

Virginia Lawyer Register

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Kenneth Edward Hildebrand	Virginia Beach, VA		November 21, 2008	n/a
Gerard Raymond Marks	Christiansburg, VA		October 6, 2008	n/a
Steven Jeffrey Riggs	Santa Ana, CA		September 16, 2008	n/a
Robert Ray Stone, Jr.	Arlington, VA		October 23, 2008	n/a
Andrew Mark Steinberg	Woodbridge, VA		November 19, 2008	n/a
Suspension — Failure to Comply with Board Order				
Timothy Martin Barrett	Yorktown, VA	Disciplinary Board	September 25, 2008	n/a
Suspensions — Failure to Comply with Subpoena				
Anthony Gerome Davis	Hampton, VA	Disciplinary Board	November 13, 2008	n/a
Uzair Mansoor Siddiqui	Manassas, VA	Disciplinary Board	October 1, 2008	n/a

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The Virginia State Bar publishes the *Virginia Lawyer Register* five times annually. The *Register* is primarily a compilation of disciplinary actions against attorneys licensed to practice law in the commonwealth; administrative suspensions; legal ethics opinions; and proposed amendments to the Rules of the Supreme Court of Virginia. All documents submitted to the state bar for inclusion in the *Register* are subject to alteration as to typography and formatting, in order to conform to the requirements of the *Register*, without changing the intent of any document.

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DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Supreme Court of Virginia, Part 6, § II, eff. Jan. 1, 2000) or another of the Supreme Court rules (Rules). Copies of complete disciplinary orders are available at the Web link provided with each summary or by contacting the Virginia State Bar Clerk's Office at (804) 775-0539 or clerk@vsb.org. VSB docket numbers are provided.

CIRCUIT COURTS

BRIAN GAY

Virginia Beach, Virginia
06-022-2717

On September 30, 2008, a three-judge panel in the Virginia Beach Circuit Court imposed a public admonition on Brian Gay for engaging in deliberately wrongful acts that reflect adversely upon the lawyer's honesty, trustworthiness, or fitness to practice law. The misconduct occurred in connection with a defamation suit Mr. Gay filed against a former client. RPC 8.4(b)

Order: <http://www.vsb.org/docs/GayOrder.pdf>
Public admonition: http://www.vsb.org/docs/Gay_Pub-Admn.pdf

DISCIPLINARY BOARD

STEVEN ROSS BELCHER

Lebanon, Illinois
09-000-076523

On October 27, 2008, the Virginia State Bar Disciplinary Board suspended Stephen Ross Belcher's license as an associate-status lawyer in Virginia for five days, in response to a sanction by the Supreme Court of Missouri for misconduct in that state. The Virginia suspension was effective October 23-27, 2008, which was the time his Virginia license was summarily suspended pending a reciprocal disciplinary hearing. In Missouri, Mr. Belcher received a six-month suspension that was stayed pending a probationary term. This was an agreed disposition of the Virginia matter. Rules Part 6, §IV, ¶13.I.7.a

http://www.vsb.org/docs/Belcher_12-4-08.pdf

DAVID CHARLES DICKEY

Stanardsville, Virginia
06-070-3222
Crespa Case No. 07-000-1187

On September 19, 2008, the Virginia State Bar Disciplinary Board suspended David Charles Dickey's license to practice law for thirteen months with twelve months suspended. The resulting thirty-day suspension begins December 15, 2008. The board also suspended Mr. Dickey's registration as a settlement attorney authorized under the Consumer Real Estate Settlement Protection Act for the same time period. He violated disciplinary rules that govern diligence, communication, declining or terminating representation, and responsibilities regarding nonlawyer assistants and statutes that govern real estate closings. Mr. Dickey's law office performed a residential real estate closing while his license was administratively suspended for his failure to comply with a subpoena duces tecum from the VSB. This was an agreed disposition of misconduct charges against Mr. Dickey. RPC 1.3(a),(b); 1.4(a),(b); 1.16(a)(1),(2), (d); 5.3(a),(b),(c)(1),(2); 5.5(a)(1),(2). CRESPA Violations Va. Code §§ 6.1-2.21A,C,DI,D2; 6.1-2.26A. VSB Regulations promulgated under CRESPA 15-VAC-5-80-30; 15-VAC-5-80-40; 15-VAC-5-80-50 A&B

