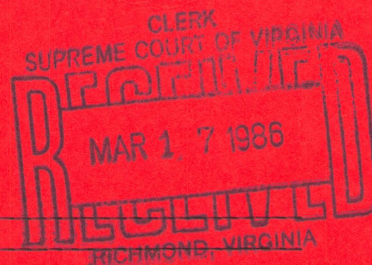


233 Va 390



IN THE  
SUPREME COURT OF VIRGINIA

WASHINGTON & LEE  
LAW LIBRARY

Record No. 850604

SEP 1 7 1987

ROBERT P. HUDOCK,

Appellant,

v.

VIRGINIA STATE BAR, EX REL.  
TENTH DISTRICT COMMITTEE,

Appellee

APPENDIX

Robert P. Hudock, pro se  
Robert P. Hudock & Associates  
8150 Leesburg Pike, Suite 1200  
Vienna, Virginia 22180  
(703) 893-0760





CHARLES G. JAMES, CHAIRMAN  
ROBERT P. JOYNER, COMMISSIONER  
WILLIAM E. O'NEILL, COMMISSIONER

L. W. HINER, CHIEF  
DEPUTY COMMISSIONER  
LOU-ANN D. JOYNER, CLERK

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF WORKMEN'S COMPENSATION INDUSTRIAL COMMISSION OF VIRGINIA

P. O. BOX 1794  
RICHMOND, VIRGINIA 23214

April 13, 1984

DEPUTY COMMISSIONERS:  
KENNETH S. WILHOIT  
WILLIAM R. YATES  
JERRY O. TALTON

### REGIONAL OFFICERS

ALEXANDRIA  
CAROLYN J. COLVILLE  
LAWRENCE D. TARP

LEBANON  
JOHN COSTA

NORFOLK  
ROBERT J. MACBETH, JR.

Mr. Michael Rigsby  
Bar Counsel  
Virginia State Bar  
700 Building  
Suite 1622  
Richmond, Virginia 23219

Dear Mr. Rigsby:

Please find enclosed materials relative to a complaint the Industrial Commission of Virginia wishes to file against Robert P. Hudock, Esquire. The Commission entered an Order of compromise settlement on May 26, 1981, wherein, Robert P. Hudock, Esquire, was awarded the amount of \$2,500, as counsel fees to be deducted from the gross settlement in the amount of \$15,000.00.

Section 65.1-102 provides that fees of attorneys shall be subject to the approval and award of the Commission.

It came to our attention in February that Mr. Hudock had collected a total fee in the amount of \$5,000.00 for services rendered. Our numerous attempts to solve this matter have been ineffectual to date.

We are requesting that the appropriate committee investigate this matter. I am available at your convenience to discuss same and thank you in advance for your cooperation.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Andrew Edelstein  
Claims Manager

AE:meb  
enclosure

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CHARLES G. JAMES, CHAIRMAN  
ROBERT P. JOYNER, COMMISSIONER  
WILLIAM E. O'NEILL, COMMISSIONER

L. W. HINER, CHIEF  
DEPUTY COMMISSIONER  
LOU-ANN D. JOYNER, CLERK

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF WORKMEN'S COMPENSATION INDUSTRIAL COMMISSION OF VIRGINIA

P. O. BOX 1794  
RICHMOND, VIRGINIA 23214

June 20, 1984

### DEPUTY COMMISSIONERS

KENNETH S. WILHOIT  
WILLIAM R. YATES  
JERRY O. TALTON

### REGIONAL OFFICERS

ALEXANDRIA  
CAROLYN J. COLVILLE  
LAWRENCE D. TARR

LEBANON  
JOHN COSTA

NORFOLK  
ROBERT J. MACBETH, JR.

Commonwealth of Virginia  
Virginia State Bar  
Tenth District Committee  
Suite 420  
6400 Arlington Boulevard  
Falls Church, Virginia 22046

Attention: Kathe Anderson, Esquire

Re: VSB Docket No. 84-474  
Robert Hudock - BC-DC-10  
Complainant: Industrial Commission

Dear Ms. Anderson:

This is in response to your letter of June 13, 1984.

Please be advised that the Commission has referred this case to the Hearing Docket for an evidentiary hearing. You may want to hold the investigation in abeyance, pending the disposition of this matter before the Industrial Commission of Virginia.

We appreciate your time and efforts. Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

L. W. Hiner  
Chief Deputy Commissioner

LWH:meb

cc: Robert P. Hudock & Associates  
8150 Leesburg Pike, Suite 1200  
Tysons Corner  
Vienna, Virginia 22180

COPY

VIRGINIA STATE BAR  
TENTH DISTRICT COMMITTEE

----- x  
:  
IN THE MATTER OF: :  
:  
ROBERT P. HUDOCK, ESQUIRE : VSB NO. 84-474  
:  
----- x

The above-entitled matter came on for hearing at  
11:45 a.m. in the offices of Boothe, Prichard and Dudley,  
4103 Chain Bridge Road, Fairfax, Virginia, on Tuesday,  
September 18, 1984.

