

**VIRGINIA:**

**IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND**

**IN THE MATTER OF  
PROPOSED RULE OF PROFESSIONAL CONDUCT 8.4(f)**

**(VSB Petition ID: 23-9)**

**PETITION OF THE VIRGINIA STATE BAR**

Chidi I. James, President  
Cameron M. Rountree, Executive Director  
Emily F. Hedrick, Ethics Counsel  
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**PETITION**

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE  
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar (“VSB”), by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of the Supreme Court of Virginia, and requests review and approval of proposed Rule of Professional Conduct 8.4(f), as set forth below. The proposed rule was approved by a vote of 50-6 of the VSB Council (“Council”) on October 13, 2023. (Appendix, p. 28).

**I. Overview of the Issues**

The VSB Standing Committee on Legal Ethics (“committee”) has proposed Rule of Professional Conduct 8.4(f). The committee agreed to submit the proposed rule amendment to Council on September 15, 2023, by a vote of 6-0. (Appendix, p. 26).

The proposed rule prohibits a lawyer from making an agreement with a client or former client limiting the client or former client’s right to file or pursue a

lawyer disciplinary complaint. The committee determined that an explicit rule on this issue is necessary because such an agreement is already considered improper under Rule 8.1(d)<sup>1</sup>, but that rule may not be clear enough to put lawyers or clients on notice that the conduct is prohibited. Comments received when the proposed rule was released for public comment suggest that some lawyers believe that such an agreement would be permissible, at least when entered into at the conclusion of a representation or as part of a resolution of a dispute between the lawyer and the client.

As a self-regulating profession, it is important that lawyers not be allowed to limit clients' abilities to file a bar complaint and have the lawyer's conduct evaluated by the VSB. As the Preamble to the Rules of Professional Conduct indicates:

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of

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<sup>1</sup> Rule 8.1 Bar Admission And Disciplinary Matters

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

\*\*\*

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

these responsibilities compromises the independence of the profession and the public interest which it serves.

Many lawyers who commented in opposition to the proposal raised the idea of VSB resources being wasted by reviewing baseless or retaliatory complaints or of disputes between lawyers and clients not being able to be resolved efficiently because lawyers will not be able to obtain a full release of any claims from the client. However, Part 6, § IV, Paragraph 13-10(A) of the Rules of this Court already requires that a complaint must be dismissed if the conduct questioned or alleged does not present an issue under the rules.

The committee believes that the proposed rule is an appropriate limitation on lawyers – the VSB has adequate resources to review complaints and to continuously evaluate throughout the disciplinary process whether a complaint states a potential violation of the Rules of Professional Conduct that could be proven by clear and convincing evidence. The disciplinary function is not simply about a dispute between a lawyer and a client, and there is a broader issue at stake, the public interest, in ensuring that potential lawyer misconduct is brought to light. Lawyers are permitted to settle civil claims with clients under the appropriate circumstances but should not be permitted to shield their conduct (perhaps repeated conduct) from regulatory investigation and action by agreement with a client or former client not to report it.

The proposed rule is included below in Section III.

## **II. Publication and Comments**

The committee approved releasing the proposed rule for public comment at its meeting on May 18, 2023, by a vote of 9-0. (Appendix, p. 1). The VSB issued a publication release dated May 19, 2023, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court. (Appendix, p. 3). Notice of the proposed rule was also published in the VSB's June 1, and August 1, 2023, E-News, (Appendix, p. 4 and 5), and on the VSB's website on the "Actions on Rule Changes and Legal Ethics Opinions" page. (Appendix, p. 6).

When the proposed rule was released for public comment, 15 comments were received: Lauren Ellerman, (Appendix, p. 7), Raighne Delaney, (Appendix, p. 8), Todd Hoyle, (Appendix, p. 9), Barry Waldman, (Appendix, p. 10), James McCauley, (Appendix, p. 11), Lee Warren, (Appendix, p. 12), Hilton Oliver, (Appendix, p. 13), John Mell, (Appendix, p. 14), Brandon H. Zeigler, (Appendix p. 15), Chanel Gray, (Appendix p. 17), Kelly Salzman, (Appendix p. 18), August Bequai, (Appendix p. 19), Steven Krieger, (Appendix p. 21), Katarina Nguyen, (Appendix p. 22), and Rebecca Simpson, (Appendix p. 25).

Five comments (Ellerman, McCauley, Warren, Salzman, and Gray) supported the proposed amendment, while ten (Delaney, Hoyle, Waldman, Oliver,

Mell, Zeigler, Bequai, Krieger, Nguyen, and Simpson) partially or entirely opposed the proposal. A primary theme of the comments in opposition is the idea that lawyers should be able to fully resolve disputes with dissatisfied clients as part of an overall settlement or resolution of a fee dispute, and that prohibiting agreements not to file bar complaints would make that less likely. Several comments also raised the concern of VSB resources or a general concern that the proposed rule would increase bar complaints, particularly retaliatory bar complaints. The committee considered these issues but made no changes to the proposed rule for the reasons stated above in Section I.

### **III. Proposed Rule**

#### **RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; ~~or~~
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or.

(f) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before a lawyer regulatory or disciplinary authority.

\* \* \*

#### **IV. Conclusion**

The Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the VSB. Part 6, § IV, Paragraph 10 of the Rules of this Court sets forth the process by which legal ethics advisory rules and rules of professional conduct are promulgated and implemented. Proposed Rule 8.4(f) was developed and approved in compliance with all requirements of Paragraph 10, adopted by the committee at its meeting on September 15, 2023, by a vote of 6-0, and by the Council, by a vote of 50-6, on October 13, 2023.

THEREFORE, the VSB requests that the Court approve proposed Rule of Professional Conduct 8.4(f) for the reasons stated above.

Respectfully submitted,  
VIRGINIA STATE BAR





By \_\_\_\_\_  
Chidi I. James, President



By \_\_\_\_\_  
Cameron M. Rountree, Executive Director

Dated this 8th day of November, 2023.