http://www.vsb.org/docs/Dickey_10-30-08.pdf

OWAIIAN MAURICE JONES

Fredericksburg, Virginia
09-000-076527

On September 26, 2008, the Virginia State Bar Disciplinary Board revoked Owaiian Maurice Jones's license to practice law for failing to comply with rules of the Supreme Court of Virginia that require an attorney to notify clients and others when he or she has been suspended. Mr. Jones was suspended for eighteen months effective June 27, 2008. After clients reported to the bar that Mr. Jones had not notified them and they could not locate him, his practice was placed in receivership by Stafford County Circuit Court on August 4, 2008. Rules Part 6, §IV, ¶13.M

http://www.vsb.org/docs/Jones_110608.pdf

DISCIPLINARY SUMMARIES

JOHN FREDRICK MCGARVEY

Richmond, Virginia
08-000-074826

On September 26, 2008, the Virginia State Bar Disciplinary Board suspended John Fredrick McGarvey's license to practice law for eighteen months based on a conviction in the City of Richmond Circuit Court of driving under the influence—third offense. The suspension is effective retroactive to April 24, 2008 — the date that his license was summarily suspended by the board pending a show cause hearing. Rules Part 6, §IV, ¶13.I.5.b

http://www.vsb.org/docs/McGarvey_12-4-08.pdf

ROBERT EDWARD MITTENDORFF

Washington, D.C.
05-051-4489, 06-051-3136, 07-051-0787, 08-051-074404, 08-051-072084

On October 8, 2008, the Virginia State Bar Disciplinary Board revoked Robert E. Mittendorff's license to practice law. Mr. Mittendorff admitted that he could not defend himself against pending complaints that alleged he accepted money to perform work for clients, did not perform the work, and did not respond to their efforts to contact him. He consented to the revocation. Rules Part 6, §IV, ¶13.L

http://www.vsb.org/docs/Mittendorff_11-20-08.pdf

NAZANIN MALEKALKETAB NASRI

Arlington, Virginia
08-000-074900

On August 22, 2008, the Virginia State Bar Disciplinary Board revoked Nazanin Malekalketab Nasri's license to practice law, effective April 29, 2008. Ms. Nasri pleaded guilty to conspiracy to commit immigration fraud in the U.S. District Court—Eastern District of Virginia in Alexandria. Her license was summarily suspended on April 29, 2008, pending a show cause hearing. Rules Part 6, §IV, ¶13.I.5.b

http://www.vsb.org/docs/Nasri_10-28-08.pdf

EVA LAVONNE STEPHENSON PLUM

Craigsville, Virginia
09-000-076230

On September 26, 2008, the Virginia State Bar Disciplinary Board suspended Eva Lavonne Stephenson Plum's license to practice law for one year and one day. Ms. Plum was found guilty on June 7, 2008, in Augusta County Circuit Court of eluding police in a vehicle. On August 29, 2008, the board summarily suspended her law license pending a show cause hearing. Rules Part 6, §IV, ¶13.I.5.b

http://www.vsb.org/docs/PLUM_10-8-08.pdf

PETER CAMPBELL SACKETT

Lynchburg, Virginia
07-090-2130, 07-090-070324

On September 26, 2008, the Virginia State Bar Disciplinary Board imposed a thirty-day suspension with terms on Peter Campbell Sackett. The suspension, effective October 6, 2008, resulted from Mr. Sackett's failure to comply with the terms of a public reprimand issued October 12, 2007. He must employ a certified public accountant to bring his accounts into compliance with the Rules of Professional Conduct or his license will be suspended for one year. This was an agreed disposition. Rules Part 6, §IV, ¶13.I.4

http://www.vsb.org/docs/Sackett_11-17-08.pdf

JAY H. ZIMMERMAN

Virginia Beach, Virginia
07-021-2047

On September 26, 2008, the Virginia State Bar Disciplinary Board publicly reprimanded Jay H. Zimmerman for violating professional rules that govern diligence and safekeeping property. The misconduct occurred during a real estate settlement. RPC 1.3(a); 1.15(c)