A P P E A R A N C E S

Committee:  
  
Vincent W. McAlevy, Esquire, Chairman  
Ann W. Mische, Esquire  
John A. C. Keith, Esquire  
Thomas J. Cawley, Esquire  
Arthur B. Vieregg, Jr., Esquire  
Terrence R. Ney, Esquire  
Mr. G. William Graves  
Mr. William J. Madigan, Jr.  
  
Harry M. Hirsch, Esquire  
Assistant Bar Counsel  
  
Kathryn M. Anderson, Esquire  
Counsel for the Committee  
  
Andrew Edelstein, Complainant  
  
Robert P. Hudock, Esquire  
Respondent

Reporter: Gaye C. Johnson, RPR



1 setting this so called customary fee?

2 MS. ANDERSON: Your Honor, Mr. Chairman, I don't  
3 know how that's relevant to this case.

4 MR. HUDOCK: It's relevant because you asked it,  
5 and I think that I am entitled to ask it on how he arrived at  
6 fifteen percent.

7 THE CHAIRMAN: Go ahead.

8 BY MR. HUDOCK:

9 Q Isn't it true that the commission never initiated  
10 any activity or actions to investigate or determine facts by  
11 which they would set a fee, whether it's fifteen percent or  
12 any other?

13 A The commission enters fees on compromise settlements --

14 Q Just answer the question. Did they?

15 A -- approximately 3,000 times per year. We feel that  
16 it is incumbent upon the attorney --

17 THE CHAIRMAN: Mr. Edelstein, can you answer the  
18 question a little more directly? It was a very direct  
19 question. Can you answer it directly, please?

20 THE WITNESS: In this case, as far as I know, there  
21 was no investigation undertaken.

22 BY MR. HUDOCK:

23 Q And in fact, isn't it true that the Industrial  
24 Commission virtually never initiates an inquiry with the  
25 attorney in terms of what the fee agreement was, the time

1 2,500 or 3,000.

2 Q How many of those cases did you initiate any inquiry  
3 to the attorney to determine the basis for setting his fee?

4 A I am not the party that would do that, so I can't  
5 answer that question.

6 Q Well, isn't it a fact that it's a very small fraction  
7 of that 2,500?

8 A I really -- no, I don't think that it is. I am not  
9 capable of answering that.

10 Q Where in the commission's rules is this customary  
11 fee of fifteen percent published?

12 A It's not published.

13 Q And it's not disseminated to anyone, is it?

14 A Well, it's disseminated to anyone that would inquire,  
15 yes.

16 Q Well --

17 A I mean it's not a secret, Mr. Hudock.

18 Q Well, what rule of the commission sets out that the  
19 customary fee is fifteen percent?

20 A It is not set out in a rule.

21 Q What procedures within the Industrial Commission  
22 contain this guideline of fifteen percent?

23 A Written procedures?

24 Q Yes.

25 A None.

1 A I do.

2 Q But isn't it true that in that file, there is  
3 nothing in there that indicates there was any inquiry as to  
4 what was in the best interest of Bernice Smith?

5 A The decision is based on looking -- by the Chief  
6 Deputy, based on looking at the medical reports, looking at  
7 the circumstances surrounding it and making a judgment call  
8 whether they feel that the compromise would be in her best  
9 interest.

10 Q Do you know if Mrs. Smith is competent to manage  
11 \$12,500 placed in her hands?

12 MS. ANDERSON: I think that this is irrelevant.

13 THE CHAIRMAN: I sustain the objection.

14 BY MR. HUDOCK:

15 Q Does the Industrial Commission have any control over  
16 what Mrs. Smith does with the money when she receives it?

17 MS. ANDERSON: I think that's irrelevant, too.

18 THE CHAIRMAN: No. Answer the question.

19 THE WITNESS: All right. There are situations where  
20 they will put controls. But in this instance, no, there was  
21 no limitation placed on her.

22 BY MR. HUDOCK:

23 Q So it would be no violation of the order of the  
24 commission or rules if Mrs. Smith took that money and gambled  
25 it away; isn't that true?



1 A None whatsoever.

2 MS. ANDERSON: He is asking him to rule what the  
3 committee is supposed to be doing.

4 THE CHAIRMAN: Well, he can't answer that question.  
5 I sustain the objection.

6 BY MR. HUDOCK:

7 Q Well, isn't it true that you don't really inquire  
8 as to what Mrs. Smith or any other lump sum settlement claim-  
9 ant is going to do with the money once they get it?

10 A You are asking in all settlements?

11 Q Well, I am asking you in this settlement, did you  
12 inquire of Mrs. Smith what she was going to do with her  
13 \$12,500?

14 A Again, I personally didn't approve this settlement.  
15 But there was no evidence in the file that there was or that  
16 those questions were asked, no.

17 Q Well, then isn't it true that Mrs. Smith can do  
18 anything she wants with that \$12,500?

19 A It's also true that we have --

20 Q Just answer the question.

21 A Yes.

22 Q And she could drink it away if she wants to?

23 A She could.

24 Q She could gamble it away if she wants to?

25 THE CHAIRMAN: That's already been answered,

1 MR. EDELSTEIN: It should be out in the next week  
2 or so if you want.

3 THE CHAIRMAN: Well, we will deliberate with what  
4 we have right now.

5 (Whereupon, a recess was taken for the Committee  
6 to deliberate.)

