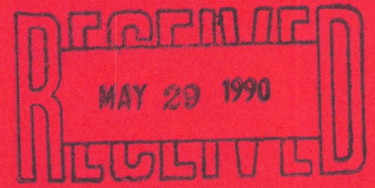


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CLERK  
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE

***Supreme Court of Virginia***

AT RICHMOND

RECORD NO. 900212

JOHN T. FALLS,

Appellant,

v.

VIRGINIA STATE BAR, et al,

Appellees.

JOINT APPENDIX

Jay J. Levit, Esquire  
LEVIT & MANN  
419 North Boulevard  
Richmond, Virginia 23220  
(804) 355-7766

Gail Starling Marshall, Esquire  
Deputy Attorney General  
Office of the Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-1129

Counsel for Appellant

Counsel for Appellees

*Brief Printing Specialist, 1001 E. Main Street, Suite 210  
Richmond, Virginia 23219, (804) 644-0700*



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Filed September 22, 1989

Case No. L M - 4056-2

**AMENDED PETITION AND MOTION FOR JUDGMENT**

Plaintiff, John T. Falls, by counsel, hereby petitions and moves the court for judgment against defendants Virginia State Bar (hereinafter sometimes referred to as the "Bar") and Edward J. Mazur, Comptroller, jointly and severally, in the sum of TWO MILLION DOLLARS (\$2,000,000.00) plus interest and costs, by virtue of the following:

1.(a) Pursuant to Virginia Code § 2.1-223.1, plaintiff duly and timely presented his written claim on or about August 8, 1988 to the defendants for compensatory damages sustained by plaintiff resulting from the Bar's breach of plaintiff's employment contract, as more fully detailed hereinafter.

(b) Thereafter, on October 5, 1988, Edward J. Mazur, Comptroller, disallowed the claim, completing the procedural requirements of Virginia Code § 2.1-223.3.

(c) Accordingly, this petition and motion for judgment is brought pursuant to, and this Court has jurisdiction by virtue of, Virginia Code § 8.01-192. Edward J. Mazur, Comptroller, is made a defendant pursuant to Virginia Code § 8.01-193.

(d) The Commonwealth of Virginia and the defendants have each consented to suits against them for breach of contract, and have each waived the defense and bar of sovereign immunity to such suits brought in Virginia state courts. Further, the Virginia Supreme Court has so held. Accordingly, defendants are not immune from this

suit in which plaintiff seeks compensatory damages for the Bar's breach of plaintiff's employment contract.

(e) Defendant Virginia State Bar was created by the Supreme Court of Virginia as an administrative agency of that Court. It is an association composed of the attorneys-at-law of the state of Virginia. Virginia State Bar fees and funds are paid into the state treasury pursuant to Virginia Code § 54-52.

(f) Employees of judicial agencies such as the Virginia State Bar are specifically excluded from the formal, regulated and prescribed grievance procedures otherwise provided for employees of the Commonwealth of Virginia.

2. Plaintiff (who is not a lawyer) was employed by the Bar effective April 1, 1986 as Director of Administration at a starting annual salary of \$32,000. His employment benefits included medical plan; dental plan; retirement plan; deferred compensation plan; life insurance; long-term disability income insurance; and other benefits. Plaintiff obtained his employment with the Bar as set forth hereinafter.

3. Early in March, 1986, plaintiff was interviewed by the Bar's then Executive Director, N. Samuel Clifton, for the position of Director of Administration of the Virginia State Bar.

4.(a) Clifton told plaintiff that he was Clifton's first choice for the position, and that the starting annual salary was \$32,000. Clifton further advised plaintiff that in addition to retirement, health, and other benefits, there were travel benefits which came with the position as well. Plaintiff told Clifton during the interview that salary was not as important to him as was job security and what the Bar expected of the Director of Administration.

(b) Clifton advised plaintiff that his first two major responsibilities would be to coordinate the relocation of the offices of the Virginia State Bar, and to direct the computerization of that office. Clifton further stated that clerical chores would be

removed from plaintiff's responsibility and turned over to others so that plaintiff could devote his time to more professional duties.

(c) Plaintiff explained to Clifton that in previous employment as a law firm or legal administrator, he had found that the experience acquired was limited in its marketability for other jobs. Consequently, plaintiff had taken his then present job outside that field to gain exposure in the accounting profession, while at the same time taking courses to prepare for the CPA examination and enter a career thereafter as a certified public accountant. Nevertheless, plaintiff advised Clifton, he had always enjoyed administrative work and found the prospect of working for the Bar to be appealing. However, plaintiff explained to Clifton, he could not quit his present employment and take employment with the Bar unless he received from the Bar assurances of job security.

(d) Clifton, in response to plaintiff's stated requirement for job security, then advised plaintiff that "as long as you do your work you will keep your job with the Bar." Clifton explained to him that his probationary period would be for six months, with an initial job performance review after three months, and the second review at the conclusion of the six-month probationary period. Clifton told plaintiff that if he successfully completed his probationary period, he would be given a permanent appointment to the position of Director of Administration with job security so long as he performed his work satisfactorily.

(e) Clifton then asked plaintiff whether he would accept the job if offered, and plaintiff replied that he would, believing and relying upon Clifton's authorized assurances made on behalf of the Bar that plaintiff would have job security as stated, i.e., Clifton's equating job security with satisfactory job performance.

5. About a week later after his initial interview with Clifton, Clifton advised plaintiff that he would have to meet with the Bar's Selection Committee. This Committee was the Bar's Administrative and Finance Committee, whose members were William W.

Eskridge (at that time Committee Chairman and President-Elect of the Bar); Roderick B. Mathews; and Colin J. S. Thomas, Jr.

6.(a) Plaintiff was interviewed by the said Committee on March 19, 1986. Eskridge and Thomas were present along with Clifton, but Mathews was not present. Eskridge conducted the interview. Eskridge devoted most of his attention to the duties of office computerization and office relocation, rather than to the job description for the Director of Administration.

(b) Eskridge emphasized to plaintiff that the continuity of the Bar depended upon and required "employees who would be there for the long haul." Eskridge then stated that the selection of the candidate would be made based upon the candidate's commitment to the Bar. Plaintiff replied that he had discussed his interest in and requirement for job security with Sam Clifton in his initial interview, and asked what the Bar's commitment in this most important respect (job security) would be. To this Eskridge responded in his authorized capacity for the Bar that "as long as you perform your duties satisfactorily, you will have a position as Director of Administration with the Bar. I mean you would have to do something terrible like take money in order to lose your job."

(c) As Clifton had previously represented for the Bar to plaintiff, so did Eskridge, who thus equated plaintiff's job security with plaintiff's satisfactory job performance. Both Clifton and Eskridge equated unsatisfactory job performance with contractual just cause for dismissal, and they so represented to plaintiff for the Bar. Plaintiff accepted these job security representations of Clifton and Eskridge for the Bar; and but for these representations as to the nature of plaintiff's job security, plaintiff would not have quit his prior employment in order to accept employment with the Bar.

(d) Based upon the statement and assurance of job security from Eskridge on behalf of the Bar, which plaintiff believed and upon which he relied, plaintiff replied

to Eskridge that he was willing to quit his present employment and to commit himself to the Bar for long-term employment subject to termination for just cause (unsatisfactory job performance). Eskridge then told plaintiff that the Bar would not require more than a forty-hour week from him. Plaintiff advised Eskridge that after he started work as Director of Administration for the Bar, he would continue with his accounting courses. However, he assured Eskridge and the Bar that he would not quit his employment with the Bar thereafter in order to practice accounting. Plaintiff also stated he would not quit employment with the Bar to accept employment elsewhere as a legal administrator. Plaintiff made this long-term commitment because of the Bar's stated requirement for long-term employment.