http://www.vsb.org/docs/Zimmerman_11-20-08.pdf

DISCIPLINARY SUMMARIES

DISTRICT COMMITTEES

KRISTINA MARIE K. FITZGERALD

King George, Virginia

06-032-3112

On October 24, 2008, a Virginia State Bar Third District Subcommittee publicly reprimanded Kristina Marie K. Fitzgerald with terms for violating professional rules that govern diligence; communication; declining or terminating representation; candor toward the tribunal; and misconduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on fitness to practice law. The violations occurred in a domestic relations matter. This was an agreed disposition. Rules 1.3(a),(b),(c); 1.4(a); 1.16(c),(d); 3.3(a)(1); 8.4(c)

http://www.vsb.org/docs/Fitzgerald_110608.pdf

RICHARD JAMES OULTON

Charlottesville, Virginia

05-032-3243

On September 26, 2008, a Virginia State Bar Third District Subcommittee publicly admonished Richard James Oulton with terms for violating professional rules that govern fees, conflict of interest—prohibited transactions, safekeeping property, declining or terminating representation, and attempted misconduct. His fee agreement in a bankruptcy case contained language that violated or attempted to violate the disciplinary rules. Mr. Oulton must stop using the fee agreement. This was an agreed disposition. RPC 1.5(a)(1-8); 1.8(h); 1.15(a)(1), (2), (c)(4); 1.16(d), (e); 8.4(a)

http://www.vsb.org/docs/Oulton_11-20-08.pdf

For easier access to the documents cited in this magazine, *Virginia Lawyer Register* is posted with live Internet links to the documents at http://www.vsb.org/docs/valawyer magazine/Register_2009-01.pdf.

The following proposal is published for public comment. All comments should be submitted in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on the day of deadline.

**PROPOSED AMENDMENT TO RULE 7.4(D)
OF THE RULES OF PROFESSIONAL CONDUCT**

Deadline for comment: February 16, 2009.

Pursuant to Part Six: Section IV, Paragraph 10(c) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on February 28, 2009, in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, a proposed amendment to Rule 7.4(d) of the Rules of Professional Conduct.

RULE 7.4(d)

The Standing Committee on Lawyer Advertising and Solicitation (SCOLAS) proposes an amendment to Rule 7.4(d) that currently allows a lawyer to communicate the fact the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication contains a disclaimer indicating there is no procedure in the Commonwealth of Virginia for approving certifying organizations. The proposed amendment would allow a lawyer to advertise a specialty certification without the need for a disclaimer if the certification was granted by an organization that is currently accredited by the American Bar Association (ABA). The proposed amendment would continue to require a disclaimer when advertising a certification that has been granted by an organization that is not accredited by the ABA because such organizations lack the rigorous requirements set forth in the ABA accreditation process.

The intent of SCOLAS in proposing the rule amendment is to provide an objective standard by which a lawyer's claim that he or she is certified as a specialist may be evaluated. Permitting a lawyer to advertise a specialty certification if bestowed by an ABA-accredited organization accomplishes this end based upon the objective criteria employed in the certification process. SCOLAS believes that the stringent requirements imposed upon a certifying organization seeking ABA accreditation, as well as the public's ability to readily access information about a certifying organization, eliminates the necessity for any disclaimer. Allowing lawyers to advertise a specialty certification which has been conferred on the basis of objective rather than subjective criteria protects the public by providing truthful, reliable information to the consumer of legal services. This is consistent with the trend in lawyer advertising

as evidenced by the decisions in prior First Amendment cases decided by the U.S. Supreme Court, which permit unrestricted lawyer advertising as long as it is truthful and not inherently misleading.

Full proposal available at <http://www.vsb.org/site/regulation/prop-amend-rule-74d>, or by calling (804) 775-0557.

