00 remained unearned.
16. The Respondent advised the Loftins that he would petition the court to reopen Carmen Loftin's immigration case.
17. Several months passed and the Complainants heard nothing from the Respondent about the progress of Carmen Loftin's case. Michael Loftin attempted to contact the

Respondent on several occasions via telephone and facsimile.

18. The Respondent neglected the case; he did nothing to secure a hearing date for Carmen Loftin, he did not petition the court to reopen her case, he failed to file any of the necessary paperwork with INS, and the Respondent failed to advise the Complainants about the status of the case.
19. On September 9, 1998, the Loftins terminated Respondent's services and Respondent agreed to refund to them the \$2,500.00 fee plus \$75.00 for interest. Respondent did not thereafter promptly refund said unearned fee to the Loftins.

Based upon the evidence presented and Respondent's stipulation that he violated the following Disciplinary Rules, the Board finds by clear and convincing evidence violations of the following Disciplinary Rules of the Code of Professional Responsibility:

DR 2-108. (D) * * *

DR 6-101. (B) and (C) * * *

DR 9-102. (A)(1) and (2) * * *

Pursuant to a stipulation entered into by the Bar and the Respondent, the Bar withdrew its contention that Respondent violated DR 2-105(A), DR 6-101(D), and DR 7-101(A)(2).

Based upon the exhibits and testimony presented, the Board finds the allegations that the Respondent violated DR 7-101(A)(1) and DR 7-101(A)(3) were not proven by clear and convincing evidence.

**VS B DOCKET # 99-021-2082
(BREON DAUGHTRY)**

20. April 14, 1998, the Respondent was court appointed by the Circuit Court of the City of Norfolk to represent the Complainant, Breon Daughtry (hereinafter Daughtry) on appeal.
21. The Respondent failed to file a petition for appeal with the Court of Appeals of Virginia and on August 7, 1998, the appeal was dismissed on the basis that no petition for appeal had been filed. The language in the order reads inter alia:

"It appearing to the Court that the record in this case was filed in this Court on June 15, 1998; and it further appearing that no petition for appeal has been filed, and that the time allowed by law within which to do so has expired, it is ordered that the case be dismissed, and that the record be returned to the trial court."

22. The Respondent failed to adequately communicate with his client in that he did not advise Daughtry that the appeal had been dismissed by the Court of Appeals of Virginia, he did not respond to status inquires from Daughtry, he did not advise Daughtry of his right to appeal to the Virginia Supreme Court, or of the need to note an appeal to the Virginia Supreme Court within the 30-day time frame. Nor did the Respondent inform the Complainant that he could seek a writ of habeas corpus.

23. After Daughtry contacted the Court of Appeals of Virginia and learned that his appeal had been dismissed, he wrote Respondent and requested that his file be sent to him so that he could obtain other counsel or proceed *pro se*. Respondent did not provide the file to Daughtry. However, Daughtry did eventually obtain new counsel who eventually obtained the file.

Based upon the evidence presented and Respondent's stipulation that he violated the following Disciplinary Rules, the Board finds by clear and convincing evidence violations of the following Disciplinary Rules of the Code of Professional Responsibility:

DR 2-108. (D) * * *

DR 6-101. (B) and (C) * * *

Pursuant to a stipulation entered into by the Bar and the Respondent, the Bar withdrew its contention that the Respondent violated DR 2-108(C) and DR 6-101(A).

Based upon the evidence and exhibits presented, the Board finds that the allegations that the Respondent violated DR 6-101(D) and DR 7-101(A) were not proven by clear and convincing evidence.

VSB DOCKET # 99-022-0319
(JAMES M. LAWSON, JR.)

24. On May 26, 1998, Respondent was appointed to represent Complainant James M. Lawson, Jr. (hereinafter Lawson) on his appeal to the Supreme Court of Virginia (an appeal to the Virginia Court of Appeals had been filed by Lawson's previous counsel. It was denied).
25. Respondent filed a timely petition on behalf of Lawson to the Supreme Court of Virginia.
26. On August 10, 1998, the Supreme Court refused Lawson's Petition for Appeal.
27. Respondent failed to advise Lawson of the denial of his Petition for Appeal by the Supreme Court.
28. Lawson did not learn about the denial of his appeal until he wrote to the Supreme Court of Virginia.

Based on the evidence presented and the stipulations of the parties, the Board finds by clear and convincing evidence that the Respondent violated the following Disciplinary Rule of the Code of Professional Responsibility:

DR 6-101. (C) * * *

Based on the evidence presented, the Board further finds that the alleged violation of DR 6-101(D) was not proven by clear and convincing evidence. The Board notes that Bar Counsel withdrew the allegation of a violation of DR 6-101(B).

VSB DOCKET # 99-022-2913
(SOPHAN PHITH)

29. In February 1998, Respondent was retained to represent Complainant Sophan Phith (hereinafter Phith) in an immigration matter in which he was subject to the possibility of deportation based on a guilty plea in an unrelated criminal matter.

30. Respondent entered his appearance on behalf of Phith at the bond hearing. Sebok obtained bond for Phith and Phith was thereafter released from custody.
31. In a letter dated May 4, 1998, from the Immigration Court, Respondent was advised that Phith's hearing had been scheduled for June 2, 1998.
32. Sometime thereafter, Respondent timely petitioned the Court for a continuance, which was granted. The matter was continued until September 29, 1998.
33. On September 29, 1998, Immigration Judge Joan V. Churchill entered an order stating "neither the respondent nor the respondent's representative was present" at the removal hearing and therefore, Phith was ordered to be removed from the United States to Cambodia. Any appeal in the matter was due by October 29, 1998.
34. Respondent filed an appeal with INS on December 23, 1998, which was denied on January 14, 1999. Respondent filed an appeal with the Board of Immigration Appeals. It was dismissed.
35. Respondent failed to communicate with Phith regarding the hearing scheduled for June 2, 1998, and the hearing scheduled for September 29, 1998.

Based upon the evidence presented and the stipulation of the parties as to violations of the following Disciplinary Rules, the Board finds by clear and convincing evidence that Respondent violated the following Disciplinary Rules of the Code of Professional Responsibility:

DR 2-108. (D) * * *

DR 6-101. (B) and (C) * * *

Based on the evidence presented, the Board further finds that the alleged violation of DR 6-101(D) was not proven by clear and convincing evidence. The Board notes that Bar Counsel withdrew the allegations of violations of DR 2-108(C) and DR 6-101(A).

VSB DOCKET # 00-021-0306
(DONALD HEIDLEBAUGH)

36. Some time between July and October 1996, Respondent was paid \$1,500 by Complainant Donald Heidlebaugh (hereinafter Heidlebaugh) to represent Dawn Maureen Egan (hereinafter Egan). Respondent was retained to *research* Egan's case and see if a Habeas Corpus Petition should be filed.
37. Respondent testified that he was hired to review documents provided by Heidlebaugh, review the court file, attempt to locate the former counsel, a Mr. Dill, whose whereabouts were unknown, and do research to advise whether a habeas corpus petition would be well-founded, that he performed the work for which he was hired, and that in 1997 he informed Heidlebaugh there was no supportable basis for a habeas corpus. The bar offered no evidence to the contrary.
38. Respondent also testified that he kept Heidlebaugh apprised of his efforts in telephone conversations and

assumed Heidlebaugh was communicating the information to Egan. The Bar offered no evidence to the contrary and no evidence that Respondent's assumption regarding communication through Heidlebaugh was unreasonable. Respondent did meet with Egan on one occasion and spoke with her by phone on one occasion. Egan was incarcerated at the Fluvanna Correctional Center for Women in Troy, Virginia, at all relevant times.

- 39. There was no testimony from Heidlebaugh, in person or by deposition.
- 40. The Bar's investigator did not review Respondent's file relating to his representation of Egan.

Based on the evidence presented, the Board finds that the alleged violations of DR 2-108(D), DR 6-101(A), (B), (C), and (D), and DR 7-101(A)(1) and (A)(3) have not been proven by clear and convincing evidence.

