VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
ROBERT HENRY SMALLENBERG

VSB Docket No. 09-032-075885 and 09-032-076648

OPINION AND ORDER OF SUSPENSION

On the 24th day of June, 2011, a hearing in this matter was held before a panel of the Virginia State Bar Disciplinary Board consisting of Thomas R. Scott, Jr, 1st Vice Chair, presiding, ("Chair"), Paul M. Black, Raighne C. Delaney, Tyler E. Williams and Werner H. Quasebarth, Lay Member, (Collectively, the "Board").

Renu Magu Brennan, Assistant Bar Counsel, represented the Virginia State Bar ("Bar").

Gary R. Hershner represented Robert Henry Smallenberg ("Respondent") who was present. Tracy J. Stroh, a registered professional reporter, Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

I. PRELIMINARY MATTERS

This matter came before the Board for a hearing upon the Determination of the Third District Subcommittee, Section II ("Certification"), which was served upon the Respondent on November 15, 2010, by certified mail, return receipt requested. On January 18, 2011, the Clerk duly noticed, by certified mail, return receipt requested, the Certification for a hearing, before the Board to take place on June 24, 2011 at 9:00 am at the State Worker's Compensation Commission, Courtroom A, 1000 DMV Drive, Richmond, Virginia 23220.

The Chair opened the proceeding and stated that the merits of case #09-032-076648 would be heard first, and then the Board would hear the merits of case #09-032-075885. The

Board would then deliberate, and if any misconduct was found, the panel would proceed to the sanctions phase.

II. VSB DOCKET NO. 09-032-076648: COMPLAINANT MARGARET L. THORPE

The Chair polled the members to determine whether any had a personal or financial interest in the proceeding that would impair, or reasonably could be perceived to impair his or her ability to be impartial. Each member responded in the negative.

By pre-hearing Order, the Chair admitted the Bar's Exhibits 1-12, along with the transcript of DeAngelo L. Thorpe and the Respondent's Exhibits 1-5. The Bar presented the testimony of Margaret L. Thorpe, and then rested. The Respondent presented the testimony of Steven Kelsey, Warren M. Powell, the Respondent, and the stipulation that John Paul Gregorio would testify as to when a motion for a sentencing reduction may be filed, and then rested. Additionally, the Board admitted Respondent's Exhibits 6, 7, 8, 9 and 10, over the Bar's objection. In rebuttal, the Bar then presented the testimony of Bill Dinkin, Robert Wagner and Warren Powell. Based on the evidence presented, the Board finds that the following facts were established by clear and convincing evidence:

A. Findings of Facts

1. Respondent represented Complainant Margaret L. Thorpe's son, DeAngelo L. Thorpe, at his July 2006 jury trial and November 2006 sentencing hearing in the United States District Court for the Eastern District of Virginia, at Richmond, Virginia.

2. In July 2006, a jury found Mr. Thorpe guilty of possession with intent to distribute five grams or more of cocaine base, in violation of 21 U.S.C.A. § 841 (West 1999 & Supp. 2007), possession of a firearm by a convicted felon, in violation of 18 U.S.C.A §§ 922(g)(1), 924(e)(1) (West 2000 & Supp. 2007) and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C.A. § 924(c) (West 2000 & Supp. 2007).

3. Respondent represented Mr. Thorpe at his sentencing hearing in November 2006.

4. Respondent was retained to appeal the conviction and sentence.

5. In April 2007, Respondent filed an appeal with the United States Court of Appeals for the Fourth Circuit.

6. By Order dated November 8, 2007, the United States Court of Appeals for the Fourth Circuit affirmed the trial court's conviction and sentence by unpublished per curiam opinion.

7. The Fourth Circuit issued a Notice of Judgment, which included the following directive to Respondent:

"In criminal cases, counsel must inform the defendant in writing of the right to file a petition for writ of certiorari from an adverse decision of this Court."

However, Rule 1.4(a) required only that the Respondent keep his client "reasonably informed" about the status of his criminal appeal; Rule 1.4(a) did not require notice in writing.

8. Respondent tried to communicate the denial of the appeal to Mr. Thorpe by contacting the Pamunkey Regional Jail, where Mr. Thorpe had been held after trial. Respondent learned from the jail that Mr. Thorpe had been transferred, but the jail did not inform Respondent as to where Mr. Thorpe had been transferred. Respondent called the Court of Appeals, which did not know Respondent's location.