(e) Because of plaintiff's long-term commitment to the Bar, Eskridge, as authorized and on behalf of the Bar, offered to plaintiff the position of Director of Administration at an annual salary of \$32,000, starting on April 1, 1986. Plaintiff accepted the Bar's employment offer with the reservation that he would start on April 1, 1986 if this were sufficient notice of quitting for his present employer. Eskridge agreed for the Bar. As it developed, the quitting notice was sufficient, and plaintiff in fact thereafter commenced his duties for the Bar as Director of Administration on April 1, 1986, pursuant to his said contract of employment with the Bar.

(f) Just prior to the termination of this interview, Eskridge again told plaintiff that he should concentrate initially on computerization and relocation of the Bar's office, and that he should put his other duties "on the back burner."

7. After commencing his employment with the defendant Bar on April 1, 1986, plaintiff received inquiries from other employers for employment as a legal administrator. Because of his belief in and reliance upon the Bar's said assurances of job security (equated by the Bar with plaintiff's satisfactory job performance), plaintiff declined such employment elsewhere.

8. Effective July 1, 1986, plaintiff's salary was increased from \$32,000 to \$34,500 annually. He was praised both by Clifton and by the Bar's Executive Committee for his high quality work for the Bar.

9.(a) Thereafter, Clifton's employment as Executive Director of the Bar ended, and Eskridge and Mathews requested plaintiff to assume the post of Acting Executive Director in the interim pending Clifton's replacement. Eskridge and Mathews told plaintiff that this would be for a period of two to three months. Plaintiff advised them that he did not want to assume this interim position because of his lack of experience in this position, and because of the volume of other duties which he already had as Director of Administration. He stated that these additional and burdensome duties of Acting Executive Director would require and cause him to involuntarily neglect some of his basic duties as Director of Administration.

(b) Plaintiff was told by Eskridge to put these duties on the back burner until the new Executive Director was hired. Eskridge and Mathews thus insisted, as authorized and on behalf of the Bar, that he take the post for the interim period. Plaintiff did so, and was not paid any additional compensation for his added burdens. Plaintiff assumed his additional duties as Acting Executive Director after the 1986 Christmas holidays, and remained in this position until October 5, 1987, when Clifton's replacement, William K. Slate, II took over. This was much longer than the two to three-month interim period which had been promised to him by Eskridge and Mathews on behalf of the Bar.

10. During the period of time when plaintiff was serving as Acting Executive Director, he received praise for his high quality job performance from Mathews and from the Bar's Executive Committee. Effective July 1, 1987, plaintiff's salary as Director of Administration was increased to \$40,000 annually. Plaintiff received praise personally from members of the Council of the Virginia State Bar for his job performance. At all material times, plaintiff's loyalty to and commitment as a long-term employee to the Virginia State Bar remained firm, because plaintiff believed and relied upon the



Bar's said assurances to him that he had job security so long as he satisfactorily performed his assigned duties. Slate assumed the position of Executive Director as a replacement for Clifton in October, 1987, and plaintiff was then finally relieved of his assigned extra and burdensome duties for which he had received no additional compensation.

11.(a) On January 4, 1988, plaintiff was summoned to the office of William K. Slate, II, Executive Director of the Bar. Slate advised him that he (Slate) was going to eliminate the position of Director of Administration, and that plaintiff would be discharged. Slate stated that "I can hire lower-line employees to do your functions and therefore save the Bar some money." Slate further stated that he had been given full authority and approval over personnel matters by the Bar, and that "you are an employee at will and I have the right to discharge you."

(b) Plaintiff asked Slate whether he (plaintiff) had done something wrong, or whether there was something wrong with his work. Slate replied that there was nothing wrong with plaintiff's work, and that in fact he (Slate) had received compliments from the Bar's Executive Committee, Council members, and other committee members for plaintiff's job performance.

(c) Plaintiff then and therefore advised Slate that he had received a contractual employment commitment for job security from the Bar at the time he was hired. To this Slate responded that Slate nevertheless had full authority from Mathews, who at this time was the Bar's President, to discharge plaintiff.

12.(a) On January 5, 1988, plaintiff had a meeting with Slate in the morning. Plaintiff explained that his discharge was placing a heavy burden upon him and his family. Slate nevertheless responded that plaintiff would be given only six weeks before his employment was terminated. This was not reasonable notice to plaintiff by the Bar. Slate further stated that he would write a letter of recommendation for plaintiff.

(b) Slate wrote the letter of recommendation to incorrectly reflect that plaintiff had been offered another position by the Bar and had turned it down. Plaintiff requested Slate to correct this because it was not true. Upon plaintiff's insistence, Slate did so. Thereafter, despite plaintiff's objection, Slate distributed a memorandum among the Bar's employees stating that plaintiff had resigned. Plaintiff had objected to this memorandum before distribution on the grounds that it was not true, and that plaintiff had in fact not resigned. Nevertheless, Slate distributed the memorandum which falsely stated that plaintiff had resigned.

(c) At all material times, the Bar had an oral and written policy of discharging plaintiff only for unsatisfactory job performance or just cause. This oral and written policy was a contractual commitment of the Bar to plaintiff. This just cause policy and contractual commitment was presented to plaintiff by the Bar before and after his employment with the Bar. It was held out by the Bar to plaintiff as a significant inducement for him to accept employment with the Bar and to thereafter remain committed as an employee of the Bar for the long term.

(d) In its written form as the Bar's Personnel Manual (pertinent portions thereof attached hereto and incorporated herein), which was drafted and signed by the Bar with its logo, this just cause policy and contractual commitment to plaintiff provided for an initial probationary period of employment which, if completed successfully by plaintiff, would be followed by permanent appointment, conditioned upon continued satisfactory job performance, to the position of Director of Administration. This appointment was thus subject to annual reviews by the Bar of plaintiff's job performance. Plaintiff successfully completed his probationary period. At all times thereafter his job performance was satisfactory or better.

(e) The Bar's written just cause policy and contractual commitment to plaintiff through the Bar's personnel manual expressly recognizes that plaintiff has grounds to grieve by seeking legal redress for arbitrary dismissal after the completion of plaintiff's

probationary period. No formal grievance procedure, as stated hereinabove, was available to plaintiff, other than Virginia Code § 2-223.1 and court action thereafter under Virginia Code § 8.01-192.

(f) Plaintiff relied upon this written just cause policy and contractual commitment to his detriment in that he quit his prior employment in order to go to work for the Bar; thereafter he declined employment opportunities elsewhere; and instead he remained loyal and committed to the Bar as an employee, even though he was not paid more for his additional and burdensome duties as Acting Executive Director.

(g) In addition to constituting a written employment contract, the Bar's personnel manual was also a written memorandum, signed by the Bar, confirming and memorializing the oral representations of job security made by authorized representatives of the Bar to the plaintiff during his employment interviews, as alleged and set forth hereinabove.

(h) The Bar's personnel manual contains no disclaimers as to its contractual nature, or as to plaintiff's job security which the Bar's authorized representatives equated with plaintiff's satisfactory job performance, as alleged hereinabove.