VSB DOCKET # 99-022-1480
(BRIAN L. MORRIS)

- 41. On or around October 3, 1998, Respondent visited Complainant Brian L. Morris (hereinafter Morris) at the Virginia Beach Jail and advised Morris that he would charge \$1,500 to represent him in a criminal matter. Morris and Respondent agreed to the Representation.
- 42. No written retainer agreement, contract or engagement letter was signed.
- 43. Responded received \$1,500 from Ethel Morris (Morris' mother): \$750 in cash and a \$750 check.
- 44. Morris became dissatisfied with Respondent's representation and fired him before the preliminary hearing, but after Respondent had appeared on Morris' behalf at more than one bond hearing.
- 45. The \$1,500 that Respondent received from Morris' mother was immediately deposited into his personal bank account, even though at the time he did so, at least a portion of the fee was unearned.
- 46. Morris requested that Respondent make a partial refund of the \$1,500 paid Respondent, which Responded refused to do.

Based upon the evidence presented and Respondent's stipulation that he violated the following Disciplinary Rules, the Board finds by clear and convincing evidence violations of the following Disciplinary Rules of the Code of Professional Responsibility:

DR 9-102. (A)(1) and (2) ***

The Board notes that Bar Counsel withdrew the alleged violations of DR 2-105 and DR9-102(B).

VSB DOCKET # 98-022-0677
(MARVIN BERNARD CLEMONS)

- 47. On November 25, 1996, the Circuit Court of the City of Norfolk appointed Respondent to represent Marvin Bernard Clemons (Clemons) in an appeal of a criminal conviction.

- 48. Respondent filed a petition for appeal with the Virginia Court of Appeals which was denied on June 10, 1997.
- 49. Respondent did not file an appeal with the Virginia Supreme Court.
- 50. By letter dated March 7, 1997, Respondent mailed Clemons a copy of the petition for appeal filed with the Virginia Court of Appeals and explained the grounds for appeal.
- 51. By letter dated June 17, 1997, Respondent mailed Clemons a copy of the Court of Appeals decision and inquired whether Clemons wished to pursue an appeal to the Virginia Supreme Court or a habeas corpus petition.
- 52. There was no evidence presented that Clemons did not in fact receive Respondent's letters, even though they were mailed to a facility where Clemons was no longer lodged. There was no evidence that the correspondence was not forwarded to him at his new facility and no evidence that he did not ultimately receive the correspondence.

Based on the evidence presented, the Board finds that the alleged violations of DR 6-101(B), (C), and (D) have not been proven by clear and convincing evidence.

VSB DOCKET # 98-022-1502
(BURLEY UZZLE, JR.)

- 53. On December 5, 1997, the Circuit Court for the City of Norfolk appointed Respondent to represent Burley Uzzle, Jr. (hereinafter Uzzle) on an appeal from a Final Order of the Circuit Court of the City of Norfolk finding Uzzle guilty of violations of the terms of his probation and sentencing him to serve a previously suspended nine-year sentence and a previously suspended twelve-month sentence.
- 54. Respondent met with Mr. Uzzle and informed him that there were no grounds for an appeal. Mr. Uzzle maintained that he wished to appeal and that he believed his sentence was excessive.
- 55. Respondent did file a Notice of Appeal on December 15, 1997, and, thereafter, filed a timely petition for appeal to the Virginia Court of Appeals.
- 56. On June 18, 1998, the Court of Appeals by written order denied the petition for appeal on the merits.
- 57. On June 25, 1998, Respondent wrote to Mr. Uzzle at the Norfolk City Jail informing him of the Court of Appeals' decision and informing him of his option to file a petition for a habeas corpus or an appeal to the Supreme Court of Virginia.
- 58. Respondent did not verify with Central Records or with the Norfolk City Jail the whereabouts of his client prior to sending him the letter described above even though this letter was written more than six months after Uzzle had been sentenced to a term which almost certainly would be served in a state facility and not in the Norfolk City Jail.
- 59. Respondent did not file a petition for appeal with the Virginia Supreme Court or a petition for writ of habeas corpus.
- 60. Respondent's June 25, 1998, letter to Uzzle was addressed to him at the City of Norfolk jail. On February 3, 1998,

Uzzle had been transferred from the jail to the Powhatan Correctional Center Receiving Unit, and Uzzle did not receive Respondent's June 25, 1998 letter.

Based on the evidence presented, the Board finds by clear and convincing evidence that the Respondent violated the following Disciplinary Rule of the Code of Professional Responsibility:

DR 6-101. (C) * * *

Based on the evidence, the Board further finds that the alleged violations of DR 2-108 (C) and (D) and DR 6-101 (B) and (D) have not been proved by clear and convincing evidence.

Sanctions

Following the conclusion of the Board's findings with respect to violations charged, Bar Counsel and counsel for Respondent were permitted to present evidence in aggravation or in mitigation of the misconduct found by clear and convincing evidence.

Based on the testimony of two clinical psychologists as witnesses for Respondent, the Board is satisfied that, beginning in late 1996 or early 1997, Respondent suffered from clinical depression that produced a personality change and impaired his organizational skills, attention to detail, concentration, and cognition. This is when the incidents of misconduct began and followed several years of practice as a respected and talented lawyer in the areas of criminal appellate work and immigration law. Respondent has been in treatment with a clinical psychologist and a psychiatrist since the Spring of 2000 and he remains in treatment pursuant to terms imposed by this Board in an Order entered on November 14, 2000 in connection with six other complaints arising out of conduct which occurred during this same period of time. There has been significant improvement in his condition through psychotherapy and medication since treatment began. From October of 2000 to February of 2001, Respondent attended more than 20 visits with his clinical psychologist and has remained on the medication prescribed for him by the treating psychiatrist.

In its consideration of Respondent's diagnosed depression, the Board was mindful of Part Six, Section IV, paragraph 13C(6)(e) of the Rules of Court, providing as follows:

If the Board finds that the Misconduct was the result of a Disability, it may consider the Disability in mitigation of any discipline imposed.

The Board also considered evidence from character witnesses as well as the testimony of Respondent. The Board is satisfied that before the onset of his depression, Respondent was uniformly respected as an able, talented lawyer who zealously advocated for his clients. The Board is satisfied, too, that Respondent is remorseful and recognizes the harm caused his clients, and that Respondent is committed to remain in a psychotherapy and medication program to restore his mental health. The Board notes the testimony of the chair of the Tidewater Committee on Lawyers Helping Lawyers that Respondent suggested to him a need for a program to assist lawyers coping with depression.

According to the testimony of Steven Waranch, Respondent's clinical psychologist, since September of 2000 Respondent's depression has improved on a normal curve, and his symptoms of depression have been lessened. He believes he will continue to improve with psychotherapy and medication.

Based on the evidence, the Board finds by clear and convincing evidence that Respondent's misconduct was the result of a disability and considers the disability in mitigation of the discipline imposed.

WHEREFORE, it is ORDERED that Andrew Robert Sebok's license to practice law in the Commonwealth of Virginia be and hereby is suspended for a period of ten (10) months effective February 23, 2001.

ENTERED this 29th day of March, 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: William M. Moffet, First Vice Chair



BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DAVID THOMAS STECKLER
VSB Docket No. 00-000-3308/CRESPA

ORDER

THIS MATTER came on to be heard on November 17, 2000, before a panel of the Disciplinary Board consisting of First Vice-Chair William M. Moffet, Chester J. Cahoon, Jr., Robert E. Eicher, D. Stan Barnhill and Randy I. Bellows. The State Bar was represented by Barbara Ann Williams, Esq. The respondent, David Thomas Steckler ("Steckler"), after receiving due notice by certified mailing to the last address provided to the State Bar, failed to appear either in person or by counsel.

This matter came before the Board pursuant to a Notice of CRESPA Violations, issued by Bar Counsel on June 26, 2000, and a Show Cause Order, entered by the Board on October 5, 2000. Following the introduction of all evidence concerning this matter, the Board retired to deliberate. Deliberations were stayed in order for the Board to resolve several matters of procedure and interpretation. On March 14, 2001, by telephone conference call, all panel members being present, deliberations were resumed and concluded.