9. Both the Respondent and his assistant Steven Kelsey, placed one or more calls to Mr. Thorpe's mother, complainant Margaret Thorpe, of the denial of the appeal, leaving voice messages on her phone that the appeal was denied. The Respondent's calls were also for the purpose of attempting to recover final payment for his bill. Ms. Thorpe never returned their calls and claimed to have not received any of them. The Board found Mr. Kelsey to be a credible witness in that regard.

10. The client, DeAngelo L. Thorpe, had authorized the Respondent to communicate with Ms. Thorpe about his case in the past, and Mr. Thorpe had authorized her to be a conduit for information about his case.

11. The Respondent could have used the federal locator system to attempt to determine Mr. Thorpe's whereabouts, but made no attempt to do so.

12. The Respondent did not send any written communication to either Mr.

Thorpe or his mother to inform Mr. Thorpe in writing of the right to file a petition for writ of certiorari.

13. By letter dated December 12, 2007 to his mother, Mr. Thorpe asked Mrs. Thorpe to determine the status of his appeal the next time she spoke with Respondent.

14. Not having heard anything regarding the status of his appeal, on June 19, 2008, Mr. Thorpe signed an affidavit, which he had notarized, asking Respondent to update him as to the status of the appeal. The affidavit also requested Respondent to explain why he had failed to communicate with Mr. Thorpe.

15. Mr. Thorpe sent the June 19, 2008, affidavit to what he believed to be Respondent's address of record, 1521 West Main Street, Richmond, Virginia 23220-4630. On July 4, 2008, the letter was returned as undeliverable. Respondent had moved his office earlier in 2008, and orally testified that he had notified Mr. Thorpe of the change.

16. By letter dated July 13, 2008 to his mother, Mr. Thorpe stated to Mrs. Thorpe that he had tried to send Respondent an affidavit, which he enclosed, but the affidavit was returned as undeliverable.

17. By letter dated February 22, 2009, from Mr. Thorpe to the VSB Investigator, Mr. Thorpe stated that his last communication with Respondent was at his sentencing hearing in November 2006 and that it was only through his own investigation that he learned his appeal was denied on November 8, 2007. In this same letter, Mr. Thorpe noted that he lost the opportunity to pursue further appeals because of Respondent's failure to advise him of the denial of his appeal within 90 days of the November 8, 2007 decision.

18. While Mr. Thorpe made the aforementioned statements, Mr. Thorpe timely filed a *pro se* motion for reduction of his sentence five days after his appeal was denied, which could only have been filed after his appeal was denied.

B. **Nature of Alleged Misconduct**

The Bar asserts that such conduct by Robert Henry Smallenberg constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to the applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

C. **The Board's Decision**

After deliberation, the Board finds by unanimous decision that the Bar has not proven by clear and convincing evidence violations of Rule 1.3(a) or Rule 1.16, and by majority decision, the Board finds that the Bar has not proven by clear and convincing evidence a violation of Rule 1.4(a).

III. VSB DOCKET NO. 09-032-075885: COMPLAINANT VERONICA WILSON PITTS

The Chair polled the members to determine whether any had a personal or financial interest in the proceeding that would impair, or reasonably could be perceived to impair his or her ability to be impartial. Each member responded in the negative.

By pre-hearing Order, the Chair admitted the Bar's Exhibits 1-42 and the Respondent's

Exhibits A1-A2, B1-B3, C1-C37, C133-C134, and D1- D157.

The Bar presented the testimony of Veronica Pitts, Gladys Harris, Robert Partin, Warren Powell, and then rested. The Respondent presented the testimony of the Respondent, the Board admitted Respondent's Exhibits E and F over the Bar's objection, and then the Respondent rested. Based on the evidence presented, the Board finds that the following facts were established, by clear and convincing evidence:

A. **Findings of Fact**

1. On October 30, 2006, Complainant Veronica Wilson Pitts hired Respondent to prepare a property settlement agreement and to represent her in her divorce.

2. Beginning in November 2006, Ms. Pitts provided Respondent with her proposed equity split breakdown for the proceeds from the sale of the marital residence as well as information regarding the value of the marital residence.

3. On or about November 22, 2006, the Respondent sent a proposed property settlement agreement to Ms. Pitts' former husband. When Ms. Pitts' former husband refused to sign the agreement and move out of the residence, the Respondent acted with alacrity and filed a Complaint alleging cruelty and abandonment along with a Motion for Pendente Lite relief. Despite resistance from his opposing counsel, the Respondent obtained exclusive possession of the house for Ms. Pitts on April 9, 2007. Ms. Pitts' former husband vacated the home, and finally, on July 9, 2007, despite some obstruction by his opposing counsel, Respondent obtained an order to that effect.