(i) Indeed, during plaintiff's employment interview with Clifton, as alleged hereinabove, Clifton presented plaintiff with the Bar's personnel manual, and plaintiff examined the pertinent portions thereof, attached hereto, and relied upon them in making his decision to quit his employment in order to accept employment with the Bar.

(j) During his employment interview with Clifton, plaintiff accordingly advised Clifton that he wanted a copy of the Bar's personnel manual to keep for himself. Clifton then arranged for Anita Stevenson to furnish plaintiff with a copy of the Bar's personnel manual, which she did. When plaintiff thereafter accepted employment with the Bar, he replaced Anita Stevenson as the Bar's Director of Administration.

(k) When plaintiff commenced his employment with the Bar on April 1, 1986, he was given another copy of the Bar's personnel manual, containing the same pertinent provisions, copies of which are attached hereto.

(l) At all material times, the Bar through its authorized agents represented to plaintiff that the Bar's personnel manual and the pertinent provisions thereof, copies of which are attached hereto, were applicable to plaintiff. The Bar intended for plaintiff to rely upon these provisions as giving him job security in return for satisfactory job performance. The Bar's intention was to thereby induce plaintiff to quit his present employment, accept employment with the Bar, and to thereafter continue his employment with the Bar by declining offers of employment elsewhere. Plaintiff relied upon the Bar's personnel manual and the manual's provisions for job security through satisfactory job performance, as stated. Accordingly, to his detriment and damage, plaintiff changed his position by quitting his employment in order to accept employment with the Bar, and by thereafter remaining loyal to the Bar and declining employment opportunities elsewhere.

(m) The pertinent provisions of the Bar's personnel manual, copies of which are attached hereto, expressly establish satisfactory job performance as the Bar's standard for job security. These written provisions in the manual confirm, corroborate, and memorialize the oral representations of job security made to plaintiff by the Bar's authorized representatives as alleged and set forth hereinabove. Further, the Bar's personnel manual restricted plaintiff's ability to grieve or seek legal redress for arbitrary dismissal during plaintiff's probationary period of employment only, but not thereafter.

(n) Plaintiff successfully completed his probationary period of employment, and at all times thereafter his job performance with the Bar was satisfactory or better.

13. During plaintiff's employment interviews, with Clifton, Eskridge, and Thomas, the latter three were acting within the scope of their employment, authority, and agency on behalf of the Virginia State Bar. Plaintiff relied upon their direct oral

representations to him that his employment would be secure and that he would have job security with the Bar so long as he performed his duties satisfactorily. This is precisely what Clifton, Eskridge and Thomas, in their authorized capacities and on behalf of the Bar, intended plaintiff to believe in order to induce him to quit his present employment, accept new employment with the Bar, and remain committed to the Bar thereafter.

14. As a result of the Bar's announced and published oral and written (and signed) policy and contractual commitment to discharge plaintiff only for just cause, and as a result of plaintiff's belief in and reliance upon this policy and the oral assurances made by the Bar's authorized agents (Clifton, Eskridge and Thomas) to plaintiff during his hiring interviews that he would have job security so long as his work was satisfactory, a contract of employment was made between plaintiff and the Virginia State Bar. This contract existed thereafter at all material times.

15. When plaintiff's employment with the Bar was terminated effective February 19, 1988, it was so terminated by the Bar (1) without reasonable notice to plaintiff; (2) in violation of the Bar's own oral and written just cause policy and contractual commitment to plaintiff; and (3) in flagrant breach of the Bar's contract of employment with plaintiff. Plaintiff was discharged by the Bar without reasonable notice, and without just cause as required by his employment contract with the Bar.

16. The Bar's improper motive, as stated through Slate, was to have lower-line personnel perform plaintiff's job duties at lower cost to the Bar (and without an employment contract). The Bar tried to deceptively cover up and avoid its contractual obligations and contractual job security commitment to plaintiff by: (1) attempting (through Slate) to get plaintiff to agree that he had turned down another employment opportunity with the Bar, when in fact this was not true; (2) by notifying its employees (through Slate) over plaintiff's objection that plaintiff had resigned when in fact this was false; and (3) by Slate's pretextually characterizing plaintiff's discharge as a job



elimination, when in fact plaintiff's job duties and the Bar's need to have them performed have remained. Both plaintiff and the Bar had previously agreed to and had mutually defined plaintiff's job security so as to exclude such so-called "job elimination" as a basis for discharge. At all material times, the Bar could well afford plaintiff's wages and benefits.

17. Under his contract of employment with the Bar, plaintiff's duration of employment was for a definite term, although not expressed in measured time units, such as years. The contractual just cause (job security) commitment made to plaintiff by the Bar was an important part of plaintiff's compensation, wages, benefits, and consideration of employment with the Bar, which commitment plaintiff had earned before he was arbitrarily terminated. This just cause (job security) commitment itself, alone, constituted the fixed (definite) term of plaintiff's employment contract. Under this contractual fixed term, plaintiff had employment until such time as he gave to the Bar just cause to terminate the employment contract. Contractual performance was possible within a year. Plaintiff had fully and satisfactorily performed his part of the contract prior to his termination.

18. By promising plaintiff job security for so long as he satisfactorily performed his job duties, the Bar contractually gave up its right to terminate plaintiff's employment arbitrarily or "at will". The bar to its own benefit thereby induced plaintiff to detrimentally and to his damage quit his prior employment, accept employment with the Bar, thereafter decline opportunities for employment elsewhere, and assume additional burdensome duties as Acting Executive Director without being paid additional compensation therefor.

19. The Bar's decision to terminate plaintiff's employment was, as stated by Slate to plaintiff, for the purpose of reneging on the Bar's contractual commitments to plaintiff so that it could assign plaintiff's duties to others at lower cost. The bar in bad faith asserted to plaintiff, through Slate as approved by Mathews, that he was an

"employee at will", notwithstanding the Bar's knowledge that it had made binding contractual commitments to plaintiff which clearly had removed him from the status of an employee at will. This bad faith conduct by the Bar, through its authorized agents Slate and Mathews, constituted an illicit attempt by the Bar to belatedly obtain from lower-line personnel the contractual services performed by plaintiff at non-contractual lower wages and benefits, even though this opportunity had been lost to the Bar when it entered into its employment contract with plaintiff.

20. As a result of the breach of plaintiff's employment contract by the Bar, plaintiff has sustained serious damage including the loss of his prior employment before his employment with the Bar; loss of career opportunities; loss of wages and benefits; loss of opportunities for advancement and promotion; loss of opportunities for beneficial employment elsewhere; and plaintiff has otherwise been damaged.

WHEREFORE, plaintiff demands compensatory damages against the defendants, jointly and severally, and the Commonwealth of Virginia, for breach of his employment contract in the sum of TWO MILLION DOLLARS (\$2,000,000), plus interest thereon and his costs expended.

**TRIAL BY JURY IS DEMANDED.**

JOHN T. FALLS

By

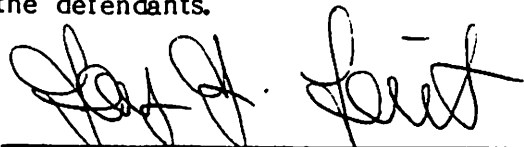
  
Counsel

Jay J. Levit, Esquire  
LEVIT & MANN  
419 North Boulevard  
Richmond, Virginia 23220  
(804) 355-7766

**CERTIFICATE**

I certify that on this 22nd day of September, 1989, I hand-delivered a true copy of the foregoing Amended Petition and Motion for Judgment to Ms. Cleo E. Powell,

Senior Assistant Attorney General, Supreme Court Building, 101 North Eighth Street,  
Richmond, Virginia 23219, counsel for the defendants.