Other Proceedings

Three matters were consolidated for hearing on November 17, 2000. They were as follows:

VSB Docket No. 00-000-1274 came before the Board on a Motion and Notice of Show Cause Proceeding to Further Suspend or Revoke License to Practice Law for Failure to Comply with Rules of Court, Part Six, §IV, Paragraph 13. This proceeding arose out of Steckler's failure to comply with the terms of a one year suspension imposed by a three-judge circuit court panel, specifically the requirements of Part Six, §IV, Paragraph 13(K)(1). At the conclusion of the hearing on this matter, the Board found by clear and convincing evidence that respondent had failed to comply with requirements of Paragraph 13(K)(1) and ordered that Steckler's license to practice law in the Courts of this Commonwealth be revoked, effective November 17, 2000. See In the Matter of David Thomas Steckler, VSB Docket No. 00-000-1274.

VS B Docket No. 00-060-1972 came before the Board pursuant to a direct certification from a subcommittee of the Sixth District Committee, alleging violations of various Disciplinary Rules arising out of Steckler's services as settlement agent for a client's home mortgage refinancing. At the conclusion of the hearing on this matter, the Board found by clear and convincing evidence that Steckler violated DR 1-102 and DR 9-102 and ordered that Steckler's license to practice law in the Courts of this Commonwealth be revoked, effective November 17, 2000. See In the Matter of David Thomas Steckler, VS B Docket No. 00-060-1972.

VS B Docket No. 00-000-3308/CRESPA is the instant proceeding. It arises out of the same factual circumstances as VS B Docket No. 00-060-1972.

Preliminary Discussion

This proceeding presents the Board with two matters of first impression concerning the Consumer Real Estate Settlement Protection Act ("CRESPA"), which was enacted by the 1997 session of the General Assembly of Virginia and went into effect on July 1, 1997. Therefore, it is appropriate as a preliminary matter to address these issues, particularly as they are certain to reoccur in subsequent proceedings involving CRESPA.

CRESPA, Va. Code §6.1-2.19 through §6.1-2.29, authorizes licensed Virginia attorneys, title insurance companies and agents, real estate brokers and financial institutions to serve as settlement agents and provide escrow, closing and settlement services if they register with the Virginia State Bar and meet other conditions of their regulatory agencies. The purpose of CRESPA, as set forth by the Virginia State Bar Council in the Unauthorized Practice of Law (UPL) Guidelines for Real Estate Settlement Agents under the Virginia Consumer Real Estate Settlement Protection Act, approved on June 19, 1997, is "to provide consumer protection safeguards and to define who can lawfully provide real estate settlement services in Virginia."

Pursuant to CRESPA, the Virginia State Bar promulgated a set of Regulations (hereafter "CRESPA Regulations"), effective July 1, 1997, concerning both the administration of CRESPA and procedures for handling CRESPA complaints lodged against attorney settlement agents.

The first issue the Board addresses is the standard of proof governing the Board's determination of whether a CRESPA violation has been committed.

It is well established, of course, that the standard of proof governing Board proceedings involving allegations of professional misconduct is "clear and convincing evidence." See Part 6, §IV, Paragraph 13.K(8) of the Rules of the Supreme Court of Virginia. CRESPA does not explicitly adopt this or any other standard of proof and, therefore, the issue before the Board is whether the standard of proof governing misconduct proceedings before the Board should also govern CRESPA proceedings before the Board. We conclude that the "clear and convincing" standard must also govern CRESPA proceedings.

We come to this judgment principally due to the very serious nature of the sanctions available to the Board in the event of a finding of a CRESPA violation. Specifically, CRESPA provides, inter alia, for revocation or suspension of a settlement agent's license. Such revocation or suspension may prevent the individual from carrying on his livelihood, a "heavy sanction" that warrants a standard of proof as high as "clear and convinc-

ing" evidence. See Collins Security Corp. v. Securities and Exchange Commission, 562 F.2d 824, 825 (D.C. Cir. 1977) (holding that SEC's consideration as to whether to deprive an entity of its securities license based on allegations of fraud warranted a "clear and convincing" evidentiary standard.) Moreover, since the allegations leading to a CRESPA proceeding will also frequently lead to disciplinary proceedings, it would create a troubling and confusing inconsistency to have different proof standards governing the Board's consideration of the same factual circumstances. Finally, we conclude below that CRESPA also authorizes the Board to revoke or suspend not only an attorney's registration as a settlement agent but also his license to practice law. It would be plainly inconsistent with both the letter and spirit of the Rules of the Supreme Court of Virginia to permit the Board to revoke or suspend an attorney's license to practice law on a proof standard less than "clear and convincing" evidence. Therefore, we adopt the "clear and convincing" standard as the proof standard applicable to CRESPA proceedings.

As stated above, the second issue the Board addresses is whether CRESPA provides the Board authority to revoke or suspend not only an attorney's registration as a settlement agent but also the attorney's license to practice law. We conclude that it does. We come to this conclusion principally because of the broad language used in CRESPA concerning sanctions. It reads in part that, upon finding a CRESPA violation, the "appropriate licensing authority," may revoke or suspend "applicable licenses." Va. Code §6.1-2.27(2). If the legislature had intended to limit the Board's authority to revocation or suspension of a settlement agent's registration, we must assume that the legislature would have used such language. Instead, the language used clearly encompasses the license to practice law (in the case of an attorney). Further support for this position is found in the concluding language of the sanctions provision of CRESPA, which reads as follows: "Nothing in this section shall affect the right of the appropriate licensing authority to impose any other penalties provided by law or regulation." Va. Code §6.1-2.27.B. In concluding that CRESPA provides this Board authority to revoke or suspend an attorney's license to practice law, we note that this is the same position adopted by the Virginia State Bar in its CRESPA Regulations. Those regulations, at Section V(3)(E)(2) and (3), specifically provide that the Board may both revoke or suspend the attorney settlement agent's registration and impose "[a]ny other sanction available to the Disciplinary Board in attorney disciplinary proceedings under the rules of the Virginia Supreme Court, including, but not limited to, revocation or suspension of the attorney settlement agent's license to practice law." We conclude that this is a correct reading of the authority vested in this Board by CRESPA.

Findings of Fact

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. From April 26, 1983, until July 16, 1999, Steckler was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia. Until October 25, 1999, Steckler was also registered as an attorney settlement agent with the Virginia State Bar.
2. Before July 8, 1999, Michael E. McShane ("McShane") hired Steckler to serve as settlement agent for McShane's home mortgage refinancing.

3. McShane picked up the closing papers (including a HUD settlement statement that Steckler had already signed) at Steckler's office, took the papers home and signed them, then mailed the papers back to Steckler's office; McShane never met Steckler.
4. The HUD Settlement Statement dated July 8, 1999, directed Steckler as settlement agent to make mortgage payoffs in the amount of \$9,929.93 and \$96,830.41, and to pay the borrower, McShane, \$15,808.66.
5. On July 8, 1999, Steckler, or his employees, closed the refinancing and deposited a loan disbursement check in the amount of \$125,000.00, drawn on a NationsBank account and made payable to David T. Steckler & Michael McShane, in account number 7911345360, titled DAVID T. STECKLER ATTORNEY AT LAW TRUST ACCOUNT, at Wachovia Bank, formerly known as Central Fidelity Bank.
6. Check # 8080 in the amount of \$15,808.66, drawn on Steckler's trust account, and made payable to McShane as payment for loan proceeds due to him as borrower, was issued on July 8, 1999, and deposited by McShane on July 20, 1999.
7. Check #8085 in the amount of \$9,929.93, drawn on Steckler's trust account and made payable to First Virginia Bank as payment in full of a mortgage loan to McShane, was issued on July 8, 1999, and deposited on July 19, 1999.
8. Check # 8086 in the amount of \$96,830.41, drawn on Steckler's trust account and made payable to NationsBank as payment in full of a mortgage loan to McShane, was issued on July 8, 1999.
9. Bank of America, which merged with NationsBank and accepts, processes and endorses checks payable to NationsBank, received Check #8086 on July 15, 1999, and unsuccessfully attempted to deposit it on July 19, and again on July 23, 1999.
10. On or about July 27, 1999, Wachovia Bank returned Check #8086 to Bank of America for non-sufficient funds.
11. After Bank of America made numerous unsuccessful attempts to contact Steckler about the returned check, on September 6, 1999, Steckler contacted Bank of America and indicated that he had been out of town and his trust account was "out of whack" due to the overpayment of a large amount of bank fees.
12. After Steckler failed to make Check #8086 good, by letter dated October 5, 1999, Bank of America made a claim in the amount of \$96,830.41 against Bond #60936704 that CNA—Western Surety issued to Steckler as an attorney settlement agent.
13. On November 4, 1999, Western Surety Company issued a check for \$96,830.41 to Bank of America, and as consideration for the payment, Bank of America assigned its claims against Steckler to Western Surety Company.
14. Western Surety Company hired Bonded Collections of Tucson, Inc., to collect the missing funds from Steckler.
15. After numerous unsuccessful attempts to contact Steckler, Jamie G. Lynch, Collection Manager for Bonded Collections of Tucson, filed a bar complaint against Steckler with the State Bar on or about February 4, 2000.
16. The State Bar's efforts to locate Steckler have been unsuccessful. He no longer is conducting business at the last known address he provided the State Bar, he has failed to respond to certified mail sent to that address, and his current or former spouse, a professor at Mary Washington College, has failed to respond to all inquires as to his whereabouts.
17. On June 26, 2000, Bar Counsel Barbara Ann Williams sent Steckler by certified mail, return receipt requested, a Notice of CRESPA Violations, specifically alleging violations of Va. Code §6.1-2.23(B) and Section V(2) of the Virginia State Bar CRESPA Regulations. The notice provided Steckler a 30 day period in which to rectify any violations and/or to request a hearing. There was no response to this notice and, on October 5, 2000, the Board issued a Show Cause Order, setting the matter for November 17, 2000.