4. Thereafter, Ms. Pitts was informed that she should take no further action on the case until one year had elapsed from when Ms. Pitts' former husband vacated the home.

5. The Respondent advised her that after the one year period had elapsed, on April 9, 2008, she could have a "no fault" divorce if her husband would sign a property settlement agreement, the cheaper approach, and if not, she would need to set a trial on the equitable distribution of the property, which was the more expensive approach.

6. Just prior to the expiration of the one year waiting period, the Respondent propounded discovery on Ms. Pitts' former husband. The Respondent

never filed a motion to compel discovery because the information necessary to prevail on an equitable distribution trial was already in Ms. Pitts' possession. The Respondent wanted to save costs for Ms. Pitts, and she told him to do whatever he thought was best.

7. After the one year period expired, the Respondent made efforts to obtain the former husband's signature on a property settlement agreement. These efforts were complicated because the former husband was hoping for reconciliation, and his attorney saw no reason to expedite the case.

8. On July 15, 2008, Ms. Pitts filed a bar complaint because Respondent had not returned her calls or, in her view, sufficiently communicated with her regarding the status of the case.

9. By e-mail to Ms. Pitts on July 15, 2008, Respondent stated he preferred to communicate by e-mail, and he stated that he believed that the only remaining issue of contention was the house, and that if he was correct, they were ready to set a hearing. By separate e-mail dated July 15, 2008, Respondent stated that they were "at the very end." Ms. Pitts promptly responded that setting a hearing sounded good.

10. By e-mail dated July 24, 2008, Respondent advised Ms. Pitts that he had set a "trial date" on October 6, which was the first full hour the court had. To obtain this date, the Respondent cleared the date with opposing counsel.

11. By e-mail dated July 24, 2008, Ms. Pitts asked for more information regarding the trial. She asked whether she would need her mother to appear, how long the hearing would last, and whether she needed to bring anything to the hearing or to provide Respondent with any information beforehand.

12. By separate e-mails dated July 24, 2008, Ms. Pitts asked about the house, stated she would provide updated figures to Respondent, and advised that she had made all payments on the house since November 2006. Also, by e-mails dated July 24, 2008, Ms. Pitts stated she wanted to try to avoid a custody fight with her husband and added that perhaps she needed to schedule an appointment with Respondent before October 6.

13. By e-mail dated July 24, 2008, Respondent responded to Ms. Pitts as follows: "Biggie is the house. Will need your mother if they try to make custody an issue."

14. By e-mails dated July 28, 2008, Ms. Pitts provided Respondent with an updated equity breakdown as well as other related documentation. By e-mail dated July 28, 2008, Respondent confirmed receipt of Ms. Pitt's e-

mails and stated he would review the numbers and get back to her with any questions.

15. By e-mail dated July 29, 2008, Ms. Pitts asked Respondent to contact her regardless of whether he had questions as she was curious of his thoughts about the numbers.

16. By e-mail dated July 30, 2008, Ms. Pitts asked Respondent for more information regarding the October 6 trial.

17. Approximately one week later, on August 5, 2008, Ms. Pitts again asked Respondent his thoughts about her equity breakdown and asked his advice as to how to proceed. She further noted that Respondent had advised her he would contact her that week.

18. By e-mail dated August 21, 2008, Respondent stated that he would review the equity breakdown over the weekend and contact Ms. Pitts.

19. On September 15, 2008, Ms. Pitts asked Respondent if the hearing was still scheduled for October 6, 2008, how long the hearing would be, and whether the hearing would determine who would be awarded final custody and possession of the property.

20. By e-mail dated September 15, 2008, Respondent stated that he understood the hearing would take place in October; he asked Ms. Pitts questions about the equity breakdown; he asked whether he could share Ms. Pitts's figures with opposing counsel; and he stated that she and another witness would need to conclude divorce depositions before the October 6 hearing. Finally, he stated he would review Ms. Pitts' other questions and get back to her on or before the next day.

21. Ms. Pitts wanted the equitable distribution matter decided promptly so she could refinance the house.

22. By e-mail dated September 15, 2008, Ms. Pitts advised Respondent that Randy Jones, Branch Manager of US Mortgage Corporation of Virginia, would e-mail Respondent to answer his questions.

23. By letter dated October 1, 2008, from Randy Jones, US Mortgage Corporation of Virginia pre-approved Ms. Pitts' home loan on certain terms and conditions. Ms. Pitts provided Respondent with a copy of Mr. Jones' October 1, 2008, letter.