A handwritten signature in black ink, appearing to read "Jay J. Levit", written over a horizontal line.

Jay J. Levit



# VIRGINIA STATE BAR

## PERSONNEL MANUAL

*Revised July 1, 1985*

VIRGINIA STATE BAR  
PERSONNEL MANUAL  
(Revised July 1, 1985)



## EMPLOYMENT PERFORMANCE, EVALUATION AND TERMINATION

The policy of the Virginia State Bar is to require satisfactory completion of a six-month's probationary period as a prerequisite to permanent appointment to a position.

All new employees will receive a performance review at the end of three months and again at the end of six months and annually thereafter. The performance review is part of an appraisal system designed to evaluate and enhance performance. The review also provides new employees with a judgment as to whether their work is measuring up to State Bar standards, gives them an opportunity to respond to criticisms, discuss problems, suggest improvements, ask questions, etc. [Sample Employee Performance Evaluation Form attached]

If at any time during the probationary period, the employee or the supervisor decide that the employee is not suited for the job, the employee will be terminated or allowed to resign. In such cases, the records should reflect "unsatisfactory performance during the probationary period," or, at the employee's option, "resignation."

Termination during the probationary period is not grievable.

## RESIGNATIONS

If an employee finds it necessary to resign, a written resignation should be submitted to the executive director at least two weeks, and preferably four weeks in advance. Of course, an even longer advance notice would be appreciated. When leaving, unused vacation time will be paid. If more vacation or sick leave has been taken than earned, an adjustment will be made on the final paycheck. All insurance coverage remains in effect through the month in which an employee resigns.

VIRGINIA STATE BAR  
EMPLOYEE PERFORMANCE EVALUATION

EMPLOYEE \_\_\_\_\_ SUPERVISOR \_\_\_\_\_

POSITION \_\_\_\_\_ DEPT. \_\_\_\_\_

DATE EMPLOYED \_\_\_\_\_

TYPE OF REVIEW:

\_\_\_\_\_ 3 mos. performance

\_\_\_\_\_ 6 mos. performance

\_\_\_\_\_ annual performance

\_\_\_\_\_ special review

This performance evaluation will serve as a permanent record of the progress of the individual employee's job performance, over the time represented by employment with the Virginia State Bar. It is intended to be used with any frequency appropriate, but at least once a year for each employee. The evaluation will remain a permanent record in the personnel file of the individual.

The value of this review depends solely on the supervisor making the rating, his/her impartiality, and sound judgment. The ratings should be made with care and fairness in the interest of both the employee and the VSB, based on the entire period, not isolated incidents. The supervisor's ratings are to be based on accepted standards for the employee's type of work. If the supervisor feels that comments are necessary, those comments are to be noted. Explanatory comments must be included where "Outstanding" or "Unsatisfactory" ratings are given.

The evaluator is to complete the form and review it with his/her director and submit it (signed by both the evaluator and director) on the date indicated. The review will be approved by the Executive Director and returned to the evaluator for review with the employee. The employee may append any statement if he/she wishes and is asked to sign the review before returning it to become part of the employee's permanent record.

RATING DEFINITIONS

OUTSTANDING	Performance far surpasses normal standards and attains outstanding results both in day-to-day activities and in the long range.
SUPERIOR	Performance almost always exceeds all normal standards and attains superior results, both in day-to-day activities and in the long range.
GOOD	Performance is sound, balanced and reliable. Consistently meets the normal expectations.
FAIR	Performance is adequate. Some deficiencies exist.
UNSATISFACTORY	Performance is unacceptable.

**JOB KNOWLEDGE:** Familiarity with the technical requirements of the position and how it fits into the overall organizational structure. Consider a comprehensive understanding of all phases of the job. Shows progress.

OUTSTANDING	SUPERIOR	GOOD	FAIR	UNSATISFACTORY
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**QUALITY OF WORK:** The ability to produce results of high quality and error free. Consider accuracy, neatness, consistency and thoroughness in producing work which meets VSB standards.

OUTSTANDING	SUPERIOR	GOOD	FAIR	UNSATISFACTORY
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRODUCTIVITY QUANTITY:** The ability to continually produce high-volume, acceptable work under normal conditions. Consider the quantity of work turned out and promptness with which it is completed.

OUTSTANDING	SUPERIOR	GOOD	FAIR	UNSATISFACTORY
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLANNING AND ORGANIZATION:** Anticipates workload and schedules established tasks for efficient accomplishment of individual and group objectives. Consider amount of supervision required, ability to prioritize and coordination with others as necessary.

OUTSTANDING	SUPERIOR	GOOD	FAIR	UNSATISFACTORY
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELIABILITY/DEPENDABILITY/WORK HABITS:** Conscientious in attendance and follows VSB policies. Consider scheduling and notification of absences, punctuality, appearance and use of VSB property. Consider acceptance of commitments and meeting of deadlines.

OUTSTANDING	SUPERIOR	GOOD	FAIR	UNSATISFACTORY
<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTITUDE:** Approaches work and office in a positive, constructive manner, wants to do a good job. Consider effect on others' morale, acceptance of constructive criticism, support of organizational objectives, interest in improving skills, and willingness to cooperate.

OUTSTANDING      SUPERIOR      GOOD      FAIR      UNSATISFACTORY  
☐ ☐      ☐ ☐      ☐ ☐      ☐ ☐      ☐

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**JUDGMENT:** Recognizes consequences of decisions and demonstrates logical thinking, timing and insight. Consider use of common sense in normal and unusual situations as well as response under pressure.

OUTSTANDING      SUPERIOR      GOOD      FAIR      UNSATISFACTORY  
☐ ☐      ☐ ☐      ☐ ☐      ☐ ☐      ☐

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**HUMAN RELATIONS INTERNAL/EXTERNAL:** Effective in dealing with co-workers and the public. Creates and maintains harmonious work relations. Consider oral and written communications skills, support of group goals, tolerance of the views of others, tactfulness and patience.

OUTSTANDING      SUPERIOR      GOOD      FAIR      UNSATISFACTORY  
☐ ☐      ☐ ☐      ☐ ☐      ☐ ☐      ☐

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**INITIATIVE:** Recognizes situations which can be improved or potential problems and acts promptly or independently to develop or propose solutions. Consider the gravity and/or uniqueness of situation, appropriateness of action, and follow-through.

OUTSTANDING      SUPERIOR      GOOD      FAIR      UNSATISFACTORY  
☐ ☐      ☐ ☐      ☐ ☐      ☐ ☐      ☐

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### OVERALL PERFORMANCE

Outstanding <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Superior <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Good <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Fair <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Unsatisfactory <input type="checkbox"/>
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Signatures confirm review of this performance evaluation:

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Employee's Signature

Date

---

Evaluator's Signature

Date

---

Reviewed by

Date

---

Reviewed by

Date



Filed September 29, 1989

Case No. L M - 4056-2

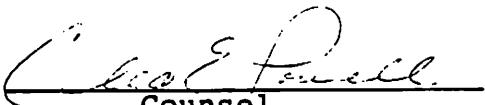
DEFENDANTS' DEMURRER TO PLAINTIFF'S  
AMENDED PETITION AND MOTION FOR JUDGMENT

Defendants, Virginia State Bar and Edward J. Mazur, by counsel, respectfully demur to Plaintiff's Motion for Judgment alleging a contract of employment. The grounds for this Demurrer are 1) an oral contract is unenforceable under the Statute of Frauds; 2) the Bar's Personnel Manual does not constitute a contractual agreement; and 3) the alleged contract, whether oral or written, fails to establish a definite duration of employment, and therefore, does not rebut the presumption of employment at will.