Nature of Misconduct

Va. Code §6.1-2.23(B) provides in part as follows:

Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed * * *

Section V(2) of the CRESPA Regulations provides in part as follows:

Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. * * * All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and the Act. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with the Act.

The Board finds by clear and convincing evidence that Steckler violated both CRESPA and the CRESPA Regulations by failing to properly disburse the \$96,830.41 check to NationsBank in accordance with written instructions and by failing properly to maintain his trust account which should have, but did not, have sufficient funds to cover the \$96,830.41 check.

Sanctions Imposed

Due to the gravity of Steckler's intentional misconduct, we impose the most serious sanctions available to the Board under CRESPA. It is hereby ORDERED as follows:

1. Steckler's registration as an attorney settlement agent is REVOKED, effective as of March 14, 2001.
2. Steckler's license to practice law in the Courts of this Commonwealth is REVOKED, and the name of David Thomas Steckler shall be stricken from the roll of attorneys of this Commonwealth, effective as of March 14, 2001.

- 3. Steckler shall pay a civil penalty in the amount of \$5,000, the maximum penalty permitted by Va. Code §6.1-2.27(1).

ENTERED this 3rd day of April, 2001.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: William M. Moffet, First Vice Chair

1 We recognize, of course, that Steckler's license to practice law was revoked by this Board on November 17, 2000 and, therefore, his name has already been stricken from the roll of attorneys of this Commonwealth. The practical significance of this revocation, therefore, is to establish a third and independent basis for the revocation action which this Board has previously taken.



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

**IN THE MATTER OF
 LAWRENCE DOUGLAS WILDER, JR.
 VSB Docket No. 00-033-2917**

ORDER

Having been certified by the Third District Committee, Section III, this matter came on for hearing on March 2, 2001, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Chester J. Cahoon, Jr., D. Stan Barnhill, Richard J. Colten, Robert L. Freed and John A. Dezio, presiding.

At the hearing, the Virginia State Bar, by Bar Counsel Barbara Ann Williams, and the respondent, by his counsel Thomas E. Spahn, presented the board an Agreed Disposition endorsed by the respondent, his counsel and Bar Counsel.

Having considered the Certification and the Agreed Disposition, it is this board's decision to accept the Agreed Disposition, and the board finds by clear and convincing evidence as follows:

I. Findings of Fact

- 1. The respondent Lawrence Douglas Wilder, Jr. was admitted to the practice of law in the Commonwealth of Virginia on April 28, 1988.
- 2. At all relevant times to this proceeding, Mr. Wilder was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
- 3. Beginning as early as 1992 and continuing until mid-1999, Mr. Wilder was a regular user of, and addicted to, powdered cocaine.
- 4. Mr. Wilder consumed the cocaine that he obtained and did not distribute cocaine to others.
- 5. During the summer of 1999, Mr. Wilder voluntarily stopped using cocaine and sought treatment for his addiction.
- 6. On May 5, 2000, Mr. Wilder pled guilty in the United States District Court for the Eastern District of Virginia, Richmond Division, to a Criminal Information charging him with unlawfully, intentionally and knowingly possessing a mixture and substance containing cocaine, a Schedule II narcotic controlled substance, in violation of 21 U.S.C. § 844.

- 7. On August 23, 2000, Mr. Wilder entered into a Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers.

II. Disciplinary Rule Violations

The facts presented above, to which the respondent and Bar Counsel have stipulated, give rise to a finding of violation of the following Disciplinary Rule:

DR 1-102. (A)(3) * * *

III. Disciplinary Sanctions

The Disciplinary Board finds that the sanctions imposed in attorney discipline cases involving the use or possession of illegal drugs is largely dependent upon evidence of mitigating or aggravating circumstances. Based upon evidence of mitigating circumstances presented in this case, and the lack of evidence of aggravating circumstances, the Disciplinary Board finds that a Public Reprimand with Terms is more appropriate than a Suspension.

Upon consideration whereof, it is **ORDERED** that the respondent shall receive a **Public Reprimand with Terms** as follows:

- 1. Mr. Wilder shall comply fully with the terms of the Plea Agreement that he entered into on May 5, 2000, in *United States of America v. Lawrence D. Wilder, Jr.*, Criminal No. 3:00M160 (E.D. Va., Richmond Div).
- 2. Mr. Wilder shall comply fully with the terms of the probation imposed by the United States District Court for the Eastern District of Virginia, Richmond Division, in connection with *United States v. Wilder*.
- 3. Mr. Wilder shall comply fully with the terms of the Rehabilitation/Monitoring Agreement that he entered into with Lawyers Helping Lawyers on August 23, 2000.
- 4. Mr. Wilder will execute whatever releases are necessary for Lawyers Helping Lawyers to communicate with the Virginia State Bar on a quarterly basis through August 23, 2003, and for any therapists, counselors or medical providers with whom he consults or by whom he is treated to, upon request, produce his records and communicate with the Virginia State Bar.
- 5. On or before August 23, 2003, representatives of Lawyers Helping Lawyers, in consultation with any therapists, counselors or medical providers with whom Mr. Wilder consults or by who he is treated, shall determine whether Mr. Wilder's Rehabilitation/Monitoring Agreement should end on August 23, 2003, or be extended through August 23, 2005.
- 6. If the Rehabilitation/Monitoring Agreement is extended through August 23, 2005, Mr. Wilder will execute whatever releases are necessary for Lawyers Helping Lawyers to communicate with the Virginia State Bar on a quarterly basis through August 23, 2005, and for any therapists, counselors or medical providers with whom he consults or by whom he is treated to, upon request, produce his records and communicate with the Virginia State Bar.

Enter this Order this 9th of March 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: John A. Dezio, Second Vice Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
RICKEY GENE YOUNG

VSB Docket Nos. 98-090-0948
98-090-1491
98-090-0133

ORDER OF SUSPENSION

THIS MATTER came to be heard on January 26, 2001 before a duly convened panel of the Disciplinary Board, consisting of William M. Moffet, First Vice Chair, Richard J. Colten, Michael A. Glasser, Werner H. Quasebarth and Randy I. Bellows. The Virginia State Bar was represented by Charlotte P. Hodges, Assistant Bar Counsel, and the Respondent, Rickey Gene Young, was present and represented by William W. Tunner and Christopher M. Malone. The hearing was transcribed by Tracy J. Stroh, of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

PROCEEDINGS

On May 18, 2000, a Ninth District Subcommittee met to hear three complaints involving Respondent Young and, pursuant to Part 6, §IV, ¶13(B)(5)(c)(ii) of the Rules of the Supreme Court of Virginia, certified all three matters to the Disciplinary Board. A Disciplinary Board hearing was set for October 27, 2000. Upon motion of Respondent Young, the matter was continued until January 26, 2001.