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**APPENDIX TO PETITION OF THE VIRGINIA STATE BAR**

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**VIRGINIA STATE BAR  
LEGAL ETHICS COMMITTEE  
MINUTES  
Hybrid Meeting  
In-Person and Electronic/via Microsoft Teams**

The Virginia State Bar Legal Ethics Committee met on **May 18, 2023**, commencing at **10:00 a.m. in the Board Room of the Virginia State Bar**. Those individuals appearing remotely did so with the approval of the Chair, via the Microsoft Teams platform, pursuant to public notice. A roll call vote yielded the following:

<b>Name</b>	<b>Remote/location; in-person; absent</b>	<b>Why member attended remotely</b>	<b>Approved by Chair yes/no</b>
Michael M. York Chair	In-person	N/A	N/A
Vera Kathleen Dougherty Vice-Chair	Remote – Norfolk, VA (Home)	Greater than 60 miles away	Yes
Teresa Goody Guillen Member	Remote – Great Falls, VA (Home)	Greater than 60 miles away	Yes
Michael HuYoung, Member	In-person	N/A	N/A
Naveed Kalantar, Member	In-person	N/A	N/A
Kenneth Brett Marston Member	Remote – Roanoke, VA (Home)	Greater than 60 miles away	Yes
Jeffery K. Mitchell Member	Remote – The Mitchell Law Firm, 1700 Kraft Dr, Ste 2000, Blacksburg VA (Office)	Greater than 60 miles away	Yes
Michael Wayne Robinson Member	In-person	N/A	N/A
Nia Ayanna Vidal, Member	In-person	N/A	N/A

The following Legal Ethics Committee staff members were present in-person as indicated:

**VSB Staff:**

Emily F. Hedrick, Ethics Counsel  
Dorian L. Dalton, Assistant Ethics Counsel  
Krista Mathis Samuels, Assistant Ethics Counsel  
Kristi R. Hall, Ethics Executive Asst./Paralegal  
Cameron M. Rountree, Executive Director  
Janet Van Cuyk, Deputy Executive Director

**I.** Approval of Minutes

The minutes of the March 16, 2023, meeting were approved as follows, via voice vote: Yea: 6; Nay: 0; Abstaining: 3.

**II.** Proposed opinions and Rules of Professional Conduct

A. LEO 1900 – Obligation to disclose client's death

After discussion, the committee agreed staff would make necessary changes to the draft opinion for review and discussion at the next meeting.

B. Rule 8.4(f) – Agreement not to file bar complaint

The committee unanimously approved releasing the draft rule for public comment, via voice vote.

**III.** Adjournment

The chair adjourned the meeting at 11:05 a.m.



# Virginia State Bar Public Comment Request

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Richmond, Virginia 23219-0026  
Telephone: (804) 775-0500

-----  
Facsimile: (804) 775-0501 VOICE/TTY 711 or (800) 828-1120

Release Date: May 19, 2023

## **The Virginia State Bar Seeks Public Comment on Proposed Rule 8.4(f)**

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar is seeking public comment on a proposed amendment to Rule 8.4 adding a new paragraph (f). The proposed rule prohibits a lawyer from making an agreement with a client or former client limiting the client or former client's right to file or pursue a lawyer disciplinary complaint.

### ***Inspection and Comment***

The proposed rule may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 am and 4:30 pm, Monday through Friday.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron M. Rountree, executive director of the Virginia State Bar, not later than **August 31, 2023**. Comments may be submitted via email to [publiccomment@vsb.org](mailto:publiccomment@vsb.org).

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## Governance

### **VSB Seeks Comment on Rule Prohibiting Agreements Discouraging Bar Complaints**

The Virginia State Bar is seeking public comment on a proposed amendment to Rule 8.4 adding a new paragraph (f).



### **Supreme Court of Virginia Requests Public Comment on Proposed Amendments to Rule 1A:1.**

Comments on the proposed amended rule must be received by June 12, 2023.

### **Supreme Court of Virginia Amends Several Rules of Court, Effective Immediately**

Changes affect Objections and Proffers; Contents of Sentencing Orders; Petition for a Writ of Actual Innocence; and Petition for Review Pursuant to Code § 8.01-626; Preliminary Injunctions and Interlocutory Immunity Rulings.

### **Paragraph 13 Clarification of the Term "shall"**

On May 9, 2023, the Supreme Court of Virginia amended Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13, regarding the clarification of the term "shall." Effective immediately.

## 2023 Annual Meeting June 14-17

### **We want to see You at the Beach, a VSB tradition for 85 years.**

You will find showcase CLEs, receptions, luncheons, the historic induction of our new president, Chidi I. James, and the opportunity to connect with lawyers

mailed a check, allow five business days for final processing. Do not pay again. **This is the final year paper statements will be mailed.**

The MCLE compliance deadline is **October 31, 2023**. Now is the time to check your online record and plan your MCLE compliance. Apply now for any non-approved course that you have attended. Review the MCLE compliance deadlines and other information.

## Ethics



Legal Ethics

### **VSB Seeks Comment on Rule Prohibiting Agreements Limiting Bar Complaints**

The VSB seeks public comment on a proposed amendment to Rule 8.4 adding a new paragraph (f) that would prohibit a lawyer from making an agreement with a client or former client limiting the client or former client's right to file or pursue a lawyer disciplinary complaint. Deadline: August 31.

## Discipline

Disciplinary hearings are public meetings found on the disciplinary docket and on the VSB calendar.

### **Recent disciplinary system actions:**

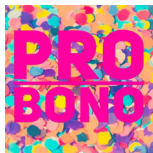
**Patrick Lynn Edwards**, license suspended, July 14, 2023.

**Henry W. McLaughlin III**, public reprimand, effective July 6, 2023.

**Kerr Stewart Evans Jr.**, public reprimand, effective July 26, 2023.

**Private discipline: 3 admonitions**

## Pro Bono / Access to Justice



Do you know a Virginia attorney or legal organization making exemplary contributions to pro bono? Nominate them for the annual **Lewis F. Powell Jr. Pro Bono Award**  
Deadline: Friday, August 4, by 5 pm.

## CLE

Three FREE **Solo & Small-Firm Practitioner Forums** have been scheduled for the 2023-24 year. Please note that these will be in-person only events and they'll all have the same agenda:

**September 18, 2023** – Eastern Shore Community College, **Melfa**





# Virginia State Bar

An agency of the Supreme Court of Virginia

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**On behalf of:** [\(select\)](#)

## Actions on: Rule Changes, Legal Ethics Opinions, and Unauthorized Practice of Law Opinions

### FILTER BY TYPE:

[Legal Ethics Opinion](#) | [Regulation](#) | [Rules](#) | [Rules of Professional Conduct](#) | [Unauthorized Practice of Law](#)

CLEAR TYPE FILTER



### [VSB Seeks Comment on Rule Prohibiting Agreements Discouraging Bar Complaints](#)

*Posted on 5/19/2023*

The Virginia State Bar is seeking public comment on a proposed amendment to Rule 8.4 adding a new paragraph (f).

**From:** [Lauren Ellerman](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Proposed 8.4f  
**Date:** Thursday, June 1, 2023 2:43:52 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Dear VSB – I think the proposed rule makes a ton of sense and parallels the arbitration rules for sexual harassment victims (we shouldn't be allowed to sweep bad behavior under the rug with hush agreements), but I don't think it's location as 8.4f makes the best sense. While it may be misconduct, I think it should be its own separate category or included under Rule 1:6 – that relates to client / attorney relationship and confidentiality.