Respectfully submitted,

VIRGINIA STATE BAR, et al.

By:

  
Counsel

Circuit Court  
OF THE  
City of Richmond  
John Marshall Courts Building

ROBERT L. HARRIS, SR.  
JUDGE

November 20, 1989

800 EAST MARSHALL STREET  
RICHMOND, VIRGINIA 23219

Jay J. Levit, Esquire  
Levit and Mann  
419 North Boulevard  
Richmond, VA 23220

Ms. Cleo E. Powell  
Senior Assistant Attorney General  
Commonwealth of Virginia  
Supreme Court Building  
101 North Eighth Street  
Richmond, VA 23219

Dear Mr. Levit and Ms. Powell:

Re: Case No. LM 4056-2  
John T. Falls v.  
Virginia State Bar, et al

As you are aware, I entered an order in the above-referenced case on September 19, 1989. That order sustained defendant's demurrer and allowed plaintiff leave to amend. On October 12, 1989, I entertained oral argument on defendant's demurrer to plaintiff's amended petition and motion for judgment.

I have considered all of the briefs submitted by counsel, the arguments made by counsel at several hearings and the recent Supreme Court decision in Elliott v. Shore Stop, 6 VLR 346 (September 22, 1989). After consideration and reconsideration of all of the above, I have sustained defendant's demurrer. No leave to amend is granted. The alleged oral contract, if proven, is unenforceable by virtue of the statute of frauds. The Bar's personnel manual is not a sufficient memorandum to lift the bar of the statute. I have entered the appropriate order, a copy of which is attached.

Very truly yours,

  
ROBERT L. HARRIS, SR.

RLH/vgt  
Enclosure

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

the 20th day of November 19 89

LM 4056-2

ORDER

On October 12, 1989, came the parties, by counsel, on the plaintiff's Amended Petition and Motion for Judgment, defendant's Demurrer, Memorandum in Support of Demurrer, Memorandum in Opposition to Demurrer and argument of counsel.

Based on a review of all the pleadings, memoranda and argument of counsel, the defendant's demurrer is SUSTAINED and the plaintiff's case is hereby dismissed with prejudice.

The objections of the plaintiff are noted.

Endorsements of counsel are dispensed with pursuant to Rule 1:13 of the Rules of the Virginia Supreme Court.

ENTER: November 20, 1989

Robert F. Harris

Judge

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 17th day of April, 1990.*

Record No. 900212  
Circuit Court No. LM-4056-2/89-3491

From the Circuit Court of the City of Richmond

Upon the petition of John T. Falls an appeal is awarded him from a judgment rendered by the Circuit Court of the City of Richmond on the 20th day of November, 1989 in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and the Virginia State Bar and another were defendants; upon the petitioner, or some one for him, filing an appeal bond with sufficient security or an irrevocable letter of credit in the clerk's office of the said court below in the penalty of \$500, within 15 days from the date of the Certificate of Appeal, with condition as the law directs.

This appeal, however, is limited to the consideration of assignment of error No. 1 which reads as follows:

1. The trial court erred by expressly ruling on demurrer that plaintiff's oral employment contract requiring cause for employment termination was rendered unenforceable by the Virginia statute of frauds, Virginia Code Section 11-2(7).

On further consideration whereof, it is ordered that the parts of the record to be printed or reproduced in the appendix are to be limited to those parts of the record germane to assignment of error No. 1, and the briefs to be filed shall be limited to such discussion as is relevant to that assignment of error.

The petition for appeal is refused as to assignment of error No. 2.

Reference is made to the said petition for the names of all the appellees involved in this appeal.

A Copy,

Teste:

  
Clerk



CERTIFICATE

Pursuant to Rule 5:23, I, David B. Beach, Clerk of the Supreme Court of Virginia, do hereby certify that on April 17, 1990 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day mailed to the lower court indicated in the order and to all counsel of record.

Given under my hand this 18th day of April, 1990.

  
Clerk

(sent by certified  
mail February 20,  
1990 and filed  
February 22, 1990)

ASSIGNMENTS OF ERROR

1. The trial court erred by expressly ruling on demurrer that plaintiff's oral employment contract requiring cause for employment termination was rendered unenforceable by the Virginia statute of frauds, Virginia Code Section 11-2(7) - APPEAL AWARDED.

2. The trial court erred by impliedly ruling on demurrer that plaintiff had not been denied the required reasonable notice prior to employment termination - APPEAL REFUSED.

Filed December 18, 1989

Case No. L M - 4056-2

NOTICE OF APPEAL

Plaintiff, John T. Falls, by counsel, hereby appeals to the Supreme Court of Virginia from the final Order dated and entered on November 20, 1989, by The Honorable Robert L. Harris, Sr., Judge of the Circuit Court of the City of Richmond, sustaining the defendants' demurrer, and dismissing the plaintiff's case with prejudice. The following documents, as well as other incidents of the case, have been or will be filed:

1. Transcript of oral argument on defendants' demurrer before Judge Harris on July 21, 1989.

2. Transcript of second oral argument on defendants' demurrer before Judge Harris on October 12, 1989.


3. Letter dated October 27, 1989, from Jay J. Levit to Judge Harris, to which is attached a copy of the motion for judgment in the case of Elliott v. Shore Stop, Inc.

The Clerk of the Circuit Court of the City of Richmond has advised Jay J. Levit by telephone on December 18, 1989, that the above listed documents are presently contained in the Circuit Court

Clerk's file in this matter. These documents previously had been transmitted by Judge Harris to the Clerk. Both the July 21, 1989 and October 12, 1989 transcripts were furnished to Judge Harris by defendants' counsel.

4. This notice of appeal shall also constitute notice under Rule 5:11(b) of the Rules of the Supreme Court of Virginia.

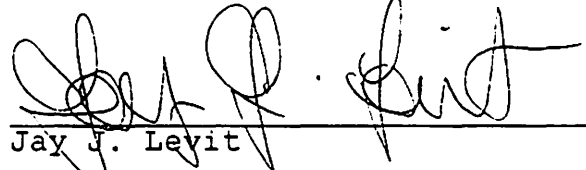
JOHN T. FALLS

By   
Counsel

Jay J. Levit, Esquire  
LEVIT & MANN  
419 North Boulevard  
Richmond, Virginia 23220  
(804) 355-7766

CERTIFICATE

I certify that on this 18th day of December, 1989, I mailed a true copy of the foregoing Notice of Appeal by regular United States mail, postage prepaid, to defendants' counsel, Ms. Cleo E. Powell, Senior Assistant Attorney General, Supreme Court Building, 101 North Eighth Street, Richmond, Virginia 23219.