The matter came before the Disciplinary Board on January 26, 2001. The Board heard each matter separately. After each matter was presented, the Board deliberated and rendered its findings as to misconduct. Following the completion of the third matter, the matters were consolidated for purposes of determining appropriate discipline.

At the beginning of the hearing, VSB Exhibits A-Z, AA-ZZ, and AAA-QQQ, were offered and admitted without objection. The parties also entered into Factual Stipulations, which were entered into the record of this proceeding.

VSB Docket No. 98-090-1491 (Vada W. Younger)

A. Findings of Fact

The Board finds, by clear and convincing evidence, the following facts:

1. At all times relevant to this matter, Respondent Young was licensed to practice law in the Commonwealth of Virginia.
2. On May 29, 1996, Respondent Young filed a civil action in the Circuit Court for the City of Danville, alleging that his client, Vada W. Younger, had been injured when an elevator, in which she was riding, malfunctioned. Younger v. Montgomery Kone, Inc., Case Number 96-127. (VSB Exh. A) Defendant Montgomery Kone, Inc. caused the case to be removed to the United States District Court for the Western District of Virginia (Danville Division). Younger v. Montgomery Kone, Inc., Case Number 96-0036-D. (VSB Exh. B) Previously, Respondent Young obtained worker's compensation and social security benefits for Ms. Younger. (Stipulation at ¶3.)
3. On June 21, 1996, Chief United States District Judge Jackson Kiser issued a pretrial order which, inter alia,

required that discovery be completed in a timely manner. (VSB Exh. D) On August 23, 1996, the defendant served interrogatories and a motion to produce on the plaintiff. (VSB Exh. F) Plaintiff did not respond to the interrogatories or the motion to produce in a timely manner, as required by both the Federal Rules of Civil Procedure and the pretrial order. (VSB Exh. H)

4. On January 6, 1997, defendant filed a motion to compel. (VSB Exh. G) Respondent Young filed no opposition to the defendant's motion to compel. (Stipulation at ¶7.) On the morning of the hearing on the motion to compel, Respondent Young faxed certain responses to the interrogatories. (VSB Exh. L) On January 8, 1997, United States Magistrate Judge Glen E. Conrad heard argument on the defendant's motion to compel discovery and granted the motion. He ordered: (1) that plaintiff supplement her responses to defendant's interrogatories; (2) that plaintiff respond to defendant's request for production of documents; and (3) that such supplemental interrogatory responses and production of documents be delivered to defendant within ten days of the order, in other words, by January 18, 1997. Judge Conrad noted in his order that "[f]ailure to comply with this order may result in the imposition of sanctions, including possible dismissal of the case." (VSB Exh. I)
5. On January 9, 1997, defendant filed Request for Admissions. Respondent Young, on behalf of the plaintiff, did not respond to the request for admissions. (VSB Exh. J, O) In addition, Respondent Young did not file timely supplemental responses to the interrogatories, as ordered by the Court. (VSB Exh. L) Nor did Respondent Young file adequate responses to the Requests for Production. (VSB Exh. L) On January 24, 1997, the defendant filed a motion to dismiss based on the plaintiff's failure to comply with the Court's order of January 8, 2000. (VSB Exh. K, L)
6. Respondent Young filed no response to the motion to dismiss (see Stipulation at ¶10), as required by the pretrial order, which required that briefs in opposition must be filed within 14 days of the movant's brief. (VSB Exh. D, N) On February 13, 1997, defendant filed a second motion to dismiss, this time for both the failure to respond to the first motion to dismiss and the plaintiff's continuing failure to comply with her discovery obligations under both the Court's pretrial order and the Federal Rules of Civil Procedure.
7. On February 27, 2000, Respondent Young, on behalf of the plaintiff, moved to have the case nonsuited (VSB Exh. P), a motion not recognized under the Federal Rules of Civil Procedure but which the Court and the defendant treated as a motion to dismiss without prejudice. (VSB Exh. P, Q, R)
8. On March 3, 1997, Judge Kiser held a hearing on the plaintiff's motion for dismissal without prejudice. The Court gave Respondent Young one day to consult with his client as to whether to proceed with trial or have the case dismissed with prejudice. (VSB Exh. R) On March 11, 1997, Judge Kiser issued an order dismissing the case with prejudice. The Court noted: "Plaintiff's counsel stated he would call the Court on March 4, 1997, regarding the status of this case. Plaintiff's counsel has yet to contact the

Court. As the plaintiff has failed to justify why this case should not be dismissed with prejudice, after receiving ample opportunity to do so, it is ORDERED that this case be DISMISSED with prejudice.” (VSB Exh.. R)

9. The Board heard testimony from Robert L. Morrison, counsel for the defendant, who testified to the circumstances described above and indicated that, in his opinion, Respondent Young had “mishandled” the case. The plaintiff, Vada Younger, also testified. She indicated that she had great difficulty contacting the Respondent and that there were so many occasions upon which he did not return her telephone calls that “I stopped counting.” Ms. Younger testified that the Respondent did not tell her when the case was dismissed and that she had to call the clerk’s office to find this out. In the Stipulation, however, the parties agreed that sometime in March 1997, Respondent Young did advise Ms. Younger that her case had been dismissed.
10. Respondent Young also testified as to this matter. The Respondent had no explanation or justification for his failure to comply with the requirements of either the Federal Rules of Civil Procedure or the Court’s pretrial order. In both the Stipulation, at ¶15, and in his testimony, the Respondent maintained that he called Judge Kiser’s chambers and spoke to Deputy Clerk Sam Golightly, advising Mr. Golightly that the matter should be set for trial. Mr. Golightly did not testify at the hearing, but his affidavit was admitted. Mr. Golightly states in his affidavit that, while he has no “independent recollection” as to whether Respondent Young ever called him regarding this matter, he “can only conclude” that he did not call him because, if he had, Mr. Golightly would have set the matter for trial. (See Affidavit of Sam Golightly, ¶¶ 5, 7.)
11. While the Board does not dispute that Mr. Young may recollect that he did call the Court or its clerk on March 4, 2000, the Board concludes that such a call was not in fact made. First, we credit Mr. Golightly’s statement, in his affidavit, that had he received such a call the matter would have been set for trial. Second, had Respondent Young made such a telephone call, it is reasonable to assume that he would have contacted the Court after receiving its order, which stated that it had not heard from the Respondent. Respondent Young concedes he made no effort to contact the Court after receiving its order.
12. In terms of substantive work on the case, it appears that Respondent Young’s work on the case was limited to his filing of the above-described documents, some slight contact with his client and opposing counsel, and a conversation which he said he had with an elevator repair person.

B. Allegations of Misconduct

13. The Certification charges Respondent Young with multiple violations of the Disciplinary Rules, as follows:

DR 2-108. (D) * * *

The Board finds that the Bar has not carried its burden of proving by clear and convincing evidence a violation of this rule. Specifically, it was established by stipulation that Mr. Young did advise his client that her case had been dismissed.

Furthermore, there is no clear evidence that Mr. Young promised his client that he would proceed with an appeal of Judge Kiser’s order of dismissal.

DR 6-101. (A)(1) and (2), (B), (C) and (D) * * *

The Board finds by clear and convincing evidence that Respondent Young violated DR 6- 101(A)(1), B, C and D. The Bar proved by clear and convincing evidence that Respondent Young did not handle this matter in a competent manner, that he did not attend to the matter promptly and that he did not maintain an acceptable level of communication with his client.

The Board cannot state, of course, whether Ms. Younger had a meritorious cause of action. It can state, however, that because of Respondent Young’s negligent handling of the matter, Ms. Younger was deprived of any potential right she may have had to recover for her injuries.