I just fear it's inclusion under 8.4 is random and easy to ignore.

Thank you.

**Lauren Ellerman**

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**From:** [Raighne Delaney](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Proposed Rule 8.4(f) Comment  
**Date:** Thursday, June 1, 2023 2:55:30 PM  
**Attachments:** [image004.png](#)  
[image005.png](#)  
[image006.png](#)

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Proposed Rule 8.4(f) would define misconduct to include reaching an agreement with a client that limits the client's right to pursue a bar complaint.

I'm not sure this is wise. These agreements take place in the context of civil settlements of disputes with clients.

While I can certainly see the theoretical wisdom of preventing a lawyer from covering up serious misconduct with a settlement agreement, practically speaking, 1) the more serious misconduct cases will be made subject of bar complaints anyway, and 2) most legal malpractice claims arise from fee disputes, and those malpractice claims always involve claims of ethical breaches. When the fee dispute is settled, one would think that the claimed malpractice / ethical breaches would die with the settlement.

Thus, I suspect that the practical effect of this rule will be to promote vindictiveness rather than justice.

**Raighne C. Delaney**



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**From:** [Todd Hoyle](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Rule 8.4 comment  
**Date:** Thursday, June 1, 2023 3:49:19 PM

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I think as attorneys we should always hold ourselves to the highest ethical standard, but I think it is unnecessary to try and limit the tools at our disposal to address a possible complaint by a client.

There are likely an unlimited number of reasons, some good and some bad, why a client might threaten to file a bar complaint. Attorneys without any coercive behavior should be allowed to attempt to address those concerns directly with a client and as part of any agreed upon consensus for resolution, the attorney should be able to have the comfort that that client isn't going to turn around and still file a complaint .

Self regulation is great but why would we intentionally leave attorneys exposed to complaints that otherwise may have been addressed through mediation or alternative dispute resolution?

Thanks-Todd

Todd C. Hoyle, Esq.  
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(804)295-4380

**From:** [Barry Waldman](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Changes to Rule 8.4(F)  
**Date:** Friday, June 2, 2023 8:00:19 AM  
**Attachments:** [Outlook-ipshtx4n.png](#)  
[Outlook-wgmvmxdj.png](#)

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While I am thankful I have not had to resort to similar tactics, as society changes, clients change. I have found far too often among colleagues that I find are competent, they are threatened by clients with Administrative complaints, often in the context of having a past due balance or other financial difficulty.

In reality, the majority of the instances I have heard about from colleagues where threat of a bar complaint has been made, arise when the client has a bill they can't pay and seemingly want leverage on their attorney.

The sheer headache, potential administrative difficulty, and damage to reputation (even if unfounded), a complaint can have would make the imposition of this provision yet another way that smaller practitioners, who are the subject of far more voluminous Bar Counsel activity, once again are more vulnerable.

While the intent of the change may be laudable, it will once again disproportionately impact those attorneys who represent individuals, and smaller firms. Protecting the public is a worthy goal, doing so in this fashion fails to consider the frequency of the "difficult client" motivated by financial breakdowns with their attorney. I encourage a different approach.

Thank you.

-Barry

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AV-Rated Family Law Attorney, Selected as a SuperLawyer in the Area of Family Law

**From:** [James McCauley](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Proposed Rule 8.4(f)  
**Date:** Monday, June 12, 2023 8:53:14 AM

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I am in favor of proposed Rule 8.4(f) but would broaden its scope. Lawyers should not be able to settle a case with an agreement that restricts or prohibits a party from filing a bar complaint. For example if a settlement to a legal malpractice claim is negotiated, a lawyer should be prohibited from requiring a party to the settlement to agree not to file or pursue a bar complaint. Such conduct could also be inconsistent with the duty to report misconduct under Rule 8.3(a).

See, e.g., *In re Himmel*, 533 N.E.2d 790 (Ill. 1988) (lawyer who failed to report unprivileged knowledge of another lawyer's misconduct suspended for one year despite the fact that his client asked him and agreed not to report the matter to grievance authority; client information was confidential but not privileged).

I would like to see the proposed rule expanded to say:

(f) enter into an agreement with a person limiting or purporting to limit the rights of that person to file or pursue any complaint before a lawyer regulatory or disciplinary authority.

-

James M. McCauley

Bar No. 21778

-

Sent from [Mail](#) for Windows

**From:** [Lee](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Proposed Rule 8.4(f)  
**Date:** Sunday, July 9, 2023 8:29:41 PM

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Greetings:

The Bar should proceed with the proposed Rule change. I cannot think of a legitimate reason for a provision in the client contract barring them from filing a bar complaint. Such provisions would protect far more bad behavior by attorneys than they would prevent bad behavior by clients. Part of being a lawyer is acting consistently with the Rules (and avoiding bar complaints to begin with).

Lee Warren  
VSB 77446 '08

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July 19, 2023

Mr. Cameron M. Rountree  
Virginia State Bar  
1111 E. Main St., Suite 700  
Richmond, VA 23219-0060

Dear Mr. Rountree,

I am writing to express my strong opposition to the proposed new Rule 8.4(f), prohibiting agreements not to file a bar complaint.

I believe it is perfectly appropriate, ethical, and practical for an attorney to attempt to reach an amicable solution of a difference with a client or former client. Since lawyers accused of an ethical violation are presumed innocent, and since a majority of complaints are dismissed, the chances are great that an attorney seeking such an agreement is protecting himself from the vexation of a frivolous complaint. I have had experience myself with clients who were either unreasonable or who failed to understand the facts who have made such threats against me. Frivolous complaints waste the time of both the attorney and bar counsel, not to mention the stress and probable expense involved.

I note that the "accord and satisfaction" is a widely accepted practice in criminal cases, where a criminal charge may be dropped in exchange for restitution or other satisfaction made to the party who feels aggrieved. I see no valid interest whatsoever being served by denying a similar common-sense remedy between lawyers and clients.

This proposed Rule is unnecessary at best and most ill-advised at worst. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hilton Oliver". The signature is fluid and cursive, with a large initial "H" and "O".

Hilton Oliver





**From:** [JOHN MELL](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Rule 8:4(f)  
**Date:** Saturday, July 29, 2023 2:21:50 PM

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Good afternoon. A blanket prohibition against bar Complaints should not be permitted. However, certain limitations should be allowed. A time limitation to file the complaint is appropriate. A time limitation should be integrated as part of the Rules by the Bar. Prohibition of Retaliatory Complaints in response to collection efforts of attorney fees should be permissible in the attorney client contract. 8.4(f) blanketing prohibition against contracts prohibiting bar Complaints is not constitutional. The right to contract free from government regulation is protected by the Due Process Clause of the Fourteenth Amendment.