  
Jay J. Levit

Filed December 14, 1988

CASE No. L M - 4056-2

**PETITION AND MOTION FOR JUDGMENT**

Plaintiff, John T. Falls, by counsel, hereby petitions and moves the Court for judgment against defendants Virginia State Bar (hereinafter sometimes referred to as the "Bar") and Edward J. Mazur, Comptroller, jointly and severally, in the sum of TWO MILLION DOLLARS (\$2,000,000.00) plus interest and costs, by virtue of the following:

1.(a) Pursuant to Virginia Code § 2.1-223.1, plaintiff duly and timely presented his written claim on or about August 8, 1988 to the defendants for compensatory damages sustained by plaintiff resulting from the Bar's breach of plaintiff's employment contract, as more fully detailed hereinafter.

(b) Thereafter, on October 5, 1988, Edward J. Mazur, Comptroller, disallowed the claim, completing the procedural requirements of Virginia Code § 2.1-223.3.

Filed December 14, 1988

CASE No. L M - 4056-2

PETITION AND MOTION FOR JUDGMENT

Plaintiff, John T. Falls, by counsel, hereby petitions and moves the Court for judgment against defendants Virginia State Bar (hereinafter sometimes referred to as the "Bar") and Edward J. Mazur, Comptroller, jointly and severally, in the sum of TWO MILLION DOLLARS (\$2,000,000.00) plus interest and costs, by virtue of the following:

1.(a) Pursuant to Virginia Code § 2:1-223.1, plaintiff duly and timely presented his written claim on or about August 8, 1988 to the defendants for compensatory damages sustained by plaintiff resulting from the Bar's breach of plaintiff's employment contract, as more fully detailed hereinafter.

(b) Thereafter, on October 5, 1988, Edward J. Mazur, Comptroller, disallowed the claim, completing the procedural requirements of Virginia Code § 2.1-223.3.

(c) Accordingly, this petition and motion for judgment is brought pursuant to, and this Court has jurisdiction by virtue of, Virginia Code § 8.01-192. Edward J. Mazur, Comptroller, is made a defendant pursuant to Virginia Code § 8.01-193.

(d) The Commonwealth of Virginia and the defendants have each consented to suits against them for breach of contract, and have each waived the defense and bar of sovereign immunity to such suits brought in Virginia state courts. Further, the Virginia Supreme Court has so held. Accordingly, defendants are not immune from this suit in which plaintiff seeks compensatory damages for the Bar's breach of plaintiff's employment contract.

(e) Defendant Virginia State Bar was created by the Supreme Court of Virginia as an administrative agency of that Court. It is an association composed of the attorneys-at-law of the state of Virginia. Virginia State Bar fees and funds are paid into the state treasury pursuant to Virginia Code § 54-52.

(f) Employees of judicial agencies such as the Virginia State Bar are specifically excluded from the formal, regulated and prescribed grievance procedures otherwise provided for employees of the Commonwealth of Virginia.

2. Plaintiff (who is not a lawyer) was employed by the Bar effective April 1, 1986 as Director of Administration at a starting annual salary of \$32,000. His employment benefits included medical plan; dental plan; retirement plan; deferred compensation plan; life insurance; long-term disability income insurance; and other benefits. Plaintiff obtained his employment with the Bar as set forth hereinafter.

3. Early in March, 1986, plaintiff was interviewed by the Bar's then Executive Director, N. Samuel Clifton, for the position of Director of Administration of the Virginia State Bar.

4.(a) Clifton told plaintiff that he was Clifton's first choice for the position, and that the starting annual salary was \$32,000. Clifton further advised plaintiff that in addition to retirement, health, and other benefits, there were travel benefits which

came with the position as well. Plaintiff told Clifton during the interview that salary was not as important to him as was job security and what the Bar expected of the Director of Administration.

(b) Clifton advised plaintiff that his first two major responsibilities would be to coordinate the relocation of the office of the Virginia State Bar, and to direct the computerization of that office. Clifton further stated that clerical chores would be removed from plaintiff's responsibility and turned over to others so that plaintiff could devote his time to more professional duties.

(c) Plaintiff explained to Clifton that in previous employment as a law firm or legal administrator, he had found that the experience acquired was limited in its marketability for other jobs. Consequently, plaintiff had taken his then present job outside that field to gain exposure in the accounting profession, while at the same time taking courses to prepare for the CPA examination and enter a career thereafter as a certified public accountant. Nevertheless, plaintiff advised Clifton, he had always enjoyed administrative work and found the prospect of working for the Bar to be appealing. However, plaintiff explained to Clifton, he could not quit his present employment and take employment with the Bar unless he received from the Bar assurances of job security.

(d) Clifton, in response to plaintiff's stated requirement for job security, then advised plaintiff that "as long as you do your work you will keep your job with the Bar." Clifton explained to him that his probationary period would be for six months, with an initial job performance review after three months, and the second review at the conclusion of the six-month probationary period. Clifton told plaintiff that if he successfully completed his probationary period, he would be given a permanent appointment to the position of Director of Administration with job security so long as he performed his work satisfactorily.



(e) Clifton then asked plaintiff whether he would accept the job if offered, and plaintiff replied that he would, believing and relying upon Clifton's authorized assurances made on behalf of the Bar that plaintiff would have job security as stated, i.e., Clifton's equating job security with satisfactory job performance.

5. About a week later after his initial interview with Clifton, Clifton advised plaintiff that he would have to meet with the Bar's Selection Committee. This Committee was the Bar's Administrative and Finance Committee, whose members were William W. Eskridge (at that time Committee Chairman and President-Elect of the Bar); Roderick B. Mathews; and Colin J. S. Thomas, Jr.

6.(a) Plaintiff was interviewed by the said Committee on March 19, 1986. Eskridge and Thomas were present along with Clifton, but Mathews was not present. Eskridge conducted the interview. Eskridge devoted most of his attention to the duties of office computerization and office relocation, rather than to the job description for the Director of Administration.

(b) (i) Eskridge emphasized to plaintiff that the continuity of the Bar depended upon and required "employees who would be there for the long haul." Eskridge then stated that the selection of the candidate would be made based upon the candidate's commitment to the Bar. Plaintiff replied that he had discussed his interest in and requirement for job security with Sam Clifton in his initial interview, and asked what the Bar's commitment in this most important respect (job security) would be. To this Eskridge responded in his authorized capacity for the Bar that "as long as you perform your duties satisfactorily, you will have a position as Director of Administration with the Bar. I mean you would have to do something terrible like take money in order to lose your job."

(b) (ii) As Clifton had previously represented for the Bar to plaintiff, so did Eskridge, who thus equated plaintiff's job security with plaintiff's satisfactory job performance. Both Clifton and Eskridge equated unsatisfactory job performance with

contractual just cause for dismissal, and they so represented to plaintiff for the Bar. Plaintiff accepted these job security representations of Clifton and Eskridge for the Bar; and but for these representations as to the nature of plaintiff's job security, plaintiff would not have quit his prior employment in order to accept employment with the Bar.

(c) Based upon the statement and assurance of job security from Eskridge on behalf of the Bar, which plaintiff believed and upon which he relied, plaintiff replied to Eskridge that he was willing to quit his present employment and to commit himself to the Bar for long-term employment subject to termination for just cause (unsatisfactory job performance). Eskridge then told plaintiff that the Bar would not require more than a forty-hour week from him. Plaintiff advised Eskridge that after he started to work as Director of Administration for the Bar, he would continue with his accounting courses. However, he assured Eskridge and the Bar that he would not quit his employment with the Bar thereafter in order to practice accounting. Plaintiff also stated he would not quit employment with the Bar to accept employment elsewhere as a legal administrator. Plaintiff made this long-term commitment because of the Bar's stated requirement for long-term employment.