DR 7-101. (A)(1), (2) and (3) * * *

The Board finds by clear and convincing evidence that Respondent Young violated DR 7- 101(A)(1), (2) and (3). By failing to comply with his discovery obligations, as well as by failing to respond to the dismissal motions and by his failure to otherwise prosecute this action, Respondent Young did not seek the lawful objectives of his client. Moreover, he failed to carry out his contract of employment with his client and he both prejudiced and damaged his client during the course of his representation. The Board finds by clear and convincing evidence that said actions and inactions were intentional.

DR 7-105. (A) * * *

The Board finds that the Bar did not prove a violation of this rule by clear and convincing evidence.

VSB Docket No. 98-090-0948 (Robin D. Arrington)

A. Findings of Fact

The Board finds, by clear and convincing evidence, the following facts:

14. At all times relevant to this matter, Respondent Young was licensed to practice law in the Commonwealth of Virginia.
15. The complainant, Robin D. Arrington, was an employee of Tultex Corporation. He claimed that he was subjected to various on-the-job forms of sexual harassment by a Tultex supervisor, Robert Walker.
16. On May 6, 1996, Mr. Arrington, entered into a Contract of Employment with the Respondent. (VSB Exh. S) Although the contract was signed by an associate of the Respondent, Ms. Kimberly Richardson, the Respondent did speak directly with Mr. Arrington at or before the time when the contract was executed. (Testimony of Mr. Arrington) The contract had three elements of relevance to this proceeding:

First, it required a payment to the Respondent’s law firm of 50% of any recovery which Arrington might receive as a result of his cause of action, whether the recovery was reached through suit, settlement or compromise.

Second, it stated that “my attorney” will pay the expenses of the litigation in exchange for 50% of the recovery.

Third, it committed Mr. Arrington not to accept any compromise or offer of settlement “unless it is first discussed and

recommended by my Attorney,” which was described as the “Law Office of Rickey G. Young.” (Emphasis added.) It thus gave the Respondent what amounted to veto power over any settlement.

The Respondent testified that he did not prepare this contract but, rather, that his associate had prepared the contract. He admitted, however, that he was aware of the 50% fee and of the requirement that his firm approve of any settlement. (Testimony of Mr. Young)

17. On September 24, 1996, Respondent Young filed a civil action in the United States District Court for the Western District of Virginia (Danville Division) on behalf of Mr. Arrington. Robin D. Arrington v. Tultex Corporation and Robert Walker, Civil Action No. 96- 0052-D. (VSB Exh. T)
18. On October 31, 1996, defendant Tultex served its first set of interrogatories and its first request for production on the plaintiff. (VSB Exh. CC, Attachment A) The plaintiff’s responses were due on December 3, 1996. (VSB Exh. CC) They were not filed. On or about December 10, 1996, defendant’s counsel learned that the Respondent’s wife had died and, in deference to the Respondent’s situation, he wrote the Respondent and suggested that discovery be held off until after the first of the year. (VSB Exh. U) On January 8, 1997, defendant’s counsel left a message for the Respondent regarding discovery, which he did not return. On January 10, 1997, defendant’s counsel faxed a letter to the Respondent regarding discovery. Although the Respondent responded by voice mail to this fax, and promised that the discovery responses would be forwarded to defendant’s counsel promptly, the discovery was not forthcoming. On January 13, 1997, defendant’s counsel tried to reach the Respondent again, without success. On January 21, 1997, defendant’s counsel tried once again to reach Respondent and, after having no success, wrote Respondent a letter. That letter details defense counsel’s repeated efforts to proceed with discovery and the Respondent’s frustration of that effort. It warned the Respondent that if discovery was not forthcoming, the defendant’s counsel would file a motion to compel. (VSB Exh. CC, Attachment D) There was no response.
19. On January 27, 1997, defendant’s counsel filed a motion to compel discovery. On the following day, he noticed the deposition of Mr. Arrington for March 3, 1997. (VSB Exh. Y)
20. On February 19, 1997, United States Magistrate Judge Glen E. Conrad heard the defendant’s motion to compel discovery. The Respondent had brought to the hearing some responses to the defendant’s discovery requests but they were inadequate. (Testimony of Bruin S. Richardson, III, VSB Exh. VV) Judge Conrad granted the defendant’s motion to compel discovery and ordered that plaintiff supplement both his interrogatory responses and responses to the request for production. (VSB Exh. VV) He also ordered that the plaintiff pay defendants \$100 in compensation for costs incurred in their efforts to compel discovery. (VSB Exh. VV) On the following day, defendant’s counsel wrote the Respondent and told him to make the check for \$100 payable to Tultex Corporation and confirmed that the deposition of Mr. Arrington would begin on March 3, 1997. He also detailed with precision the inadequacies of the plaintiff’s discovery responses. (VSB Exh DD) It may be

noted here that the \$100 was never paid. (Testimony of Mr. Richardson)

21. The Respondent’s supplemental discovery responses were due by February 26, 1997. (Stipulation at ¶ 29) When they had not been served on defendant’s counsel by February 27, 1997, defendant’s counsel sent another letter to the Respondent, advising him that if he did not receive the responses by the end of the day, he would seek additional sanctions from Judge Conrad. The interrogatory responses were not actually received by defendant’s counsel until March 3, 1997. (VSB Exh. HH)
22. Mr. Arrington did not appear for his deposition on March 3, 1997. (VSB Exh. HH) There is a factual dispute as to why this occurred. Mr. Arrington testified that he was never told by the Respondent that his deposition was to be taken, or even might be taken, on March 3, 1997. (Testimony of Mr. Arrington) Mr. Arrington testified that the first time he learned that he had missed his deposition was when he got a message from the Respondent at his girlfriend’s mother’s home on the evening of March 3, 1997. (*Id.*) The Respondent testified that there was “no question” he told Mr. Arrington about the March 3, 1997 deposition. (Testimony of Mr. Young) He also stated, however, that he had told Mr. Arrington to “stand by his telephone” on the day of the deposition in case it was canceled. (*Id.*) In the deposition transcript, the Respondent admitted that Mr. Arrington’s failure to appear “may have been my fault.” (VSB Exh. KK, at page 8) At the deposition, the Respondent stated that Mr. Arrington “was aware of it, but I also told him that I had other things today, that I couldn’t understand how we scheduled for today. * * * I told him that I would call him back. And when I called, he was not there. He may have gotten the impression he didn’t need to be here.” (*Id.*)
23. The Board concludes that Mr. Arrington’s failure to appear at the deposition is principally attributable to the Respondent’s failure properly to advise Mr. Arrington, in no uncertain terms, that he must appear for the deposition. At best, the Respondent left Mr. Arrington in a state of uncertainty as to whether the deposition would take place on March 3, 1997. If the Respondent’s other responsibilities raised the possibility that the deposition could not go forward, it was the Respondent’s duty to resolve these matters in advance, rather than have the defendant incur the substantial costs of a deposition that might not, and ultimately did not, go forward. At the deposition—which was attended by Tultex’s counsel, Tultex’s company representative, defendant Robert Walker, the court reporter and the Respondent—the defendant’s counsel asked the Respondent: “Was there any doubt in anyone’s mind that we would be here today?” The Respondent’s response was: “No, I don’t think there was.” (VSB Exh. KK, at Page 9.) In light of this admission, we attribute the failure of Mr. Arrington to appear for deposition to the Respondent’s failure appropriately to instruct his client to appear for the deposition.¹
24. On March 4, 1997, defendant’s counsel filed a motion for sanctions and to compel the plaintiff’s attendance at a deposition. (VSB Exh. HH) The motion sought sanctions in the amount of \$3,452.20 and an order compelling plaintiff to give his deposition. On March 31, 1997, the Court granted Tultex’s motion for sanctions and stated the following:

At the conclusion of this litigation, defendants shall recover from plaintiff's counsel reasonable costs associated with the attempt to depose plaintiff on March 3, 1997. Plaintiff is notified that future failures to comply with discovery obligations will result in the imposition of sanctions under Rule 37(a)(4) and may result in an involuntary dismissal of the case under Rule 41(b).