Thank you, John Mell

**From:** [Brandon H. Zeigler](#)  
**To:** [publiccomment](#)  
**Cc:** [Kellam T. Parks](#)  
**Subject:** EXTERNAL SENDER Rule 8.4 Comment  
**Date:** Monday, July 31, 2023 11:05:24 AM

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## To Whom It May Concern:

I cannot agree with the proposed rule as written as it covers several aspects of an attorney client relationship and is overbroad as written.

First, as the Court of Appeals and the Supreme Court of Virginia have held, the attorney-client relationship is one based on contract. Ideally, a written retainer agreement but sometime an oral one. Based on this premise, the rule as drafted is too broad in my opinion as there are 3 distinct stages of an attorney-client relationship.

1. **New Client Relationship:** It is perfectly appropriate that there should be an ethical bar to any initial agreement that would limit, restrict, or prevent a client from filing a bar complaint.
2. **Existing Client Relationship:** An attorney should not avoid discipline via a contract/waiver from a current client. For example, the attorney should not be able to waive certain fees or continuing with the case on a pro bono bases in return for not having a complaint filed against them.
3. **Past Client Relationship:** Because the relationship is based in contract, I find it appropriate for an attorney and past client to resolve their differences by a settlement agreement.

The VSB is tasked with ensuring a minimum competency across all attorneys. This theory supports the idea that there should not be a contractual bar or limit on a client filing a complaint. This is why I agree that at the onset or during the representation, the VSB should prohibit a contractual waiver preventing the client from advising the VSB of conduct that is alleged to fall below the acceptable line. However, it is not infrequent that a client who is either dissatisfied with the outcome of the case or the resulting bill, does not manufacture a complaint and complains about things that were not an issue while the representation was ongoing. Based on the VSB statistics, this most frequently appears in domestic relations case and criminal defense matters. If a past client makes this allegation, then I find it appropriate for the attorney and client to resolve their differences by contract. In this scenario, and based on the timing of the complaint, it is clear that from a client's perspective the alleged conduct was not serious enough for the then-active client to file a complaint. This lack of action during the representation is a clear indication

that the client found the representation at least acceptable if not agreeable. For this reason, a client and attorney should be able to resolve their post-relationship status by agreement.

This issue begs the next question. Why is there not a statute of limitations for a Bar complaint. I was recently a witness for an attorney who was charged with misconduct 20 years ago. His defense was significantly hindered because he destroyed his file over a decade after the case ended and a decade prior to the complaint being filed. Until relatively recently, even the most serious crimes in Virginia had statute of limitations. The Virginia Legislature has approved a 5-year Statute of Limitations on written contracts. Because the client relationship is found in contract, it is likewise reasonable that the client has 5 years from the termination of the relationship to file a complaint. That would allow the attorneys to destroy their files with confidence.

Thank you,

BHZ

Brandon H. Zeigler, Esq.

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**ELIZABETH CITY, NC ADDRESS:**

201 E. Elizabeth Street

Elizabeth City, North Carolina 27909



**From:** [Chanel A. Gray](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Proposed | Rule Prohibiting Agreements Limiting Bar Complaints  
**Date:** Monday, July 31, 2023 11:05:09 AM  
**Attachments:** [image001.png](#)

---

Good morning:

I support the proposed amendment to Rule 8.4.

Thank you.



**Chanel Ann Gray, Esq.**

Assistant City Attorney

City Attorney's Office

City of Chesapeake

**Office:** 757-382-6586

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**From:** [Kelly Salzmann](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Comment Regarding Proposed Rule 8.4(f)  
**Date:** Monday, July 31, 2023 3:30:14 PM  
**Attachments:** [Outlook-zgtvzzup.png](#)

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Good afternoon Director Rountree,

I offer the below comments to the rule on my own behalf and not on behalf of the Legal Aid Justice Center.

I write to wholeheartedly support the rule that would make clear that it is misconduct to "enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before a lawyer regulatory or disciplinary authority."

I'm, frankly, surprised that there is any confusion about this. There is a power imbalance in any retainer agreement by virtue of the fact that our clients come to us in a time of need - whether criminal or civil - specifically because of our legal expertise. To then use that expertise to attempt to shield ourselves from complaint and oversight cannot be allowed. We are a self-governing profession and it is our responsibility to ensure that we take that governance seriously. To allow attorneys to use a position of power in order to subvert that process would seriously undermine the public's trust that we should remain a self-governing profession.

Thanks for the opportunity to comment.

My best -

Kelly

Kelly Salzmann (she/her/ella), Attorney/Abogada  
Legal Aid Justice Center  
6402 Arlington Blvd., Suite 1130  
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571-620-5260/kelly@justice4all.org  
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**From:** [attyabeg@aol.com](mailto:attyabeg@aol.com)  
**To:** [publiccomment](#)  
**Cc:** [publiccomment](#); [Hall, Kristi](#)  
**Subject:** Re: EXTERNAL SENDER Rue Prohibiting Agreements Limiting Bar Complaints/Rule 8:4 adding new par. (f)  
**Date:** Friday, August 11, 2023 10:36:40 AM

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Thank you. I did want to add that if an individual is represented by counsel, not pro se, it seems to me that it is presumptuous to assume that his lawyer is not able to discern what is best in the client's best interest. Further, it's also no secret that a number of these Bar complaints, costly to the VSB to investigate, are prompted by financial considerations; i.e., enhancing one's negotiating position.

August Bequai, Esq.  
1750 Tysons Blvd., Suite 1500  
McLean, VA 22102  
(T) (703) 893-4806  
(c) (571) 277-5996  
[attyabeg@aol.com](mailto:attyabeg@aol.com)

In a message dated 8/10/2023 8:26:10 AM Eastern Daylight Time, [PublicComment@vsb.org](mailto:PublicComment@vsb.org) writes:

Good morning, Mr. Bequai:

Thank you for your comments to the Legal Ethics Committee's proposed amendment to Rule 8.4. The committee next meets on September 15, 2023, at which it will consider all of the comments received to date.

Please let me know if you have any questions.

Best,



**Kristi R. Hall**

Ethics Executive Assistant/Paralegal

Virginia State Bar

1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026

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The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers.