7 THE CHAIRMAN: The Committee has considered the  
8 testimony as brought forth during the hearing in the case  
9 of Robert Hudock, 84-474 and with regard to the allegation  
10 of DR 1-102(A)(1), the Committee finds that there is no  
11 violation. With regard to DR 1-102(A)(4), the Committee finds  
12 that there is no violation. With regard to DR 2-105(A),  
13 the Committee finds that there has been a violation of that  
14 DR in that it is in the opinion of the Committee that the  
15 fee in excess of the \$2,500.00 from the Industrial Commission  
16 was illegal and in violation of the Code of Virginia, Section  
17 65.1-102 and that it was excessive as defined in DR 2-105,  
18 Subsection B, Subsection 3, which states that a fee is  
19 excessive when it is in excess of the fee customarily charged  
20 in the locality for similar legal services. In violation of  
21 DR 2-105, the Committee has further decided to certify the  
22 matter for further consideration to the Grievance Committee  
23 in Richmond. My Hudock will receive a letter to that effect  
24 very shortly.

25 (Whereupon, the hearing in the above-entitled matter was  
concluded.)



# COMMONWEALTH OF VIRGINIA



## VIRGINIA STATE BAR

### TENTH DISTRICT COMMITTEE PERSONAL AND CONFIDENTIAL

PLEASE REPLY TO:

Vincent W. McAlevy, Esq.

2201 Wilson Boulevard

Arlington, VA 22201

October 5, 1984

E. Samuel Clifton  
Executive Director  
Virginia State Bar  
Suite 1622, 700 Building  
700 East Main Street  
Richmond, Virginia 23219



### CERTIFICATION

Re: BC-DC-10-Hudock, Robert P.  
Complaint by: Industrial Commission of Virginia  
VSB Docket No.: 84-474

Dear Mr. Clifton:

Following is the Certification by the 10th District Committee of the above-referenced matter.

### I. STATEMENT OF MISCONDUCT

1. The Committee found that Mr. Hudock accepted a fee in excess of that awarded by the Industrial Commission of Virginia.

2. The Committee found that this acceptance constituted a violation of Disciplinary Rule 2-105(A) in that it was a clearly excessive fee as that term is defined in Disciplinary Rule 2-105(b)(3) and that such fee violates Virginia Code §65.1-102.

### II. TRANSCRIPT AND EVIDENCE

The transcript and exhibits received or refused at the hearing pertaining to, or considered by, the Committee in certifying the foregoing misconduct will be sent to you under separate cover by Maureen McMahon, the court reporter at the hearing. Enclosed please find all other documents relating to the misconduct.

Respectfully submitted,

*Vincent W. McAlevy*

Vincent W. McAlevy  
Chairman

AFFIDAVIT

COUNTY OF ARLINGTON

STATE OF VIRGINIA, to-wit:

This day Vincent W. McAlevy appeared before me and made oath that the foregoing statements are true to the best of his knowledge and belief.

Darlene S. Standiff  
Notary

My Commission expires 6/19/88.

cc: Michael Rigsby  
Kathryn M. Anderson  
Maureen McMahon



in D. Dolan, III, President  
Suite Three  
North Henderson Road  
Richmond, Virginia 22203  
Phone: 703-243-5000

† H. Patterson, Jr., President-Elect  
Ross Building  
Richmond, Virginia 23219  
Phone: 804-644-4131

T. Mayo, Jr., Immediate Past President  
Box 3037  
Richmond, Virginia 23514  
Phone: 804-622-3000



# Virginia State Bar

Suite 1022, 100 Building, 100 East Main Street  
Richmond, Virginia 23210 • 804-786-5970

N. Samuel Clifton, Executive Director  
Telephone: 804-786-5970

Michael L. Rigsby, Bar Counsel  
Telephone: 804-786-5956

Iuanita T. Stevenson  
Director of Administration  
Telephone: 804-786-5971

Elizabeth L. Keller  
Director of Bar Services  
Telephone: 804-786-5961

October 31, 1984

PERSONAL AND CONFIDENTIAL  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: Virginia State Bar Ex Rel Tenth District Committee  
v. Robert P. Hudock, Respondent  
Disciplinary Board Docket No. 84-38

## STATEMENT OF CHARGES OF MISCONDUCT

1. Robert P. Hudock represented a client in a matter before the Industrial Commission of Virginia in which an order was entered May 25, 1981, indicating a total compromise settlement award of \$15,000 out of which a \$2,500 attorneys fee was to be paid to Mr. Hudock, leaving the claimant with the sum of \$12,500.
2. Mr. Hudock had a contingency agreement with the client calling for a one-third contingency fee in the matter.
3. Mr. Hudock accepted \$2,500 from his client in addition to the \$2,500 fee awarded by the Commission, for a total of \$5,000 attorneys fee.

Such conduct by Robert P. Hudock constitutes Misconduct in violation of Disciplinary Rules 2-105(A), 2-105(B)(3) of the Virginia Code of Professional Responsibility.

