

Virginia Lawyer Register

The Official Publication of the Virginia State Bar

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DISCIPLINARY PROCEEDINGS

Respondent's Name	Address of Record	Action	Effective Date	pg
Circuit Courts				
*Curtis Tyrone Brown	Norfolk, VA	Suspension – two 12 months (concurrent)	May 26, 2009	4
Timothy O'Connor Johnson	Richmond, VA	Suspension – 30 Days	August 1, 2009	
*Jonathan Alden Moseley	Southport, NC	Dismissal De Minimus	July 14, 2009	4
		Suspension – 6 months	June 15, 2009	4
Disciplinary Board				
Barbara Lyn Brackett	Vienna, VA	Suspension – 30 days	May 27, 2009	4
David Eugene Cecil	Grundy, VA	Revocation	September 25, 2009	4
James Kevin Clarke	Richmond, VA	Suspension – 1 year w/terms	October 25, 2009	4
Walter Franklin Green IV	Harrisonburg, VA	Suspension – 18 months	October 19, 2009	4
Reuben Voll Greene	Richmond, VA	Public Reprimand w/terms	June 26, 2009	5
Thomas Dixon Johnston	Richmond, VA	Revocation	August 11, 2009	5
Vaughan Christopher Jones	Richmond, VA	Public Reprimand w/terms	August 12, 2009	5
John Crane King	Plano, TX	Revocation	June 26, 2009	5
Ann Marie Miller	Roanoke, VA	Revocation	October 20, 2009	5
Robert E. Miller	Newman, GA	Revocation	June 26, 2009	5
Ralph E. Mirarchi	Wayne, PA	Revocation	October 20, 2009	5
Peter Campbell Sackett	Lynchburg, VA	Suspension – 18 months w/terms	October 1, 2009	5
Alfred M. Tripp	Norfolk, VA	Revocation	October 20, 2009	6
Bruce Harold Troxell	Annandale, VA	Revocation	October 1, 2009	6
District Committees				
Christopher Jason Agresto	Leesburg, VA	Public Reprimand w/terms	October 9, 2009	6
Paul Michael Childers	Grundy, VA	Public Reprimand	August 28, 2009	6
Anthony Elmer Collins	Wise, VA	Public Reprimand	August 18, 2009	6
Michael Bruce Hamar	Norfolk, VA	Public Reprimand w/terms	July 13, 2009	6
Raphael Benedict Hartley III	Pulaski, VA	Public Reprimand w/terms	October 9, 2009	6
Vaughan Christopher Jones	Richmond, VA	Public Admonition	July 23, 2009	6
David Lassiter Jr.	Richmond, VA	Public Reprimand	September 11, 2009	6
Bradley Glenn Pollack	Woodstock, VA	Public Reprimand w/terms	September 28, 2009	6
Impairment Suspension				
James Alexander Baber III	Richmond, VA		Effective Date July 31, 2009	7
Suspension – Failure to Pay Disciplinary Costs				
Timothy Martin Barrett	Yorktown, VA		Effective Date September 9, 2009	n/a
James Andrew Carter II	Hampton, VA		September 30, 2009	n/a
Wade Trent Compton	Lebanon, VA		July 6, 2009	August 20, 2009
Kevin Michael Cunningham	Tega Cay, SC		July 24, 2009	n/a

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The Official Publication of the Virginia State Bar

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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 PROCEEDINGS

Kelly Ralston Dennis	McLean, VA	April 23, 2009	August 21, 2009	n/a
Thomas Dixon Johnston	Richmond, VA	September 29, 2009		n/a
Anne Marston Lynch	Portsmouth, VA	September 16, 2009		n/a
James Edward Moyler Jr.	Williamsburg, VA	July 23, 2009		n/a
Raul Novo	Chesterfield, VA	August 17, 2009		n/a
Tonja Michelle Roberts	Danville, VA	July 22, 2009		n/a
Peter Campbell Sackett	Lynchburg, VA	July 6, 2009	September 17, 2009	n/a
Leslie Dana Silverman	College Park, MD	July 22, 2009	July 24, 2009	n/a
Alan Sherwin Toppelberg	Arlington, VA	September 1, 2009		

Respondent's Name	Address of Record	Action	Effective Date	pg
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Suspension – Failure to Pay Disciplinary Costs