(d) Because of plaintiff's long-term commitment to the Bar, Eskridge, as authorized and on behalf of the Bar, offered to plaintiff the position of Director of Administration at an annual salary of \$32,000, starting on April 1, 1986. Plaintiff accepted the Bar's employment offer with the reservation that he would start on April 1, 1986 if this were sufficient notice of quitting for his present employer. Eskridge agreed for the Bar. As it developed, the quitting notice was sufficient, and plaintiff in fact thereafter commenced his duties for the Bar as Director of Administration on April 1, 1986, pursuant to his said contract of employment with the Bar.

(e) Just prior to the termination of this interview, Eskridge again told plaintiff that he should concentrate initially on computerization and relocation of the Bar's office, and that he should put his other duties "on the back burner."

7. After commencing his employment with the defendant Bar on April 1, 1986, plaintiff received inquiries from other employers for employment as a legal administrator. Because of his belief in and reliance upon the Bar's said assurances of job security (equated by the Bar with plaintiff's satisfactory job performance), plaintiff declined such employment elsewhere.

8. Effective July 1, 1986, plaintiff's salary was increased from \$32,000 to \$34,500 annually. He was praised both by Clifton and by the Bar's Executive Committee for his high quality work for the Bar.

9.(a) Thereafter, Clifton's employment as Executive Director of the Bar ended, and Eskridge and Mathews requested plaintiff to assume the post of Acting Executive Director in the interim pending Clifton's replacement. Eskridge and Mathews told plaintiff that this would be for a period of two to three months. Plaintiff advised them that he did not want to assume this interim position because of his lack of experience in this position, and because of the volume of other duties which he already had as Director of Administration. He stated that these additional and burdensome duties of Acting Executive Director would require and cause him to involuntarily neglect some of his basic duties as Director of Administration.

(b) Plaintiff was told by Eskridge to put these duties on the back burner until the new Executive Director was hired. Eskridge and Mathews thus insisted, as authorized and on behalf of the Bar, that he take the post for the interim period. Plaintiff did so, and was not paid any additional compensation for his added burdens. Plaintiff assumed his additional duties as Acting Executive Director after the 1986 Christmas holidays, and remained in this position until October 5, 1987, when Clifton's replacement, William

K. Slate, II took over. This was much longer than the two to three-month interim period which had been promised to him by Eskridge and Mathews on behalf of the Bar.

10. During the period of time when plaintiff was serving as Acting Executive Director, he received praise for his high quality job performance from Mathews and from the Bar's Executive Committee. Effective July 1, 1987, plaintiff's salary as Director of Administration was increased to \$40,000 annually. Plaintiff received praise personally from members of the Council of the Virginia State Bar for his job performance. At all material times, plaintiff's loyalty to and commitment as a long-term employee to the Virginia State Bar remained firm, because plaintiff believed and relied upon the Bar's said assurances to him that he had job security so long as he satisfactorily performed his assigned duties. Slate assumed the position of Executive Director as a replacement for Clifton in October, 1987, and plaintiff was then finally relieved of his assigned extra and burdensome duties for which he had received no additional compensation.

11.(a) On January 4, 1988, plaintiff was summoned to the office of William K. Slate, II, Executive Director of the Bar. Slate advised him that he (Slate) was going to eliminate the position of Director of Administration, and that plaintiff would be discharged. Slate stated that "I can hire lower-line employees to do your functions and therefore save the Bar some money." Slate further stated that he had been given full authority and approval over personnel matters by the Bar, and that "you are an employee at will and I have the right to discharge you."

(b) Plaintiff asked Slate whether he (plaintiff) had done something wrong, or whether there was something wrong with his work. Slate replied that there was nothing wrong with plaintiff's work, and that in fact he (Slate) had received compliments from the Bar's Executive Committee, Council members, and other committee members for plaintiff's job performance.

(c) Plaintiff then and therefore advised Slate that he had received a contractual employment commitment of job security from the Bar at the time he was hired. To this Slate responded that Slate nevertheless had full authority from Mathews, who at this time was the Bar's President, to discharge plaintiff.

12.(a) On January 5, 1988, plaintiff had a meeting with Slate in the morning. Plaintiff explained that his discharge was placing a heavy burden upon him and his family. Slate nevertheless responded that plaintiff would be given only six weeks before his employment was terminated. This was not reasonable notice to plaintiff by the Bar. Slate further stated that he would write a letter of recommendation for plaintiff.

(b) Slate wrote the letter of recommendation to incorrectly reflect that plaintiff had been offered another position by the Bar and had turned it down. Plaintiff requested Slate to correct this because it was not true. Upon plaintiff's insistence, Slate did so. Thereafter, despite plaintiff's objection, Slate distributed a memorandum among the Bar's employees stating that plaintiff had resigned. Plaintiff had objected to this memorandum before distribution on the grounds that it was not true, and that plaintiff had in fact not resigned. Nevertheless, Slate distributed the memorandum which falsely stated that plaintiff had resigned.

(c) (i) At all material times, the Bar had an oral and written policy of discharging plaintiff only for unsatisfactory job performance or just cause. This oral and written policy was a contractual commitment of the Bar to plaintiff. This just cause policy and contractual commitment was presented to plaintiff by the Bar before and after his employment with the Bar. It was held out by the Bar to plaintiff as a significant inducement for him to accept employment with the Bar and to thereafter remain committed as an employee of the Bar for the long term.

(c) (ii) In its written form, which was signed by the Bar, this just cause policy and contractual commitment to plaintiff provided for an initial probationary period

of employment which, if completed successfully by plaintiff, would be followed by permanent appointment to the position of Director of Administration. This appointment was then subject to annual reviews by the Bar of plaintiff's job performance, and termination of plaintiff's appointment (employment) for unsatisfactory job performance. Plaintiff successfully completed his probationary period. At all times thereafter his job performance was satisfactory or better.

(c) (iii) The Bar's written just cause policy and contractual commitment to plaintiff expressly recognizes that plaintiff has grounds to grieve or seek legal redress for arbitrary dismissal after the completion of plaintiff's probationary period. No formal grievance procedure, as stated hereinabove, was available to plaintiff, other than Virginia Code § 2-223.1 and court action thereafter under Virginia Code § 8.01-192.

(c) (iv) Plaintiff relied upon this just cause policy and contractual commitment to his detriment in that he quit his prior employment in order to go to work for the Bar; thereafter he declined employment opportunities elsewhere; and instead he remained loyal and committed to the Bar as an employee, even though he was not paid more for his additional and burdensome duties as Acting Executive Director.

13. During plaintiff's employment interviews with Clifton, Eskridge, and Thomas, the latter three were acting within the scope of their employment, authority, and agency on behalf of the Virginia State Bar. Plaintiff relied upon their direct oral representations to him that his employment would be secure and that he would have job security with the Bar so long as he performed his duties satisfactorily. This is precisely what Clifton, Eskridge and Thomas, in their authorized capacities and on behalf of the Bar, intended plaintiff to believe in order to induce him to quit his present employment, accept new employment with the Bar, and remain committed to the Bar thereafter.

14. As a result of the Bar's announced and published oral and written (and signed) policy and contractual commitment to discharge plaintiff only for just cause, and as a result of plaintiff's belief in and reliance upon this policy and the oral

assurances made by the Bar's authorized agents (Clifton, Eskridge and Thomas) to plaintiff during his hiring interviews that he would have job security so long as his work was satisfactory, a contract of employment was made between plaintiff and the Virginia State Bar. This contract existed thereafter at all material times.