A handwritten signature in cursive script, appearing to read "Harry M. Hirsch".  
\_\_\_\_\_  
Harry M. Hirsch

HMH:mib

ROBERT P. HUDOCK

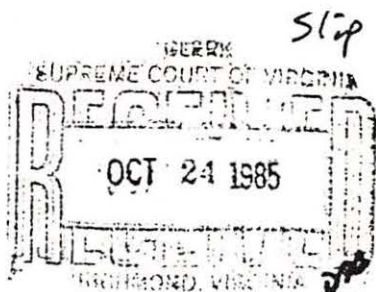
DOCKET NO. 84-38

DR 2-105 Fees for Legal Services.

- (A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
- (B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
  - (3) The fee customarily charged in the locality for similar legal services.



DISCIPLINARY  
BOARD  
of the  
VIRGINIA  
STATE  
BAR



Robert P. Hudock  
Respondent

Docket No. 84-38

May 16, 1985

Richmond, Virginia

HALASZ & HALASZ  
Court Reporters  
P. O. Box 223  
Richmond, Virginia 23203  
(804) 741-5200  
Reported by: Victoria V. Halasz

1     disbarment.

2                     Any questions, sir, as to the procedure?

3                     MR. HUDOCK: I have some preliminary motions I  
4     would like to raise before the proceeding goes forward. I  
5     have filed some of these motions in written form and I ask  
6     they be ruled on prior to proceeding with the hearing.

7                     THE CHAIRMAN: Do you have any questions as to  
8     procedure before we get to the motion?

9                     MR. HUDOCK: No, no questions as to procedure  
10    except the question of what is the standard of finding of  
11    misconduct, is it under the standard of clear and convincing  
12    evidence?

13                    THE CHAIRMAN: Clear and convincing evidentiary  
14    standard.

15                    Do you want to make your motions, Mr. Hudock?

16                    MR. HUDOCK: Yes.

17                    First --

18                    THE CHAIRMAN: Would you come up here, please?

19                    MR. HUDOCK: I am sorry.

20                    This matter was reviewed by a district  
21    committee and the district committee certified so-called  
22    charges to this board. I would first move to dismiss the  
23    proceeding because the district committee's certification is  
24    not in line with the disciplinary rules. The review of the  
25    transcript and the finding of that committee's review used

1 the standard of finding that I may have charged an excessive  
2 legal fee.

3 However, the statement rendered by the chairman  
4 of that committee used the term excessive legal fee. But the  
5 rule and the standard is a clearly excessive fee. And  
6 further the standard for whether or not it is clearly  
7 excessive is the fee customarily charged for similar  
8 services. And there was not one scintilla of evidence at  
9 that committee hearing as to what anyone else charged but me  
10 in terms of legal services for legally charging for similar  
11 services.

12 Therefore, the district committee has certified  
13 a charge which does not meet the disciplinary rules and,  
14 therefore, I ask that these charges be dismissed.

15 I will go through them all or one at a time.

16 THE CHAIRMAN: Go through them all.

17 MR. HUDOCK: The complainant here is the  
18 Industrial Commission of Virginia. Not any private person.  
19 It's my understanding that there will be no representative of  
20 the Industrial Commission here. I have no opportunity  
21 therefore to cross-examine a complainant, there is no  
22 complainant to testify at this hearing.

23 THE CHAIRMAN: Without interrupting you, isn't  
24 the issue really very simple, what the award was of the  
25 Industrial Commission and what your fee arrangements were,



THE CHAIRMAN: Any objection, Mr. Rigsby?

MR. RIGSBY: No objection.

Complaint was filed April 13, 1984.

JAMES EDWARD SWIGER

was sworn and testified as follows:

DIRECT EXAMINATION BY MR. RIGSBY:

Q Would you please state your full name and address, sir?

A Yes, sir, my name is James Edward Swiger; my business address is 4660 Kenmore Avenue, Suite 220, Alexandria, Virginia 23220.

Q And your occupation?

A I am an attorney-at-law.

Q Licensed in Virginia?

A Yes, sir, also licensed in the District of Columbia.

Q For how long have you been licensed to practice in Virginia?

A I believe, I believe I was sworn in court in June of 1981.

Q And the District of Columbia?

A That was very recent, perhaps a month ago.

Q Can you tell us, please, your principal area of

1                   THE WITNESS: The manner in which my firm does  
2     it is the way I do it, of course, and that we prepare the  
3     petition and order because the understanding is that it must  
4     be approved by the Industrial Commission, the entire  
5     settlement. We leave a blank space when the lump sum is  
6     agreed upon, that figure is placed on the papers.

7                   Then for the attorney's fee a blank space is  
8     left for the Industrial Commission to determine and write in  
9     the attorney's fee. Then obviously they will also write in  
10    the balance that the complainant is to receive, which will be  
11    the total sum minus the attorney fee.

12 BY MR. RIGSBY:

13           Q       What law firm do you work with?

14           A       Name of the law firm is Ashcraft & Gerel.

15           Q       Are you a partner or an associate?

16           A       I am an associate.

17           Q       As an associate, you follow the instructions  
18    the firm gives you?

19           A       That is right, that is correct.

20           Q       What is the area of practice Ashcraft & Gerel  
21    engages in?

22           A       Well, now with reference to our Virginia  
23    practice, it is primarily workmen's comp. If I were to give  
24    a percentage break down, which would not be exact, but  
25    approximately 75 percent of the practice in Virginia is

1 BY MR. HUDOCK:

2 Q Mr. Swiger, you said there is an opportunity  
3 for reconsideration of a legal fee; would you point out any  
4 section in the Code of Virginia which allows you to appeal  
5 the attorney's fee granted in a compromised settlement case?