---

**From:** [attyabeq@aol.com](mailto:attyabeq@aol.com) <attyabeq@aol.com>  
**Sent:** Wednesday, August 9, 2023 9:52 PM  
**To:** publiccomment <PublicComment@vsb.org>  
**Subject:** EXTERNAL SENDER Rue Prohibiting Agreements Limiting Bar  
Complaints/Rule 8:4 adding new par. (f)

While the proposed addition to the rule is well meaning, nevertheless, there is also the real world to deal with. It will create more red tape and drain limited resources from Bar Counsel's policing efforts. If an individual is represented by counsel, he/she should be left to their own whim as to any settlements. In short, I oppose the proposal. Thank you.

August Bequai, Esq.

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---

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**From:** [Steven Krieger](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Rule 8.4(f) - Comment  
**Date:** Saturday, August 12, 2023 2:44:34 PM

---

Cameron,

Thank you for giving the public an opportunity to provide comment on proposed Rule 8.4(f).

I certainly understand the Bar's concern about a lawyer including a prohibition limiting the client's right to file a bar complaint into a fee agreement at the beginning of representation.

However, the language in the proposed rule goes much further: "...enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before a lawyer regulatory or disciplinary authority."

This language also limits lawyers and clients from entering into a settlement agreement after the representation has begun (or even concluded) that would prohibit a bar complaint, which is problematic and discourages resolution between the parties.

You can imagine a situation where a dispute arises between a lawyer and client and the lawyer agrees to return some portion of a fee that the lawyer believes was properly earned to a client or lawyer agrees to waive an outstanding balance to simply resolve the dispute and allow both parties to move forward. In many settlement agreements, the parties agree to a mutual release of all claims. If the client could sign a settlement agreement and later file a bar complaint, the lawyer would be less likely to enter into the agreement. This could result in a dramatic increase in bar complaints as disputes that were previously resolved are no longer getting resolved because the lawyer has to account for the possible bar complaint (whether justified or not).

Further, the act of trying to settle a dispute, or even having a fully executed settlement agreement where both parties waive all claims, would actually be an ethics violation itself where an ethics violation may not have previously even existed.

Here's a hypo to illustrate: Client believes Lawyer did not adequately keep client informed. Lawyer agrees to give Client X dollars to resolve dispute. The parties sign a settlement agreement waiving all claims. Later, the Client decides to file a bar complaint. The bar investigates the claim of not being adequately informed and finds no misconduct, but determines that the settlement agreement was a violation, so the lawyer has a violation.

The Bar is reasonably concerned about a lawyer prospectively limiting liability at the beginning of representation, but once a dispute has arisen, I don't think the Bar should be inserting itself into the parties' efforts to resolve a dispute. The Virginia Courts feel very strongly that parties are free to enter into agreements and I think the Bar should take a very similar view.

As such, I'd strongly urge the Bar to modify the proposed language to allow parties to resolve their disputes without having to worry about a subsequent bar complaint.

Steven



**From:** [Katarina Nguyen](#)  
**To:** [publiccomment](#)  
**Cc:** [Hall, Kristi](#)  
**Subject:** Re: EXTERNAL SENDER Re: Public Comment in Opposition to Proposed New Rule 8.4(f)  
**Date:** Monday, August 14, 2023 11:23:19 AM

---

Hi Ms. Hall,

Thank you, and there was one last thing I meant to add to the very end of my comment:

Attorneys would not want to enter into settlement agreements to resolve disputes with clients because (a) they could end up facing a bar complaint anyway, but also (b) the act of entering into a settlement agreement that contains a general mutual release would, in and of itself, be considered a violation of Rule 8.4(f) as it's written.

Thank you, again, for your consideration,

On Mon, Aug 14, 2023 at 11:16 AM publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)> wrote:

Good morning, Ms. Nguyen,

Thank you for your comments to the Legal Ethics Committee's proposed amendment to Rule 8.4.

The committee next meets September 15, 2023, and will consider your comments at that time.

Please let me know if you have any questions.

Best,



*Kristi R. Hall*

Ethics Exec. Assist./Paralegal/FOIA Officer  
Virginia State Bar

1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026

804/775.0557 | Fax 804/775.0597 | [hall@vsb.org](mailto:hall@vsb.org) | [www.vsb.org](http://www.vsb.org)

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---

**From:** Katarina Nguyen <[katarina@stevenkriegerlaw.com](mailto:katarina@stevenkriegerlaw.com)>  
**Sent:** Monday, August 14, 2023 10:55 AM  
**To:** publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>  
**Subject:** EXTERNAL SENDER Re: Public Comment in Opposition to Proposed New Rule 8.4(f)

Dear Sir or Madam,

Although I understand and agree that it would be inappropriate for an attorney to require a client to sign a waiver of their right to file a bar complaint as part of the retainer agreement, the current proposed language of Rule 8.4(f) goes well beyond that. It generally uses the word "agreement", which would also apply to settlement agreements that the attorney and client enter into as part of the dispute resolution process.

A standard provision of any settlement agreement is a general mutual release of claims in exchange for the settlement. This is so that both parties can rest assured that the matter is forever resolved and both parties can move on without worry.

But the proposed language would invalidate a general mutual release as it applies to an attorney. So if an attorney and client get into a dispute over billing matters and they reach a resolution, memorialized into a settlement agreement with a general mutual release, the client would, no matter what, still be permitted to file a bar complaint against the attorney even though the client voluntarily and freely entered into the settlement.

This would mean that even if the attorney did not actually commit an ethics violation (i.e., the attorney only agreed to settle the dispute because the attorney prefers to resolve disputes with clients amicably, even if the attorney does not agree with the client's position), the fact that there was a settlement agreement with a general mutual release would violate the new Rule 8.4(f). Moreover, even if the bar determines that there was no ethics violation as it related to the billing dispute, the settlement agreement would mean that the bar would determine the attorney violated Rule 8.4(f). And this doesn't just apply to billing disputes--any dispute that could potentially be a basis for a legal malpractice claim, but which gets resolved, would be caught up in Rule 8.4(f) as it's currently written.

I strongly believe that Rule 8.4(f) needs to be rephrased so that it clearly only refers to limiting liability at the start of the representation, such as part of the retainer agreement. It should also clearly indicate that, if a dispute has arisen between the attorney and client, then settlement agreements resolving such disputes are exempt from Rule 8.4(f).

Without these changes, attorneys will be completely disincentivized from trying to resolve disputes with clients. Attorneys will ask themselves, "What's the point of settling if I'm just going to wind up having to fight a bar complaint anyway?" Without these changes, we'll see a significant rise in bar complaints, Rule 8.4(f) violations in connection with settlement agreements, and/or lawsuits between attorneys and clients.