(VSB Exh. OO)

25. This admonishment to Respondent did not have its intended effect. The Respondent continued to neglect this matter. Chief United States District Judge Jackson L. Kiser, in a subsequent order, summarized the events following his March 31, 1997 order:

On April 7, 1997, Tultex sent a letter to plaintiff requesting deposition dates. During April, Tultex attempted to schedule the plaintiff's deposition, but was unable to obtain a date that did not pose a scheduling conflict. Tultex requested additional possible deposition dates, but did not receive these dates. On May 5, May 6 and May 8, 1997, Tultex phoned the office of plaintiff's counsel in an attempt to confer regarding discovery but was unable to speak with plaintiff's counsel. In May 8, 1997, letter to plaintiff, Tultex's counsel refers to the failure of plaintiff's counsel to return his calls and the failure of plaintiff to provide promised supplemental discovery responses. The letter states, "If I have not heard from you by Monday, May 12, I will presume that you and Mr. Arrington have elected to abandon this case and I will seek an order from the Court dismissing Mr. Arrington's case with prejudice." As of 5 p.m. on May 13, 1997, Tultex had not heard from the plaintiff. Tultex filed this motion on May 14, 1997. The plaintiff did not file a brief in opposition the motion.

(VSB Exh. OO; see also VSB Exhibits II, JJ, LL, MM, NN)

26. On June 18, 1997, Chief Judge Kiser dismissed Tultex from the action. The Court noted that it had twice sanctioned the plaintiff "for his failure to cooperate in discovery" and had "explicitly" warned plaintiff that a failure to obey the Court's order could result in dismissal of the case. As to the Respondent's stated excuse for his failure to comply with the plaintiff's discovery obligations—i.e., the "press of business"—the Court held that this was not sufficient to justify plaintiff's "complete abdication of his responsibilities in this case." (VSB Exh. OO)
27. On September 13, 1997, Mr. Arrington notified the Respondent that he did not wish to have the Respondent represent him any longer. (VSB Exh. SS) The Respondent moved to withdraw and, on November 11, 1997, that motion was granted. (VSB Exh. QQ, SS and TT)
28. Mr. Arrington asked for his case file on September 13, 1997. (VSB Exh. SS) He did not receive a copy of the file until February 1998, which was three months after Mr. Arrington filed the instant complaint. (Stipulation at ¶36 and VSB Exh. WW) Mr. Arrington testified that when he sought to get his file back, he was advised that he had to pay \$75 or \$100 to get it back. (Testimony of Mr. Arrington)
29. The instant complaint was filed by Mr. Arrington on November 5, 1997. (VSB Exh. WW) In response, the Respondent's attorney, Pery H. Harrold, advised Bar Counsel that "Mr. Young is of the viewpoint that he did an

excellent job in terms of prosecuting Mr. Arrington's claim, and the record in this matter will support such assertion." (VSB Exh. XX.) The record in this matter certainly does not support such an assertion. We express no opinion, of course, as to the merits of Mr. Arrington's claim against Tultex and Mr. Walker. The Respondent's negligent representation of Mr. Arrington, however, wholly deprived Mr. Arrington of his right to even attempt to prove his claim against Tultex.²

30. According to Mr. Arrington, the Respondent did tell him that Tultex had been dismissed from the litigation but did not tell him why. (Testimony of Mr. Arrington) The Respondent claims he did tell Mr. Arrington that the case was dismissed due to Mr. Arrington's failure to appear at his deposition. (Testimony of Mr. Young)

B. Allegations of Misconduct

31. The Certification charges Respondent Young with multiple violations of the Disciplinary Rules, as follows:

DR 2-105. (A) * * *

The Board finds that the Bar failed to carry its burden of establishing by clear and convincing evidence that the amount of the contingency fee was excessive. While a 50% contingency fee is high, the Board refuses to adopt a *per se* rule with regard to a specific percentage in all cases. Each case turns upon the facts involved and the Bar failed to prove that said fee was excessive in this case.

DR 2-108. (D) * * *

The Board finds by clear and convincing evidence that Respondent violated DR 2-108. Specifically, Respondent failed to deliver to Mr. Arrington his file until more than four and one-half months after Mr. Arrington's written request of September 13, 1997 and until more than two months after Mr. Arrington filed his complaint with the Virginia State Bar.

DR 5-103. (B) * * *

The Board finds by clear and convincing evidence that Respondent violated DR 5-103. This is based on the finding that the individual circumstances of this case, taken collectively, constitute an acquisition of an interest in the litigation. In particular, there are three circumstances upon which the Board relies: (1) This was a contingency fee matter; (2) The Respondent committed to paying all of the client's expenses; and (3) The Respondent's retainer agreement stipulated that the client could not accept any settlement offer unless Respondent recommended acceptance.

DR 6-101. (A)(1) and (2), (B), (C) and (D) * * *

The Board finds that the Bar failed to carry its burden of proof as to DR 6-101(A)(1) and (2). The Board finds by clear and convincing evidence that the Respondent did violate DR 6-101(B), (C) and (D). Specifically, the Respondent did not promptly attend to matters associated with this litigation; he did not keep his client reasonably informed; and he did not properly inform his client of the requirement that he be present at the time of his deposition.

DR 7-101. (A)(1), (2) and (3) * * *

The Board finds that the Bar failed to carry its burden of proof as to each of these allegations of misconduct. While the

Board certainly concludes that the Respondent's conduct was negligent as to the Arrington matter, it does not conclude that the Bar carried its burden of establishing that the Respondent's conduct was intentional.

DR 7-105. (A) * * *

The Board finds that the Bar failed to carry its burden of proof as to this allegation of misconduct.

VSb Docket No. 99-090-0133 (Vicki K. Smith)

A. Findings of Fact

The Board finds, by clear and convincing evidence, the following facts:

32. At all times relevant to this matter, Respondent Young was licensed to practice law in the Commonwealth of Virginia.
33. On August 22, 1994, Cornelius F. Scales was killed in an automobile accident. (Stipulation, at ¶38; VSB Exh. GGG) Scales was the father of two minor children, Devante Smith and Debreshia Hairston. The guardian of Debreshia is Gracie Hairston, the maternal grandmother of Debreshia. The guardian and mother of the second child, Devante, is the complainant, Vicki K. Smith. (Stipulation at ¶¶ 38-39 and VSB Exh. GGG)
34. In September 1994, the Respondent undertook the representation of Ms. Hairston for the purpose of filing a wrongful death suit on behalf of Debreshia. On September 26, 1994, one of the Respondent's associates entered into a contract of employment with Ms. Smith to pursue a wrongful death action on behalf of Devante. (VSB Exh. AAA). Thus, as of the end of September, the Law Offices of Rickey Young represented the interests of both of the minor children of Mr. Scales, but the children were by different mothers and were in the custody of two different unrelated adults.
35. In November 1994, it was discovered that the decedent was the sole cause of the accident. (Stipulation at ¶ 44) Accordingly, Respondent's attention turned from the potential wrongful death action to obtaining for the minor children certain money which was seized by the police from the automobile which Scales was driving at the time of the accident. (Stipulation at ¶ 44)
36. In addition, in December 1994, Hairston, as the administratrix of the decedent's estate, received a check from the Pittsylvania Juvenile and Domestic Relations Court for \$500. This money represented a cash bond posted by the deceased in August 1994, for the release of another individual. Young was made aware that Hairston had received this money. (Stipulation at ¶45) (It was established at the hearing that some of this money was eventually provided by Ms. Hairston to Ms. Smith.)
37. On or around July 1996, the Respondent filed a motion and order with the Henry County Circuit Court to have certain money held by the Virginia State Police released to the guardians of the minor children of the deceased, i.e., to his two clients, Ms. Hairston and Ms. Smith. (Stipulation at ¶46)
38. On or around July 23, 1996, a check made payable to Gracie Hairston c/o Mr. Rickey G. Young for \$5,128.69 was

sent to the Respondent from the Department of the Virginia State Police. (VSB Exh. MMM) This check represented the money seized by the state police from Scales' vehicle, plus accrued interest.