6 A Without having the book before me, I would  
7 assume -- now I have never specifically had to do it  
8 procedurally, because my practice has been if I were to  
9 receive a fee and I thought it was inappropriate would be to  
10 draft a letter to the particular commissioner or deputy  
11 commissioner that determined the fee, copy to my client,  
12 seeking an adjustment of the fee. I would assume that, just  
13 as any other award --

14 Q I am not asking you to assume, Mr. Swiger. I  
15 am asking you to tell us if you know.

16 A Yes, sir. I have had opportunity to appeal  
17 settlement orders, not on attorney's fees but on other  
18 circumstances, which led me to believe it was in my client's  
19 best interest to have the settlement set aside after it had  
20 been approved. And I appeal that in the same manner in which --  
21 the same manner as any other award can be appealed, filing  
22 the appeal within 20 days of the entry of the settlement  
23 order.

24 Q Have you ever done this to appeal your  
25 attorney's fee?



1           A       I have not.

2           Q       And isn't it true there is no such procedure to  
3 do that within the Virginia Code and there is the Industrial  
4 Commission book if you care to look at it?

5                   MR. MIDDLEDITCH: I think, based on your prior  
6 objection, Mr. Hudock, of rendering a legal conclusion, the  
7 same question applies to this witness bearing the same  
8 problem. That's for us to determine. And you can in your  
9 argument, of course, make whatever point you would like on  
10 those lines.

11                  THE CHAIRMAN: And I will tell you what bothers  
12 me about it, because the words he used was that he would ask  
13 them to reconsider. You use the word appeal. He is trying --  
14 and he told you the mechanism by which he got them to  
15 reconsider which was by writing a letter, which is far  
16 different from an appeal. But I want you to understand that  
17 we catch these distinctions.

18       BY MR. HUDOCK:

19           Q       I am glad you brought that out, because I want  
20 to pursue that distinction.

21                   The fact is there is no mechanism set out in  
22 the statute to even write a letter to request a  
23 reconsideration, isn't that true?

24                   THE WITNESS: May I answer that question?

25                   THE CHAIRMAN: Yes.

1                   THE WITNESS: As far as the specific  
2   reconsideration, I don't believe there is a specific  
3   mechanism.

4   BY MR. HUDOCK:

5           Q       All right. So what you are doing is you are  
6   relying on the cooperation, if you will, of the Industrial  
7   Commission by writing to them informally?

8           A       Well, as I indicated to you, I have had the  
9   opportunity to appeal settlement orders and I have appealed  
10   that in the same manner any other award can be appealed, and  
11   in answer to your previous case that under 60.1-89, which is  
12   the process of appealing the order by the Industrial  
13   Commission.

14          Q       But the appeal was based in behalf of your  
15   client, who was the complainant?

16          A       That is correct.

17          Q       And the complainant is a party before the  
18   Commission, isn't that true?

19          A       That is correct.

20          Q       And you are not a party before the Commission,  
21   are you?

22          A       That is also correct.

23          Q       Now, you said that the procedure at least  
24   during your practice since 1981 was to leave the order blank  
25   and let the Industrial Commission fill in the amount of legal

1 fees, is that true?

2 A If I may correct one apparent mistake that was  
3 made with regard to when I started, I was admitted to the Bar  
4 in '81 and had a judicial clerkship for one year, I have been  
5 practicing for Ashcraft & Gerel and doing workmen's  
6 compensation litigation since August 16th of 1982, just so  
7 you are clear on that.

8 Q Limiting it to the period of time you were  
9 practicing with Ashcraft & Gerel, that's the procedure you  
10 have used?

11 A Yes, sir.

12 Q And you learned that procedure from the  
13 Industrial Commission, didn't you?

14 A No, sir, I learned that from Ashcraft & Gerel.

15 Q Do you know where they learned that procedure?

16 A Really couldn't tell you that.

17 Q If a complainant comes into your office to ask  
18 you what his rights are regarding workmen's compensation, do  
19 you have a right to charge him a fee for that consultation?

20 A You are asking my opinion?

21 Q Yes.

22 A In my opinion, on a workmen's compensation  
23 case, you may only receive a fee that has been specifically  
24 approved by the Industrial Commission. I think if you were  
25 to advise the Commission that someone had sought your advice



1 Q But in the memorandum of agreement there is no  
2 provision for attorney's fees, is there?

3 A No, sir.

4 Q You said you do work and about 25 percent of  
5 your law firm does work outside the Industrial Commission  
6 cases, is that right?

7 A No, sir. Not 25 percent of my law firm,  
8 approximately 25 percent of all of our practice. In other  
9 words, 75 percent of what I do is workmen's comp the other 25  
10 percent would be related third party actions, negligence  
11 actions, and such. So it's not that we have -- the Virginia  
12 office differs from your D. C. office, does not have a  
13 litigation section and workmen's compensation action, but the  
14 practice divides about 75 percent comp.