Thank you for your consideration,

--

Katarina A. Nguyen

Attorney at Law

*Mailing Address:*

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Haymarket, Virginia 20169

Steven Krieger Law, PLLC

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**From:** [Rebecca Simpson](#)  
**To:** [publiccomment](#)  
**Subject:** EXTERNAL SENDER Comment on proposed changes to Rule 8.4  
**Date:** Monday, August 21, 2023 12:35:47 PM

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While I have no problem limiting a lawyer's ability to wield power over clients at the beginning of representation by purporting to limit the client's ability to protect him or herself by filing of a bar complaint, I think the proposed amendment goes too far. The proposal prevents a lawyer from entering into a settlement agreement with a former client or current client, the terms of which would include the client's agreement not to file a bar complaint.

I think this approach discourages resolution of disputes between parties (lawyers and clients). Prospective limitation of liability by an attorney is inappropriate, and should be prohibited by the bar. However, please consider modifying the language of the amendment so that it will clearly permit lawyers who are in a dispute with a client to resolve the dispute with all the available tools of dispute resolution, including assurances that no bar complaint be filed. Thank you.

Kindly,  
*Rebecca T. Simpson, Esq.*

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ph 571-926-4357 | fax 571-386-2685  
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**VIRGINIA STATE BAR  
LEGAL ETHICS COMMITTEE  
MINUTES  
Hybrid Meeting  
Microsoft Teams**

The Virginia State Bar Legal Ethics Committee met on **September 15, 2023**, commencing at **10:00 a.m. in the Board Room of the Virginia State Bar**. Those individuals appearing remotely did so with the approval of the Chair, via the Microsoft Teams platform, pursuant to public notice.

<b>Name</b>	<b>Remote/location; in-person; absent</b>	<b>Why member attended remotely</b>	<b>Approved by Chair yes/no</b>
Michael M. York Chair	In-person	N/A	N/A
Vera Kathleen Dougherty Vice-Chair	In-person	N/A	N/A
Teresa Goody Guillen Member	Absent	N/A	N/A
Michael HuYoung, Member	In-person	N/A	N/A
Naveed Kalantar, Member	Absent	N/A	N/A
Kenneth Brett Marston Member	In-person	N/A	N/A
Jeffery K. Mitchell Member	Remote	Visiting daughter who attends grad school at the University of Georgia, in celebration of her birthday	Yes
Michael Wayne Robinson Member	In-person	N/A	N/A
Nia Ayanna Vidal, Member	Absent	N/A	N/A

The following Legal Ethics Committee staff members were present in-person as indicated:

**VSB Staff:**

Cameron M. Rountree, Executive Director  
Janet Van Cuyk, Deputy Executive Director  
Emily F. Hedrick, Ethics Counsel  
Dorian L. Dalton, Assistant Ethics Counsel  
Krista Mathis Samuels, Assistant Ethics Counsel  
Kristi R. Hall, Ethics Exec. Asst./Paralegal/FOIA Officer

**I.** Approval of Minutes

The minutes of the May 18, 2023, meeting were approved unanimously, via voice vote.

**II.** Proposed opinions and Rules of Professional Conduct

A. LEO 1900 – Obligation to disclose client's death

After discussion, the committee voted unanimously, via voice vote, to submit the draft opinion as amended to Council for approval at its next meeting on October 13, 2023.

B. Rule 8.4(f) – Agreement not to file bar complaint

After discussion, the committee voted unanimously, via voice vote, to submit the draft rule to Council for approval at its next meeting on October 13, 2023.

C. LEO request – Waiver of oral argument in criminal appeal

The committee directed staff to LEI this request.

**III.** Adjournment

The Chair adjourned the meeting at 11:14 a.m.

**MINUTES OF THE VIRGINIA STATE BAR  
COUNCIL MEETING**

**Date:** October 13, 2023, 9:00 am

**Location:** The Williamsburg Lodge, Tidewater Room, 310 S. England Street, Williamsburg

The VSB Council met in-person on Friday, October 13, 2023. At 9:04 a.m., President Chidi I. James called the meeting to order. Sixty-four (64) committee members attended in-person satisfying the meeting quorum requirement in Part I, Art. V, Sec. 2 of the Bylaws of the Virginia State Bar (VSB). There was no remote participation.

**Committee members in attendance:**

President Chidi I. James

President-elect Michael M. York

Immediate Past President Stephanie E. Grana

Circuit 1	D.J. Hansen	Circuit 19	Susan M. Butler
Circuit 2	Jeremiah A. “Jake” Denton IV	Circuit 19	Gary V. Davis
Circuit 2	Naveed Kalantar	Circuit 19	Kyung “Kathryn” N. Dickerson
Circuit 4	Corrynn J. Peters	Circuit 19	Stephen K. Gallagher
Circuit 4	Caswell W. Richardson	Circuit 19	Carly J. Hart
Circuit 6	Derek A. Davis	Circuit 19	Gina L. Schaecher
Circuit 7	Patrick C. Murphrey	Circuit 19	Gobind S. Sethi
Circuit 8	Veronica E. Meade	Circuit 20	R. Penn Bain
Circuit 9	Susan B. Tarley	Circuit 20	Marie E. Washington
Circuit 10	E. M. Wright, Jr.	Circuit 21	G. Andrew Hall
Circuit 11	Dale W. Pittman	Circuit 23	Kevin W. Holt
Circuit 12	P. George Eliades II	Circuit 24	Hope R. Townes
Circuit 13	Timothy R. Baskerville	Circuit 25	David B. “Brian” Richardson
Circuit 13	Mark D. Dix	Circuit 26	Peter K. McDermott II
Circuit 13	Jonathan M. Petty	Circuit 27	W. Grant Back
Circuit 13	Cullen D. Seltzer	Circuit 28	Bruce H. Russell II
Circuit 13	Samuel T. Towell	Circuit 19	Susan M. Butler
Circuit 13	Susheela Varky	Circuit 19	Gary V. Davis
Circuit 13	Henry I. Willett III		
Circuit 14	William J. Egen	Member at Large	Lenard T. Myers, Jr.
Circuit 14	Joel R. McClellan	Member at Large	Molly E. Newton
Circuit 15	Allen F. Bareford	Member at Large	Lonnie D. “Chip” Nunley III
Circuit 16	Richard H. Howard-Smith	Member at Large	Patricia E. Smith
Circuit 16	Ann Marie Park	Member at Large	Joanna L. Suyes
Circuit 17	Adam M. Krischer	Member at Large	Nicole E. Upshur
Circuit 17	David E. Sher	Member at Large	David P. Weber
Circuit 18	Nicholas J. Gehrig	Member at Large	Lisa A. Wilson
Circuit 18	Sebastian M. Norton		
Circuit 18	Todd A. Pilot	CLSBA Chair	Dillina W. Stickley
Circuit 19	Tamika D. Jones	SLC Chair	W. Carter Younger
Circuit 19	Paul H. Melnick	YLC President	Craig E. Ellis
Circuit 19	Nathan J. Olson		