39. The Respondent failed to deposit these funds in his trust account or take any other meaningful steps to insure that his clients, Ms. Hairston and Ms. Smith, received such funds as were due them on behalf of the minor children. Instead, the Respondent left the check in his case file.
40. On February 13, 1997, the Virginia State Police wrote Ms. Hairston to advise her that the check had not yet been deposited and that, if it could not be located, a new check would be issued and a stop payment order put on the old check. (VSB Exh. NNN) Ms. Hairston caused the state police to issue a second check and it was mailed to her on February 25, 1997. (VSB Exh. OOO) After receiving the check, Ms. Hairston tried to contact the Respondent several times. (Testimony of Gracie Hairston)³ When she was unsuccessful in reaching the Respondent, she cashed the check and deposited it in Debreshia's account. (Id.)
41. Sometime thereafter, Ms. Smith visited the Respondent's office and the Respondent discovered the uncashed check in Ms. Hairston's file. Subsequently, the Respondent had Ms. Hairston endorse the check and he tried to cash it, only to learn that a stop payment had been issued on this check. (Stipulation at ¶¶ 48-49)
42. After learning that a second check had been issued and cashed by Ms. Hairston, the Respondent advised Ms. Smith that she would need to sue Ms. Hairston for her portion of the check but that it would be a conflict for him to do so on Ms. Smith's behalf. At some point, Ms. Smith asked for a copy of her file from office personnel of the Respondent. She was provided a copy of Ms. Hairston's file.
43. Subsequently, Ms. Smith filed a Warrant in Debt in the Henry County General District Court against Ms. Hairston, and eventually received certain funds from Ms. Hairston. (Stipulation at ¶¶ 50-51, QQQ, and Testimony of Ms. Smith)

B. Allegations of Misconduct

44. The Certification charges Respondent Young with multiple violations of the Disciplinary Rules, as follows:

DR 4-101. (B)(1) * * *

The Board finds that the Bar has not carried its burden of proof of establishing this violation. This is principally because of the lack of evidence as to the contents of the Hairston file given to Ms. Smith.

DR 5-105.(B) * * *

The Board finds by clear and convincing evidence that the Respondent violated DR 5-105(B). Specifically, he had a conflict from the outset of his representation of Ms. Smith on behalf of one child and Ms. Hairston on behalf of the other. There was an inherent potential conflict of interest between the two statutory beneficiaries in this wrongful death action under the circumstances of this case. The two beneficiaries were minor children by different mothers in the custody of unrelated adults. They were competing for limited assets and the issue of their respective relationships with their father would be an issue the court or jury would consider in allocating an award in a

wrongful death action. There was an additional conflict when Ms. Hairston took the first \$500 check and when she cashed the second \$5,128.69 check. Moreover, even though the Respondent was obviously correct in his determination that he could not sue Ms. Hairston on behalf of Ms. Smith in connection with the state police check, it was improper for him to counsel Ms. Smith to sue Ms. Hairston for her portion of the funds.

DR 6-101. (B), (C) and (D) ***

The Board finds by clear and convincing evidence that Respondent violated DR 6-101(B) by failing promptly to insure that each of his clients received their share of the state police check when he received it in July of 1996. Had he done so, the state police would not have issued a second check in February of 1997 and Ms. Smith's child would have received her share of the proceeds without the need for the warrant in debt filed in July of 1998. The Board finds that the Bar has failed to carry its burden of proof as to the allegations of violations of DR 6-101(C) and (D).

DR 7-101. (A)(2) and (3) ***

The Board finds by clear and convincing evidence that the Respondent violated both DR 7-101(A)(2) and (3), specifically by his failure promptly to insure the appropriate disposition of the state police check.

DR 9-102. (A)(2) and (B)(4) ***

The Board finds by clear and convincing evidence that the Respondent violated both DR 9-102(A)(2) and (B)(4), specifically by failing promptly to obtain Ms. Hairston's endorsement on the state police check and depositing said check into his trust account and by failing promptly to insure that each of his clients received their share of the funds.

IMPOSITION OF DISCIPLINE

After completing its adjudication of the facts and findings of misconduct, the Board was apprised of the Respondent's prior disciplinary record. It may be summarized as follows:

- VSB Docket No. 91-050-0442 (1992) Dismissal with Terms
- VSB Docket No. 96-090-0634 (1997) Private Reprimand with Terms
- VSB Docket No. 98-090-0181 (1998) Private Reprimand with Terms
- VSB Docket No. 98-090-0013 (1998) Dismissal with Terms
- VSB Docket No. 98-090-2011 (1999) Public Reprimand

The instant matters present this Board with a serious pattern of misconduct, resulting in grave adverse consequences for the Respondent's clients. In each of these three matters, the Respondent undertook the representation of a client and then, by his negligent and improper handling of the matter, caused severe prejudice to that client. In light of these findings, and in view of the Respondent's prior disciplinary record, the Board finds that the Respondent's license to practice law should be suspended for a period of eighteen (18) months, effective January 26, 2001.

It is thereby ORDERED that the license of Rickey Gene Young is hereby suspended for a period of eighteen (18) months, commencing January 26, 2001, nunc pro tunc.

ENTERED, this 26th day of February, 2001.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: William M. Moffet, First Vice Chair

- 1 After the instant complaint was filed, the Respondent's counsel, Perry H. Harrold, advised Bar Counsel that it was the Respondent's position that "Mr. Arrington missed the deposition due to no fault of Mr. Young." (VSB Exh. XX). In the same letter, however, Mr. Harrold concedes that the Respondent told Mr. Arrington "to stay by his telephone" if the deposition had to be canceled. (Id.). It was the Respondent's position that since he did not call Mr. Arrington to cancel the deposition, Mr. Arrington was obligated to appear at the deposition and his failure to do so was attributable to the plaintiff, not to his counsel. This ignores the two most salient facts associated with this issue: First, if there was any possibility that this deposition would not be going forward, the Respondent was obligated to resolve this matter in advance of the deposition. Second, even if one accepts that the Respondent gave Mr. Arrington the instruction described in Mr. Harrold's letter, it was an instruction that could only have invited Mr. Arrington to believe that there was a substantial possibility that the deposition would not proceed on March 3, 1997.
- 2 According to Mr. Richardson, who was originally counsel for Tultex and became counsel for Mr. Walker after Tultex was dismissed from the action, the case was ultimately dismissed against Walker on a summary judgment motion. (Testimony of Mr. Richardson)
- 3 Ms. Hairston testified by telephone. The parties stipulated that the witness was, in fact, Gracie Hairston, and that the oath could be administered by the court reporter by telephone.



District Committee

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
 OF THE VIRGINIA STATE BAR

In the Matter of
WILLIAM B. ALLEN, III, Esquire
 VSB Docket No. 98-070-1810

SUBCOMMITTEE DETERMINATION
 PUBLIC REPRIMAND WITH TERMS

On the 18th of January, 2001, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of Glenn M. Hodge, Esq., Ann C. Hall, and Julia S. Savage, Esq., presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the rules of the Supreme Court, the Seventh District 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, William B. Allen, III, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In August of 1996, the Complainant, Kimberly A. Sutherly, hired the Respondent to represent her in a child custody case. She signed a fee agreement with the Respondent. The Complainant agreed to pay the Respondent an hourly rate of \$175.00, and paid the Respondent \$1,500 in advance payment of fees. The fee agreement violated Legal Ethics Opinion 1606 in that it stated that the fee was non-refundable.
3. In September of 1998, at the request of the Virginia State Bar's investigator, the Respondent provided copies of the bills he sent to the Complainant. The bills show that the Respondent's total time devoted to the Complainant's case

disciplinary actions

was four and one half hours, at a rate of \$175 an hour, totaling \$787.50. There were no additional charges because the Complainant fired the Respondent on May 13, 1997.

4. The Complainant asked the Respondent to return the unearned portion of the retainer agreement. He did not return the unearned portion of the fee to the Complainant.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Disciplinary Rule has been violated:

DR 2-105. (A) and (B) ***

II. PUBLIC REPRIMAND WITH TERMS

1. The Respondent shall refund to the mother of Kimberly Sutherly the unearned portion of his fee, \$712.50, plus interest of \$204.25, totalling \$916.25.

Upon satisfactory proof that the above noted term and condition has been met, a Public Reprimand with Terms shall then be imposed, and this matter shall be closed. If, however, the term and condition has not been met by May 31, 2001, this case shall be certified to the Disciplinary Board of the Virginia State Bar.

SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Julia S. Savage
Chair/Chair Designate
Certified February 6, 2001