15 Q And 25 percent that's not comp?

16 A Yes.

17 Q On a typical contingent fee in a negligence  
18 case, what would be the percentage you would charge?

19 A On a typical one, it was 33 and a third.

20 Q Have you ever charged more?

21 A Yes, sir.

22 Q How high would the fee go under what  
23 circumstances?

24 A Now, I have never charged it, because I have  
25 not had a successful verdict on one, but on a medical

1           A       No, sir, in the majority of cases that I have  
2       settled that I have had approved by Mr. Hiner, like I said,  
3       at that time most of them would be taken down and be done  
4       face-to-face during the time when I had other reviews before  
5       the full commission, and he would specifically ask if you had  
6       come to any specific agreement with your client, and I would  
7       say only the agreement with whatever the Commission  
8       determined to be an acceptable fee.

9           Q       Do you have any idea what the Commission would  
10      do with a fee if you said you had a one-third contingency  
11      fee?

12          A       I have never asked him to approve a one-third,  
13      so I don't have knowledge. I could only speculate.

14          Q       All right. Do you know that there are no  
15      published guidelines by the Industrial Commission as to how  
16      they set fees?

17          A       That is my understanding, there is no published  
18      guideline, yes, sir.

19          Q       And there are no published rules about setting  
20      fees?

21          A       That is also my understanding, yes, sir.

22          Q       And in fact they have -- or let's say Mr. Hiner  
23      has a standard which he imposes of 15 percent on a typical  
24      fee, isn't that true?

25          A       Yes, sir.

1 Q Do you have any idea how he arrived at that?

2 A No, I don't, sir.

3 Q In fact, isn't it true that nobody knows how he  
4 arrived at that?

5 A To my knowledge, I don't know.

6 Q You don't know anybody who knows?

7 A That is correct.

8 Q In setting a fee with the client -- and let's  
9 take those cases which are outside the fee agreement which  
10 says the Industrial Commission can do what they want -- would  
11 you consider in setting the fee the likelihood of having a  
12 hearing in the case as to setting the amount of the fee?

13 A I am not sure I understand your question.

14 Q Well, the client comes in -- I'm trying to  
15 determine how you determine which fees you would charge a  
16 client.

17 A This is on something other than a workmen's  
18 compensation case?

19 Q Would the fact --

20 MR. RIGSBY: Objection. Objection.

21 THE CHAIRMAN: Sustained.

22 BY MR. HUDOCK:

23 Q Do you take into consideration any factors in  
24 the difficulty of the case in setting a fee?

25 A Yes, sir. The only other cases that I handle



1 percent attorney's fees at the time you submit the order for  
2 approval by a commission; is there a -- do you understand  
3 what I am saying?

4 A No, ma'am.

5 Q I understood you to say that you have on some  
6 rare occasions submitted a case of fee on a settlement  
7 agreement for approval for the Commission, and that on those  
8 some rare occasions you have after that submission gone back  
9 to talk more about the attorney's fees, after the initial  
10 order.

11 A No, ma'am, I never had an occasion to go back  
12 and ask for attorney's fees. I have had occasion after a  
13 case has been approved and settled to have that settlement  
14 set aside for various reasons, not involving the attorney's  
15 fees.

16 Q All right. When submitting a settlement  
17 agreement that involves what you feel would be attorney's  
18 fees in excess of the standard 15 percent, are you aware of  
19 some procedure whereby you can bring that to the attention of  
20 the Commission prior to their sanctions of your agreement?

21 A Yes, ma'am, and that would be to very simply to  
22 explain to them why you feel a typical fee would be  
23 appropriate in the case to show the -- for lack of a better  
24 word -- the aggravating circumstances which would indicate to  
25 the Commission why a higher fee would be appropriate in this

1 case.

2 Q Would that explanation be in writing, or  
3 verbal, or just how would it be made?

4 A My practice is to put it in writing and copy  
5 the client.

6 Q And what is the practice of your firm, if one  
7 exists, if you know?

8 A That would be the practice. That's what I have  
9 been advised to do in situations where I feel the typical 15  
10 percent fee would not accurately reflect the amount of work  
11 put into the case.

12 Q And so I understand you to say there is, other  
13 than your firm's practice on that matter, you don't know of  
14 any other authority for engaging in that process?

15 A With regard to the asking for the higher of a  
16 typical fee, no, I have not had an opportunity to discuss  
17 that with any of my competition who practice from a  
18 complainant's point of view.

19 EXAMINATION BY MR. HASKINS:

20 Q Mr. Swiger, I am interested in specifically the  
21 customary fees for workmen's compensation matters and the  
22 manner in which they are charged in your locality, which I  
23 believe it is Northern Virginia where Mr. Hudock practices.  
24 Would it be customary based on your personal knowledge and  
25 somewhat of an expert in workmen's compensation law to have

1 Hudock has talked about typical cases; in a typical case  
2 where there are no hearings and simply a proposed or  
3 compromised settlement the Commission enters an order,  
4 \$15,000 case, would you consider a 33 percent fee to be  
5 excessive? Your personal knowledge observation of the  
6 practice.