**Absent:**

Circuit 2	Bretta Zimmer Lewis
Circuit 3	Matthew R. Foster
Circuit 4	Charlene A. Moring
Circuit 5	Thomas G. Shaia
Circuit 14	Thomas A. Edmonds
Circuit 17	Carole H. Capsalis
Circuit 17	G. L. "Rex" Flynn, Jr.
Circuit 17	Jennifer S. Golden
Circuit 19	Chidinma U. Harley
Circuit 19	Luis A. Perez
Circuit 19	Debra L. Powers
Circuit 19	Robert B. "Bob" Walker
Circuit 22	W. Huntington "Hunter" Byrnes, Sr.
Circuit 23	Daniel P. Frankl
Circuit 29	Bradley D. Fleming
Circuit 30	D. Sue Baker
Circuit 31	Anna B. Bristle
Member at Large	James W. Hundley
DC Chair	Candace A. Blydenburgh

**Council Invitees:**

Solomon H. Ashby, Jr.	Old Dominion Bar Association
Shannon L. Taylor	Virginia Association of Commonwealth's Attorneys
Valerie O'Brien	Virginia Trial Lawyers Association

**Also attending:**

Cameron M. Rountree	VSB Executive Director and Chief Operating Officer
Janet P. Van Cuyk	VSB Deputy Executive Director
Renu M. Brennan	VSB Bar Counsel
Sylvia S. Daniel	VSB Assistant to the Deputy Executive Director
DaVida M. Davis	VSB Director of Regulatory Compliance
Crista L. Gantz	VSB Director of Access to Legal Services
Emily F. Hedrick	VSB Ethics Counsel
Crystal T. Hendrick	VSB Director of Finance and Procurement
Shawne D. Moore	VSB Assistant to the Executive Director
Caryn B. Persinger	VSB Director of Communications
Maureen D. Stengel	VSB Director of Bar Services

**I. Reports and Information Items****A. President's Report**

President Chidi I. James reported on his activities. The President's Report for October 2023 was included in the materials provided to Council.

**B. Executive Director's Report**

Executive Director Cameron M. Rountree reported on matters relating to the VSB. The Executive Director's October 2023 report was included in the materials provided to the Council.



**C. Financial Reports**

Director of Finance Crystal T. Hendrick presented the VSB financial reports. The Financial Report for the Year Ended June 30, 2023, and the Financial Report as of August 31, 2023, were included in the materials provided to the Council.

**D. Bar Counsel Report**

Bar Counsel Renu M. Brennan reported on the activities in the Office of Bar Counsel. The Disciplinary System report dated September 21, 2023, and the October 10, 2023 Report Update were included in the materials provided to Council.

**E. Conference of Local & Specialty Bar Associations Report**

Chair Dillina W. Stickley reported on the activities of the Conference of Local & Specialty Bar Associations (CLSBA). A copy of the CLSBA report dated October 12-13, 2023, was included in the materials provided to Council.

**F. Diversity Conference Report**

President Chidi I. James presented the report on the activities of the Diversity Conference on behalf of chair Candace Blydenburgh. The Report of the Diversity Conference dated September 2023 was included in the materials provided to Council.

**G. Senior Lawyers Conference Report**

Chair W. Carter Younger reported on the activities of the Senior Lawyers Conference. The Report of the Senior Lawyers Conference dated October 13, 2023, was included in the materials provided to Council.

**H. Young Lawyer Conference Report**

Young Lawyer Conference (YLC) President Craig E. Ellis reported on the activities of the YLC. The YLC President's Report dated October 2023 was included in the materials provided to Council.

**I. Standing Committee on Access to Legal Services Report**

Chair Joanna L. Suyes provided a summary of the pro bono activities reported by the VSB members. A copy of the Access to Legal Services Committee's (Access Committee's) October 2023 Pro Bono Month Report was included in the materials provided to Council.

**II. Action Items**

**A. Minutes of the June 15, 2023 Meeting**

President Chidi I. James presented the minutes of the June 15, 2023, meeting and solicited a motion. A motion was made by Bruce H. Russell II and seconded by Timothy R. Baskerville to approve the minutes of the June 15, 2023, meeting.

The motion passed and Council approved the minutes of the June 15, 2023, meeting. Member Gary V. Davis voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**B. Request for Approval of the Amendments to the Conference Bylaws**

Deputy Executive Director Janet P. Van Cuyk, on behalf of the chairs of the Senior Lawyers Conference (SLC), the YLC, and the CLSBA, presented the request for approval of the amendments to each conferences’ bylaws. A copy of the memo dated October 13, 2023, for the Proposed Changes to the Bylaws of the SLC and YLC and to the Bylaws and Constitution of the CLSBA was included in the materials provided to the Council. A motion was made by Bruce H. Russell II and seconded by Stephanie E. Grana to approve the following.

1. Amendments to the CLSBA Bylaws and Repeal of the CLSBA Constitution.
2. Amendments to the SLC Bylaws.
3. Amendments to the YLC Bylaws.

The motion passed and Council approved the requests. Members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**C. Request for Approval of the Amendments to the VSB Bylaws Relating to Quorum and the Virginia Freedom of Information Act Requirements**

Deputy Executive Director Janet P. Van Cuyk, on behalf of the chair of the Access Committee, presented the request for approval of the amendments to the VSB Bylaws relating to quorum and Virginia Freedom of Information Act Requirements. A copy of the memo dated October 13, 2023, for the VSB Bylaws Proposed Changes Regarding Committee and Board Quorum Requirements was included in the materials provided to the Council. A motion was made by Joanna L. Suyes and seconded by Susan B. Tarley to approve the amendments to the VSB Bylaws relating to quorum and Virginia Freedom of Information Act requirements.

The motion passed and Council approved the requests. Members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**D. Request for Approval from the Committee on Access to Legal Services to Authorize the Virginia State Bar to Engage in Legislative Activity in Support of Virginia Child Dependency Legal Representation Workgroup Recommendations**

Chair Joanna L. Suyes presented the request from the Access Committee for approval to authorize the VSB to engage in legislative activity. A copy of the memo dated September 19, 2023, requesting approval of VSB Legislative Activity to Support Efforts to Improve the Quality of Legal Services Provided by Court-Appointed Parents’ Counsel was included in the materials provided to

the Council. A motion was made by Bruce H. Russell II and seconded by Tamika D. Jones to approve the request of the Access Committee for submission to the Supreme Court of Virginia for approval.