24. In addition to this correspondence, the Respondent also contends that he had telephone discussions with Ms. Pitts during the time period leading up to the October 6, 2008 court date. During these discussions, the

Respondent asserts that he attempted to inform Ms. Pitts that her former husband would not sign the property settlement agreement. Therefore, the hearing would no longer be a trial on the equitable distribution issue, but rather would be to set a date for the equitable distribution trial, and to show cause why Mr. Pitts should not be held in contempt of court for failing to pay court ordered child support in a timely fashion

25. Respondent did not conduct the divorce depositions prior to October 6, 2008, but he would have had no reason to have done so because the divorce could not have been finalized until the parties had been separated for one year.

26. While the only notice of motion and motion set for October 6, 2008 in Respondent's file was a Motion to Show Cause as to why Mr. Pitts should not be held in contempt of court for failing to pay court ordered child support in a timely fashion, that was consistent with the fact that Mr. Pitts would not sign the property settlement agreement.

27. The Certificate of Service reflects that Respondent did not serve opposing counsel with this Motion to Show Cause until October 3, 2008, but the fact remains that the date itself was pre-cleared with opposing counsel.

28. On October 6, 2008, Ms. Pitts arrived at court expecting to participate in an equitable distribution trial. Instead, the court resolved the Motion to Show Cause and set January 21, 2009, as the date for the equitable distribution hearing.

29. Between October 6, 2008, and January 21, 2009, Respondent was to provide opposing counsel with the equity breakdown information.

30. On January 21, 2009, at the date and time of the hearing, Respondent believed that he had reached a settlement agreement with opposing counsel, and then he and opposing counsel advised the Court at the January 21, 2009 hearing that they had reached an agreement regarding the breakdown, though the terms of the agreement were not written down or stated on the record. The Court directed the parties to provide a property settlement agreement within 60 days of January 21, 2009, or to set a date for hearing.

31. Respondent prepared a draft agreement, but Ms. Pitts' former husband refused to sign the property settlement agreement.

32. In January 2009, Ms. Pitts asked Respondent to contact her to discuss the property settlement agreement; the status of the buy-out so she could "proceed with closing (her) loan;" and "when this all will be final."

33. On February 5, 2009, Ms. Pitts e-mailed Respondent advising that she had

a deed he had requested and stating "I am trying to do everything I can to expedite this process. I am not please (sic) with how long this has taken. Even more critical is the fact that I have to close on my loan as soon as possible before my lock sic runs out. That will cost me money if I have to extend it." Ms. Pitts asked Respondent to get back to her with updates and timelines.

34. By e-mail dated February 5, 2009, Respondent responded to Ms. Pitts that "it is now in the hands of Ethans (sic) attorney. As I indicated previously, I with. Keep (sic) on her."

35. By e-mail dated February 19, 2009, Respondent advised Ms. Pitts that he would forward the documents to her that evening or the next day.

36. By e-mail dated February 27, 2009, Respondent advised Ms. Pitts that he forgot to send her the documents and that he would send the documents on Sunday.

37. By e-mail dated March 4, 2009, Ms. Pitts asked Respondent again to e-mail her the property settlement agreement and deed for her to review. She noted that she had spoken again with the agent from US Mortgage Corporation of Virginia and that she unfortunately had no updates for him. Ms. Pitts also reminded Respondent of the Court's deadline which required her to refinance within 17 days of the e-mail, or by March 21. She asked that Respondent follow up with opposing counsel.

38. By e-mail dated March 4, 2009, Respondent responded to Ms. Pitts that he had not yet been in the office because his children were ill and he would e-mail the agreement to her the next day.

39. By e-mail dated March 11, 2009, Ms. Pitts asked Respondent if he had heard from opposing counsel.

40. By e-mail dated March 12, 2009, Respondent advised that he would inform opposing counsel that he would take the matter back to Court, which would probably set a deadline of ten days.

41. By e-mail dated March 13, 2009, Ms. Pitts stated again that the 60 day period would expire on March 21, and further that she would incur an additional appraisal fee if she did not meet the deadline. She further stated she could not miss any more time from her position as Assistant Principal for the proceedings.

42. By e-mail dated March 13, 2009, Respondent said he would appeal to opposing counsel to conclude matters as he "wasn't aware of that date."

43. By e-mail dated April 16, 2009, which was over one month after his March 12, 2009, e-mail, and after the March 21 deadline passed, Respondent advised Ms. Pitts that opposing counsel was now anxious to resolve the matter and that he would meet with her early the next week.