7 A Yes, I would.

8 MR. HASKINS: All right, sir. Thank you.

9 THE CHAIRMAN: Any other panel members have any  
10 questions?

11 FURTHER EXAMINATION BY MR. MARKOW:

12 Q Mr. Swiger, you have testified regarding fees  
13 and customs and customary charges and practices where you  
14 practice, that is the northern part of Virginia, do you have  
15 any knowledge as to whether there has been any change in  
16 those practices and those customs prior, well let's say in  
17 the two years prior to the time you came to the Bar? You  
18 came to the Bar in 1982, right?

19 A No, sir, I was admitted in 1981.

20 Q But I mean to the -- as a practitioner.

21 A Yes, sir.

22 Q '82?

23 A August 16th of '82.

24 Q In 1981, do you have any knowledge either way  
25 as to whether the customary fee charges and practices you



1 have talked about were in effect in '80 and '81?

2 A My understanding was that they were. And the  
3 reason, the basis for that understanding is that when I  
4 joined the firm of Ashcraft & Gerel and going through my  
5 training process, I was advised that was the practice in our  
6 firm for attorney's fees. So it was that as of that day and  
7 apparently had been for at least some period of time prior to  
8 that time.

9 Q You don't know how long prior to that time?

10 A No, I wouldn't be able to give you a precise  
11 time, no, sir.

12 Q Have you ever heard anybody indicate to you  
13 that the practice has changed?

14 A No, sir.

15 MR. MIDDLEDITCH: I have got one question.

16 THE CHAIRMAN: Yes, sir.

17 EXAMINATION BY MR. MIDDLEDITCH:

18 Q I believe you indicated that you had knowledge  
19 about contingent fee arrangements and in nonworkmen's  
20 compensation cases, did you not?

21 A Yes, sir.

22 Q And I think you indicated that at least on one  
23 occasion you were familiar with a 40 percent contingency in a  
24 medical malpractice case, is that correct?

25 A That is correct, sir.

1 ~~determines to be appropriate in a given case.~~

2 Q All right, sir, to its customs and traditions  
3 and usage as far as is the workmen's camp cases are  
4 concerned?

5 A Well, no, sir. My firm has advised me that  
6 65.1-102 gives the authority to the Industrial Commission to  
7 determine the fee. Now, I also have an understanding there  
8 are attorneys who sign clients up to a specific agreement and  
9 then submit that agreement to the Industrial Commission for  
10 approval. And I have been advised that we would be at  
11 liberty, we could do that if we like. But our firm does not  
12 because of the administrative problems posed by that of  
13 keeping track of every minute of every day you put in on a  
14 given case, keeping a record of it and submitting it to the  
15 Industrial Commission for approval.

16 So I think the Commission does on cases,  
17 because I have personal knowledge from cases where an  
18 attorney last involved in a comp case and then brought me in  
19 as co-counsel where they have come to an hourly agreement  
20 with a client and then submitted that agreement with an  
21 outline of the hours expended to the Commission for approval,  
22 rather than just leaving it entirely up to the Commission to  
23 determine the fee.

24 ~~THE CHAIRMAN: Any other members of the panel?~~

25 ~~MR. HASKINS: One question.~~

## 1       FURTHER EXAMINATION BY MR. HASKINS:

2           Q       Mr. Swiger, as a matter of custom in the  
3       locality of Northern Virginia, do you have any personal  
4       knowledge of anyone in your firm who last ever handled a case  
5       that you know of, your cases or other attorneys, where the  
6       attorney for the claimant has collected privately from the  
7       complainant an additional fee or fee in addition to that  
8       which has been awarded by the Industrial Commission?

9           A       I have no knowledge of that. To the best of my  
10      knowledge, no one in my firm has ever done that and the other  
11      claimant's attorneys with whom I am familiar with have never  
12      done that.

13          Q       Simply put, you have never heard of such a  
14      thing?

15          A       No, sir.

16                   MR. HASKINS: All right, sir.

17                   THE CHAIRMAN: Mr. Rigsby, any other  
18      questioned?

19                   MR. RIGSBY: No, sir.

20                   THE CHAIRMAN: Mr. Hudock.

## 21       FURTHER CROSS-EXAMINATION BY MR. HUDOCK:

22          Q       You are really testifying based on the  
23      deliberate decision of Ashcraft & Gerel as to how they charge  
24      their clients for the convenience of the firm, that is to  
25      leave the fee totally to the Industrial Commission?



1           A       With regard to the manner in which we do, I  
2       think convenience is one of the factors that they consider,  
3       because as I have indicated it does save the administrative  
4       expense and time and effort of keeping track of every minute  
5       of every day.

6           Q       You don't really know for sure outside Ashcraft  
7       & Gerel what attorneys in fact collect for fees in Industrial  
8       Commission cases?

9           A       Well, being a complainant's attorney, I have an  
10      opportunity to socialize and be involved professionally with  
11      other complainant's attorneys, and the ones I am familiar  
12      with handle it much in the same manner our firm does.