**FDIC TO PROVIDE UNLIMITED PROTECTION
TO IOLTA ACCOUNTS**

Lawyers will now have unlimited Federal Deposit Insurance Corporation (FDIC) coverage on their Interest on Lawyer Trust Accounts, thanks to efforts by bar regulators, legal services, and other interested organizations that convinced U.S. Department of the Treasury officials to amend proposed regulations. Previously, IOLTAs were covered only up to \$250,000 and only non-interest fiduciary accounts qualified for unlimited FDIC coverage under the Temporary Liquidity Guarantee Program. Lawyers with funds in excess of \$250,000 would have faced pressure to convert their IOLTAs to non-interest accounts in order to protect client funds in the event of bank failures. This, in turn, would have dramatically affected legal service organizations that rely on IOLTAs to fund legal services for the poor. More than 750 comments were submitted in response to the FDIC's proposed regulations, with more than half urging the FDIC to fully insure IOLTA.

Under the final rules issued by the FDIC, IOLTAs will be considered non-interest bearing accounts and eligible for coverage under the guarantee program. The Temporary Liquidity Guarantee Program will last only through December 31, 2009.

To learn more about the program, visit the FDIC's website at: <http://www.fdic.gov/regulations/resources/TLGP/index.html>

**SUPREME COURT APPROVED
AMENDMENTS AND NEW RULE**

RULE 2.11

The Supreme Court of Virginia approved, effective immediately, a proposed amendment to Rule 2.11, Comment [g] of The Rules of Professional Conduct, which included a reference to Rule 2.2 that no longer exists.

Details can be found at <http://www.vsb.org/site/regulation/amendments/>

FOREIGN LEGAL CONSULTANTS RULE

Lawyers who are licensed in a jurisdiction outside the United States now must be certified under Rule 1A:7 Certification of Foreign Legal Consultants http://www.courts.state.va.us/scv/amendments/2008_1230_1a7_rule.pdf if they want to establish an office and practice in Virginia to provide legal services based on the law of the foreign jurisdiction.

The Supreme Court of Virginia adopted the rule on December 30, 2008, and it went into effect January 1, 2009.

Certification is not required for foreign lawyers who provide legal services in Virginia only on a temporary and occasional basis. Virginia-licensed lawyers who are also licensed by a jurisdiction outside the U.S. need not be certified as foreign legal consultants (FLCs).

The FLC Rule would apply, for example, to a lawyer licensed in India who wishes to open an office in Virginia from which he or she gives advice on matters of Indian law. That lawyer must be certified as a foreign legal consultant or face prosecution for the unauthorized practice of law.

Certification will be handled by the Virginia Board of Bar Examiners, which is developing an application form that will be posted at <http://www.vbbe.state.va.us/forms.html>.

To qualify, a foreign lawyer must be at least twenty-six and a member in good standing of a recognized legal profession. He or she must have practiced for at least five of the seven years preceding the application.

The rule requires the applicant to submit a certificate of good standing from each jurisdiction of licensure, a letter of recommendation, and other documents — all translated into English. The applicant also must document his or her compliance with U.S. immigration laws.

The Board of Bar Examiners will conduct a character and fitness investigation of each applicant.

Once certified, a foreign legal consultant (FLC) must pay a \$250 annual fee to the VSB. FLCs will be subject to regulatory oversight by the VSB. Complaints against FLCs will be handled by the bar's disciplinary department.

The certification carves out a limited scope of practice for FLCs, and offers opportunities for practice previously unavailable in Virginia.

FLCs can be partners in a Virginia law firm, and they can be employed by law firms. They can work as in-house counsel. They are accorded attorney-client, work product, and other professional privileges.

The public will have access to the FLC's contact information and record of public discipline.

Adoption of the FLC Rule was recommended by the VSB Multijurisdictional Practice Task Force. Two other associated rules also adopted last month by the Court permit lawyers licensed outside Virginia — including lawyers licensed in jurisdictions outside the U.S. — to provide legal services here on a “temporary and occasional basis,” and extend the VSB's disciplinary authority over all lawyers who provide legal services in Virginia, regardless of where they are licensed. (Rules 5.5 and 8.5 <http://www.vsb.org/docs/Rules-5.5-8.5-final.pdf>)

VSB Executive Director Karen A. Gould reported in the December 2008 issue of *Virginia Lawyer* that the new foreign legal consultant status provides more public protection, offers law firms unprecedented opportunity to broaden their client services in a multinational marketplace, and opens reciprocal relationships so that Virginia lawyers can expect similar courtesies when they are called on to give advice in other countries.