44. By e-mail dated April 16, 2009, Ms. Pitts responded that Respondent had indicated on March 12, 2009, that he would give opposing counsel a 10-day deadline, and she inquired "what happened with that?"

45. By e-mail dated April 27, 2009, Ms. Pitts requested her file from Respondent because she planned to meet with another attorney the next week.

46. Ms. Pitts retained another attorney who resolved her case by March 2010. This attorney propounded new discovery, which was never answered by Ms. Pitts' former husband. Ms. Pitts' former husband never signed the property settlement agreement and the matter was resolved by an equitable distribution trial, upon basically the same information in the Respondent's possession on January 21, 2009.

B. **Allegations of Misconduct**

At the conclusion of the evidence, the Bar withdrew the allegation of misconduct under Rule 1.16. The Bar contends that the evidence constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

C. **Decisions of the Board**

After deliberation, the Board finds the Bar did not establish by clear and convincing evidence a violation of Rule 1.3.

However, the Board unanimously finds, by clear and convincing evidence, that the Bar has established the Respondent violated Rule 1.4(a).

IV. SANCTIONS

Upon the finding of misconduct, the Board heard evidence to determine the appropriate sanction, and the Bar and the Respondent were each provided the opportunity to offer material evidence and arguments in aggravation or mitigation, including the Respondent's prior disciplinary record. The Bar contends that a sixty (60) day suspension is the appropriate sanction. Upon consideration of the Respondent's disciplinary record and the Respondent's testimony, the Board finds the following additional facts by clear and convincing evidence:

1. The Respondent has a disciplinary record, as follows:

> Public Reprimand issued by the Third District, Section II Subcommittee, effective January 14, 2002 for violations of DR 6-101 (Competence) and DR 7 -102 (Representing a client within the bounds of the law).
>
> Private Reprimand with Terms issued by the Third District, Section II Subcommittee, effective December 20, 2005 regarding three different cases for violations of Rule 1.3 (Diligence), Rule 1.5 (Fees), and Rule 1.15 (Safekeeping Property).
>
> Public Reprimand issued by the Third District, Section II Subcommittee, effective March 19, 2008, for violations of Rule 1.3 (Diligence) and Rule 1.4 (Communication).

Upon consideration of the finding of misconduct and the evidence and arguments submitted, including the Respondent's prior disciplinary record, the Board declines to accept the Bar's recommendation of a sixty day suspension. After due deliberation, the Board determines that the Respondent's license to practice in the Commonwealth of Virginia should be suspended for a period of ten (10) days, effective June 24, 2011.

V. ORDER

ACCORDINGLY, it is ORDERED that the Respondent, Robert Henry Smallenberg be and hereby is suspended from the practice of law in the Commonwealth of Virginia for a period of ten (10) days, effective June 24, 2011.

It is further ORDERED that, the Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within fourteen (14) days of the effective date of this order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent Robert Henry Smallenberg, at his address of record with the Virginia State Bar, 10035 Sliding Hill Road, Suite 204, Ashland, VA 23005, by certified mail, return receipt requested, with a copy to his counsel, Gary R. Hershner, 9 S. Adams Street, Richmond, VA 23220 The Clerk of the Disciplinary System shall also hand deliver a copy of this order to Renu Magu Brennan, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 6th day of July, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Thomas R. Scott, Jr.

Thomas R. Scott, Jr.
First Vice Chair, Presiding

DISSENT

I dissent from the majority's finding that there was not clear and convincing evidence of a Rule 1.4(a) violation in case number 09-032-076648. Rule 1.4(a) required the Respondent to keep his client "reasonably informed" about the status of his criminal appeal. The reasonable standard is an objective one that depends on the circumstances of each case. Here, the clear and convincing evidence is that, upon the denial of his client's appeal, a court directed the Respondent to notify his client "in writing" of his right to file a petition for writ of certiorari and that the Respondent made no attempt to notify his client "in writing" of this right. The court directed the Respondent to notify his client, in writing, to protect the rights of an incarcerated person. In my view, this court order set the minimum standard for keeping the client "reasonably informed" in this instance. Whether the Respondent could have complied with Rule 1.4(a) by handing his client a letter, by first checking with the federal locator service as to his client's whereabouts and sending a letter to the address found therein, or by simply sending a written notice to his mother, it does not matter for the purposes of this dissent. Here, the Respondent did not attempt to send any notice in writing, to anyone, in any manner minimally calculated to reach his client. Therefore, I would find the Respondent in violation of Rule 1.4(a). Otherwise, I join the majority's opinion.

Raighne C. Delaney
Member, Virginia State Bar
Disciplinary Board