13          Q       But you don't really know what they collect and  
14      put in their blanks?

15          A       You mean amounts?

16          Q       Yes.

17          A       No, sir.

18                   MR. HUDOCK: I have no further questions.

19                   THE CHAIRMAN: Any other questions?

20                   Thank you very much, we appreciate it. You are  
21      excused and free to go.

22                   Call your next witness, Mr. Rigsby.

23                   MR. RIGSBY: That's the Bar's case.

24                   THE CHAIRMAN: The Board will take a  
25      five-minute recess.

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

VIRGINIA STATE BAR EX REL  
TENTH DISTRICT COMMITTEE,

Complainant

v.

DOCKET NO. 84-38

ROBERT P. HUDOCK,

Respondent

ORDER

On Thursday, May 16, 1985, came on for hearing the Charges of Misconduct certified against Robert P. Hudock by the Tenth District Committee of the Virginia State Bar. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Sharon A. Coles, James W. Haskins, Theodore J. Markow, Leigh B. Middleditch, Jr. and Samuel N. Klewans, presiding. Notice of the Charges of Misconduct and of the hearing before the Virginia State Bar Disciplinary Board were served upon Robert P. Hudock in the manner provided by the Rules applicable to this proceeding.

Robert P. Hudock appeared in person. Michael L. Rigsby appeared as counsel for the Virginia State Bar.

Upon consideration of the testimony and documentary exhibits presented, the board finds by clear and convincing evidence that:

1. Robert P. Hudock represented a client in a matter before the Industrial Commission of Virginia. Mr. Hudock prepared, or caused to be prepared, a petition to the Commission leaving a blank space therein for his fee. The petition stated " The petitioner requests the commission to approve payment of the said settlement in one lump sum, and the employee further asks the commission to award a reasonable attorney's fee to be paid directly from the settlement award . . . ."

2. An order was entered by the Commission May 25, 1981, indicating a total compromise settlement award of \$15,000 out of which a \$2,500 attorneys fee was to be paid to Mr. Hudock, leaving the claimant with the sum of \$12,500.
3. Mr. Hudock had a contingency agreement with the client calling for a one-third contingency fee in the matter.
4. Mr. Hudock asked for and received \$2,500 from his client in addition to the \$2,500 fee awarded by the commission, for a total of \$5,000 attorneys fees.
5. Mr. Hudock knew, or should have known, the requirements of Section 65.1-102 of the Code of Virginia, 1950, as amended.

It is the opinion of the board that such conduct by Robert P. Hudock constitutes misconduct in violation of Disciplinary Rule 2-105(A) and (B).

WHEREFORE, it is the judgment of the board, that such conduct by Robert P. Hudock warrants the imposition of a Public Reprimand. Accordingly,

It is ORDERED that Robert P. Hudock be, and he is hereby, reprimanded for such misconduct, which reprimand is a PUBLIC REPRIMAND.

It is further ORDERED that a copy of this Order shall be mailed to Robert P. Hudock at his last address on file with the Virginia State Bar, 8150 Leesburg Pike, Suite 1200, Vienna, Virginia 22180.

ENTER THIS ORDER THIS 10<sup>th</sup>  
DAY OF June, 1981.

VIRGINIA STATE BAR DISCIPLINARY BOARD

*Donald N. He...*  
*Chairman*



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

VIRGINIA STATE BAR EX REL  
TENTH DISTRICT COMMITTEE,

Complainant

v.

DOCKET NO. 84-38

ROBERT P. HUDOCK,

Respondent

NOTICE OF APPEAL AND  
ASSIGNMENTS OF ERROR

The respondent, Robert P. Hudock, hereby gives notice of appeal from the Order of the Virginia State Bar Disciplinary Board entered on June 10, 1985, and mailed on June 24, 1985, and further gives notice that the hearing transcript or an agreed statement of facts and other incidents of hearing will be filed, all in compliance with the Rules of the Virginia State Bar and The Rules of the Supreme Court of Virginia.

The respondent states as the assignments of error the following:

1. The Board erred in failing to terminate the proceedings when the findings of the 10th District Committee did not substantiate any violation of the Disciplinary Rules;

(a) There was no evidence of "the fee customarily charged in the locality for similar legal services."

(b) The Committee did not make any finding of the charging of a "clearly excessive fee."

(c) The Committee is imposing a punishment where none was authorized by the legislature for the enforcement of Section 65.1-102 of the Code of Virginia.

2. The Board erred in imposing a punishment for what is in effect a claimed violation of Section 65.1-102 of the Virginia Code where the legislature did not authorize any such punishment or penalty.

3. The Board erred in abusing its discretion by proceeding to hear the matter while the underlying legal issues in a case of first impression are pending before the Virginia Court of Appeals.

4. The charges of misconduct are insufficient at law to constitute a violation of the Disciplinary Rules.

5. The statutory Section 65.1-102 violates the Due Process and Equal Protection provisions of the U.S. Constitution.

6. The Board erred in making a finding of misconduct where there was insufficient evidence to support the finding.

7. The Board erred in allowing the testimony of the Ashcraft and Gerrell attorney's testimony where the evidence showed that the witness was not in practice at the time of the alledged violations, was not familiar with the charges of other attorneys at the time of the alledged violations, and his own firm's fee policy was based on the firm's convenience and desire to minimize time and record keeping.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert P. Hudock", with a long horizontal flourish extending to the right.

Robert P. Hudock, pro se