FINAL LEGAL ETHICS OPINION

LEGAL ETHICS OPINION 1844

The VSB's Standing Committee on Legal Ethics issued the following LEO as final on December 18, 2008.

Legal Ethics Opinion 1844
Ethical Duty of Guardian Ad Litem to Investigate and Report Allegation of Child Abuse and Neglect.

Details can be found at <http://www.vacle.org/opinions/1844.htm>

NOTICE TO VSB MEMBERS

RULE CHANGES TO BE CONSIDERED BY VSB COUNCIL IN FEBRUARY

The following proposed rule and regulatory changes will be considered by the Virginia State Bar Council at its meeting on February 28, 2009, in Richmond. Links to the full text of the proposals are provided. The proposals were published previously in the *Virginia Lawyer Register*. Proposed changes that require public comment can be accessed from the VSB home page, <http://www.vsb.org>, at Resources — Proposed Rule Changes.

PROPOSED AMENDMENTS TO PARAGRAPH 13, PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

Paragraph 13 A — Amendment to the definition of “Costs” to add electronic and telephonic conferencing costs to the items that may be charged to a respondent against whom discipline is imposed. <http://www.vsb.org/site/regulation/p13-definition-of-costs>

Paragraph 13 A — Amendment to the definition of “Terms” to allow imposition of terms for certain suspensions. <http://www.vsb.org/site/regulations/p13-definition-of-terms>

Paragraph 13 I (8)(b) — Amendment to increase reinstatement bond from \$3,500 to \$5,000. <http://www.vsb.org/site/regulation/p13-increase-amount-reinstatement-bond>

The comment period for these proposals ends February 1.

PROPOSED AMENDMENTS TO PARAGRAPH 19, PROCEDURE FOR ADMINISTRATIVE SUSPENSION OF A MEMBER

Paragraph 19 — Amendments to: 1) impose an additional \$100 delinquency fee for failure to comply with Mandatory Continuing Education certification by February 1; and 2) delete certified mail requirement for initial notice of noncompliance with membership obligations. The comment period for these proposals ends February 6.

Full proposal available at <http://www.vsb.org/site/regulation/para19-102108>, or by calling (804) 775-0557.

PROPOSED AMENDMENTS TO RULE 7.4 (D) OF THE RULES OF PROFESSIONAL CONDUCT, COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION

Rule 7.4(d) — Amendment would permit a lawyer to advertise a specialty certification without a disclaimer if the certification is granted by an organization accredited by the American Bar Association. <http://www.vsb.org/docs/Rule7.4-9-10-08.pdf>

The public comment period for this proposal ends February 16.

PROPOSED AMENDMENTS TO CONSUMER REAL ESTATE SETTLEMENT PROTECTION ACT REGULATIONS

15 VAC 5-80-40 — Amendment would make Unauthorized Practice of Law Guidelines available on the VSB website rather than being provided to the settlement agent on each registration and re-registration. <http://www.vsb.org/site/regulation/crespa-102108>

15 VAC 5-80-40 — Amendment would permit attorney settlement agents to file a copy of surety bond rather than the original bond. <http://www.vsb.org/site/regulation/crespa-102108>

The public comment period for these proposals ends February 6.

PROPOSED AMENDMENT TO CLIENTS’ PROTECTION FUND RULES OF PROCEDURE

Rule III(1) — Amendment would eliminate the requirement to use certified mail when sending a copy of the petition to the lawyer involved. The lawyer’s copy would be sent by regular mail. <http://www.vsb.org/docs/CPF-Proposed-chg.pdf>

NOTICE TO MEMBERS

PRESIDENT-ELECT HUDDLESTON SEEKS MEMBERS FOR 2009–10 VIRGINIA STATE BAR COMMITTEES

President-elect Jon D. Huddleston invites Virginia lawyers to volunteer for committees essential to the self-regulation of the legal profession. If interested, fill out the form, which lists current openings, at the link provided and return it to the bar at breeden@vsb.org by March 9, 2009. Persons of diversity are encouraged to apply.

<http://www.vsb.org/site/news/item/2009-10-committees/>