The motion passed and Council approved the request. Member Allen F. Bareford voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**E. Request for Approval of Proposed LEO 1900, Regarding Disclosure of the Death of a Client**

Chair Michael M. York presented a request from the Legal Ethics Committee (Ethics Committee) to the Council for Proposed Legal Ethics Opinion 1900 addressing a lawyer’s duty to disclose the death of a client. A copy of the memo from Ethics Counsel Emily Hedrick, dated October 13, 2023, and Draft Opinion, dated August 18, 2023, were included in the materials provided to the Council. After a discussion, a motion was made by Michael M. York and seconded by David P. Weber to amend the proposed draft opinion. The motion to amend was adopted unanimously by voice vote. A motion was made by Michael M. York and seconded by David P. Weber to approve the proposed draft opinion, as amended, for submission to the Supreme Court of Virginia.

The motion passed and Council approved the request. Members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**F. Request for Approval of Proposed Rule 8.4(f), Prohibiting Agreements Not to File Bar Complaint**

Chair Michael M. York presented a request from the Ethics Committee to the Council for Proposed Rule 8.4(f) – prohibiting agreements not to file a bar complaint. A copy of the memo from Ethics Counsel Emily Hedrick, dated October 13, 2023, was included in the materials provided to Council. After a discussion, a motion was made by Michael M. York and seconded by Bruce H. Russell II to accept the recommendations of the Ethics Committee and approve the proposed amendment (f) to Rule 8.4 and forward the memo for submission to the Supreme Court of Virginia.

The motion passed and Council approved the request. Members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes

**G. Request for Approval of Appointment for Clients’ Protection Fund Board Member**

Deputy Executive Director Janet P. Van Cuyk presented a request, on behalf of Brian D. Lytle, Chair of the Clients’ Protection Fund (CPF) Board, for approval of a 2023-2024 interim appointment. A copy of the October 13, 2023, memo from chair Brian D. Lytle, was included in the materials provided to the Council. A motion was made by Bruce H. Russell II and seconded by Susan

B. Tarley to approve the appointment of attorney Jacqueline M. Reiner to the CPF Board, with a term ending on June 30, 2024.

The motion passed and Council approved the request. Members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

**H. Request for Approval of Resolution Honoring Mark D. Braley**

Executive Director Cameron M. Rountree presented a resolution drafted in honor of Mark D. Braley, former executive director of the Legal Services Corporation of Virginia, in appreciation of 19 years of service to the Access Committee and 31 years of service to Virginia's legal aid programs. A copy of the resolution was included in the materials provided to the Council. A motion to adopt the resolution was made by Michael M. York and seconded by Timothy R. Baskerville.

The motion passed unanimously, and Council members verbally voted "yes" in favor of adopting the resolution.

There being no other business for the Council, at 10:54 a.m. the meeting was adjourned.

<b>Response #</b>	<b>Started At (CDT)</b>	<b>Screen Name</b>	<b>F: Do you approve the Proposed Rule 8.4(f), Prohibiting Agreements Not to File Bar Complaint?</b>
1	10/13/2023 9:44	Chidi I. James	Yes
2	10/13/2023 9:44	Corrynn Peters	Yes
3	10/13/2023 9:44	Patrick C. Murphrey	Yes
4	10/13/2023 9:44	Michael York	Yes
5	10/13/2023 9:44	Gobind Sethi	Yes
6	10/13/2023 9:45	Gina Schaecher	Yes
7	10/13/2023 9:45	George Eliades	No
8	10/13/2023 9:45	Tamika Jones	Yes
9	10/13/2023 9:45	Peter McDermott	No
10	10/13/2023 9:44	W. Grant Back	Yes
11	10/13/2023 9:44	Lisa Wilson	Yes
12	10/13/2023 9:44	Samuel Towell	Yes
13	10/13/2023 9:44	Patricia Smith	Yes
14	10/13/2023 9:45	Carly J Hart	Yes
15	10/13/2023 9:44	Kevin W. Holt	Yes
16	10/13/2023 9:45	Will Egen	Yes
17	10/13/2023 9:44	Bareford Allen	Yes
18	10/13/2023 9:44	Susan Tarley	Yes
19	10/13/2023 9:44	Henry Willett	Yes
20	10/13/2023 9:44	Todd Pilot	Yes
21	10/13/2023 9:44	Paul Melnick	Yes
22	10/13/2023 9:45	Richard Howard-Smith	Yes
23	10/13/2023 9:45	Veronica Meade	Yes
24	10/13/2023 9:44	Dale Pittman	Yes
25	10/13/2023 9:44	STEPHEN K GALLAGHER	No
26	10/13/2023 9:45	Derek Davis	Yes
27	10/13/2023 9:45	Craig E. Ellis	Yes
28	10/13/2023 9:44	Penn Bain	Yes
29	10/13/2023 9:44	DJ Hansen	Yes
30	10/13/2023 9:45	Stephanie Grana	Yes
31	10/13/2023 9:45	Joel McClellan	Yes
32	10/13/2023 9:44	e m wright jr	Yes
33	10/13/2023 9:45	Dr. David P. Weber	Yes
34	10/13/2023 9:44	Susheela Varky	Yes
35	10/13/2023 9:45	Hope Townes	Yes
36	10/13/2023 9:44	W Carter Younger	Yes
37	10/13/2023 9:44	Jeremiah Denton IV	Yes
38	10/13/2023 9:44	Nicole Upshur	Yes
39	10/13/2023 9:44	Dillina Stickley	Yes
40	10/13/2023 9:45	Sebastian M Norton	Yes
41	10/13/2023 9:45	Nathan Olson	Yes
42	10/13/2023 9:44	Lonnie Nunley	Yes
43	10/13/2023 9:44	Marie Washington	Yes
44	10/13/2023 9:44	Susan Butler	Yes
45	10/13/2023 9:45	Cullen Seltzer	Yes
46	10/13/2023 9:44	Timothy Baskerville	Yes
47	10/13/2023 9:44	Joanna Suyes	No

48	10/13/2023 9:44	Lenard Myers	No
49	10/13/2023 9:44	Bruce Russell	Yes
50	10/13/2023 9:44	Molly Newton	Yes
51	10/13/2023 9:45	Caswell Richardson	Yes
52	10/13/2023 9:44	Jonathan Petty	Yes
53	10/13/2023 9:44	Naveed Kalantar	Yes
54	10/13/2023 9:44	Nick Gehrig	Yes
55	10/13/2023 9:45	D. Brian Richardson	No
56	10/13/2023 9:44	Glen Andrew Hall	Yes

**Response Count**

**Yes 50**

**No 6**

**Abstain 0**

**Total 56**