15. When plaintiff's employment with the Bar was terminated effective February 19, 1988, it was so terminated by the Bar (1) without reasonable notice to plaintiff; (2) in violation of the Bar's own oral and written just cause policy and contractual commitment to plaintiff; and (3) in flagrant breach of the Bar's contract of employment with plaintiff. Plaintiff was discharged by the Bar without reasonable notice, and without just cause as required by his employment contract with the Bar.

16. The Bar's improper motive, as stated through Slate, was to have lower-line personnel perform plaintiff's job duties at lower cost to the Bar (and without an employment contract). The Bar tried to deceptively cover up and avoid its contractual obligations and contractual job security commitment to plaintiff by: (1) attempting (through Slate) to get plaintiff to agree that he had turned down another employment opportunity with the Bar, when in fact this was not true; (2) by notifying its employees (through Slate) over plaintiff's objection that plaintiff had resigned when in fact this was false; and (3) by Slate's pretextually characterizing plaintiff's discharge as a job elimination, when in fact plaintiff's job duties and the Bar's need to have them performed have remained. Both plaintiff and the Bar had previously agreed to and had mutually defined plaintiff's job security so as to exclude such "job elimination" as a basis for discharge. At all material times, the Bar could well afford plaintiff's wages and benefits.

17. Under his contract of employment with the Bar, plaintiff's duration of employment was for a definite term, although not expressed in measured time units, such as years. The contractual just cause (job security) commitment made to plaintiff by the Bar was an important part of plaintiff's compensation, wages, benefits, and consideration of employment with the Bar, which commitment plaintiff had earned before

he was arbitrarily terminated. This just cause (job security) commitment itself, alone, constituted the fixed (definite) term of plaintiff's employment contract. Under this contractual fixed term, plaintiff had employment until such time as he gave to the Bar just cause to terminate the employment contract. Contractual performance was possible within a year. Plaintiff had fully and satisfactorily performed his part of the contract prior to his termination.

18. By promising plaintiff job security for so long as he satisfactorily performed his job duties, the Bar contractually gave up its right to terminate plaintiff's employment arbitrarily or "at will". The Bar to its own benefit thereby induced plaintiff to detrimentally and to his damage quit his prior employment, accept employment with the Bar, thereafter decline opportunities for employment elsewhere, and assume additional burdensome duties as Acting Executive Director without being paid additional compensation therefor.

19. The Bar's decision to terminate plaintiff's employment was, as stated by Slate to plaintiff, for the purpose of reneging on the Bar's contractual commitments to plaintiff so that it could assign plaintiff's duties to others at lower cost. The Bar in bad faith asserted to plaintiff, through Slate as approved by Mathews, that he was an "employee at will", notwithstanding the Bar's knowledge that it had made binding contractual commitments to plaintiff which clearly had removed him from the status of an employee at will. This bad faith conduct by the Bar, through its authorized agents Slate and Mathews, constituted an illicit attempt by the Bar to belatedly obtain from lower-line personnel the contractual services performed by plaintiff at non-contractual lower wages and benefits, even though this opportunity had been lost to the Bar when it entered into its employment contract with plaintiff.

20. As a result of the breach of plaintiff's employment contract by the Bar, plaintiff has sustained serious damage including the loss of his prior employment before his employment with the Bar; loss of career opportunities; loss of wages and benefits;



loss of opportunities for advancement and promotion; loss of opportunities for beneficial employment elsewhere; and plaintiff has otherwise been damaged.

WHEREFORE, plaintiff demands compensatory damages against the defendants, jointly and severally, and the Commonwealth of Virginia, for breach of his employment contract in the sum of TWO MILLION DOLLARS (\$2,000,000), plus interest thereon and his costs expended.

**TRIAL BY JURY IS DEMANDED.**

JOHN T. FALLS

By

  
Counsel

Jay J. Levit, Esquire  
LEVIT & MANN  
419 North Boulevard  
Richmond, Virginia 23220  
(804) 355-7766

Case No. LM-4056-2

DEMURRER

Defendants, Virginia State Bar and Edward J. Mazur, by counsel, respectfully demur to Plaintiff's Motion for Judgment alleging an oral contract of employment. The ground for this Demurrer is that such contract, if it exists, would violate Virginia Code § 11-2(7) and be unenforceable.

Respectfully submitted,

VIRGINIA STATE BAR and  
EDWARD J. MAZUR

By: Cleo E. Powell  
Counsel

Mary Sue Terry  
Attorney General

Gail S. Marshall  
Deputy Attorney General

Cleo E. Powell  
Senior Assistant Attorney General  
Office of the Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-1583

Case No. LM-4056-2

DEMURRER

Defendants, Virginia State Bar and Edward J. Mazur, by counsel, respectfully demur to Plaintiff's Motion for Judgment alleging an oral contract of employment. The ground for this Demurrer is that such contract, if it exists, would violate Virginia Code § 11-2(7) and be unenforceable.

Respectfully submitted,

VIRGINIA STATE BAR and  
EDWARD J. MAZUR

By: Cleo E. Powell  
Counsel

Mary Sue Terry  
Attorney General

Gail S. Marshall  
Deputy Attorney General

Cleo E. Powell  
Senior Assistant Attorney General  
Office of the Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-1583

CERTIFICATE

I hereby certify that a true copy of the foregoing Demurrer was mailed, postage prepaid, to Jay Levit, Levit & Mann, 419 N. Boulevard, Richmond, Virginia 23220, this 12<sup>th</sup> day of January, 1989.

  
Senior Assistant Attorney General

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

the 19th day of September 19 89

LM 4056-2

ORDER

This day came the parties by counsel on the Petition and Motion for Judgment, Demurrer, Memorandum in Support of Demurrer, Memorandum in Opposition to Demurrer and argument of counsel.


Plaintiff alleged an oral contract of employment based on oral statements by Defendant providing for employment as long as Plaintiff's work was satisfactory. Defendants' demurrer and memorandum in support thereof challenge the enforceability of an oral employment contract providing for employment as long as the job is performed satisfactorily.

Based on a review of all the pleadings and oral argument of counsel, the demurrer is SUSTAINED and the plaintiff is allowed leave to amend his complaint on or before September 22, 1989. RPH.

The objections of the plaintiff are noted.

Endorsements of counsel are dispensed with pursuant to Rule  
1:13.

ENTER: 9-19-89

  
\_\_\_\_\_  
Judge

Jay J. Levit, Esq.  
Levit and Mann  
419 North Boulevard  
Richmond, VA 23220

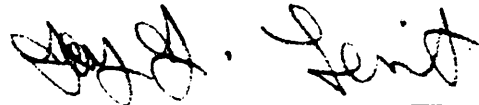
Cleo E. Powell  
Senior Asst. Attorney General  
101 North Eighth Street  
Richmond, VA 23219

CERTIFICATE

I certify that on May 29, 1990, twenty (20) copies of the foregoing Joint Appendix were filed with the Clerk of the Supreme Court of Virginia, and on the same date three (3) copies were mailed by regular United States mail, postage prepaid, to counsel for Appellees.

JOHN T. FALLS, Appellant

By



Counsel

Jay J. Levit, Esquire  
LEVIT & MANN  
419 North Boulevard  
Richmond, Virginia 23220  
(804) 355-7766  
Counsel for Appellant