		Effective Date	Lifted	
Royal Daniel III	Washington, DC	July 13, 2009		n/a
Kelly Ralston Dennis	McLean, VA	April 23, 2009		n/a
Maxime Austria Frias	Virginia Beach, VA	May 18, 2009		n/a
Steven Lieberman	Norfolk, VA	May 15, 2009		n/a
Stephen Lee McPherson	Chesapeake, VA	May 13, 2009		n/a
Brian Merrill Miller	Fairfax, VA	April 23, 2009		n/a
John Lawson Moss	Tazewell, VA	June 25, 2009		n/a
James Spaulding Powell	Golden, CO	May 8, 2009		n/a
Peter Campbell Sackett	Lynchburg, VA	July 6, 2009		n/a
Uzair Mansoor Siddiqui	Manassas, VA	April 20, 2009		n/a
Lindsey Owen Sutherland	Fairfax, VA	July 8, 2009		n/a
Lindsey Owen Sutherland	Fairfax, VA	May 13, 2009		n/a

Suspension – Failure to Comply with Subpoena

		Effective Date	Lifted	
Tina Elizabeth Orr	Norfolk, VA	October 6, 2009		n/a
Jesse Scott Shelor	Vinton, VA	August 19, 2009		n/a
Lindsey Owen Sutherland	Fairfax, VA	September 10, 2009		n/a
Gary Lance Smith	Winchester, VA	September 22, 2009		n/a

*Respondent has noted an appeal with the Supreme Court of Virginia.

**Supreme Court granted stay of suspension pending appeal.

***Respondent withdrew the appeal.

For easier access to the documents cited in this magazine, the *Virginia Lawyer Register* is posted with live Internet links at http://www.vsb.org/docs/valawyer magazine/Register_2009-08.pdf.

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). References to Part 6, § IV, ¶ 13 refer to the reformatted Rules effective May 1, 2009, unless otherwise indicated.

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

CURTIS TYRONE BROWN

Norfolk, Virginia

08-021-071424

On May 28, 2009, the Supreme Court of Virginia granted a stay pending an appeal of the suspension described below. On October 9, 2009, Mr. Brown filed the appeal with the Court.

On May 26, 2009, a three-judge panel in the Norfolk Circuit Court suspended Curtis Tyrone Brown's license to practice law for two twelve-month periods, to be served concurrently. The judges found he violated disciplinary rules that govern making a false statement to a tribunal; knowingly disobeying a standing rule or a ruling of a tribunal made in the context of a proceeding; engaging in conduct intended to disrupt a tribunal; and dishonesty, misrepresentation, and deceit that reflects adversely on the lawyer's fitness to practice. The misconduct occurred in his representation of a plaintiff in a personal injury case. RPC 3.3(a)(1); 3.4(d); 3.5(f); 8.4(c) (only as to dishonesty, misrepresentation, and deceit)

<http://www.vsb.org/docs/Brown-Susp-092409.pdf>

CURTIS TYRONE BROWN

Norfolk, Virginia

VSB Docket No. 00-010-2346

On July 10, 2009, a three-judge panel of the Norfolk Circuit Court suspended Curtis Tyrone Brown's license to practice law for thirty days beginning August 1, 2009. The court found that he violated disciplinary rules that govern candor to a tribunal, fairness to opposing party and counsel, truthfulness in statements to others, and misconduct that involves dishonesty, fraud, deceit, or misrepresentation. The violations occurred in his defense of a client indicted for capital murder for hire. This was an agreed disposition of disciplinary charges against Mr. Brown. RPC 3.3(a)(1); 3.4(d),(i); 4.1(a); 8.4(c)

http://www.vsb.org/docs/Brown_07-22-09.pdf

TIMOTHY O'CONNOR JOHNSON

Richmond, Virginia

06-032-1536

On July 14, 2009, a three-judge panel in the Richmond Circuit Court imposed a dismissal de minimus on Timothy O'Connor Johnson for violating the professional rule that governs safekeeping property. The court heard the matter on appeal of the Virginia State Bar Third District Committee's finding that Mr. Johnson had not appropriately disbursed some proceeds from a client's personal injury case. The court agreed with the committee's finding of misconduct, but reduced the sanction from a public admonition to a dismissal de minimus. RPC 1.15(c)(4)

http://www.vsb.org/docs/Johnson_08-24-09.pdf

JONATHAN ALDEN MOSELEY

Southport, North Carolina

05-070-1200

On June 8, 2009, Mr. Moseley filed an appeal of the following case with the Supreme Court of Virginia.

Effective June 15, 2009, a three-judge panel in Loudoun County Circuit Court suspended Jonathan Alden Moseley's license to practice law for six months. The court found that he violated professional rules that govern candor toward the tribunal, fairness to opposing party and counsel, truthfulness in statements to others, false or reckless remarks about judicial officials, and misconduct. RPC 3.3(a)(1); 3.4(e),(j); 4.1(a); 8.2; 8.4(a-c)

http://www.vsb.org/docs/Moseley_07-28-09.pdf

DISCIPLINARY BOARD

BARBARA LYN BRACKETT

Vienna, Virginia

09-000-079217

On June 26, 2009, the Virginia State Bar Disciplinary Board suspended Barbara Lyn Brackett's license to practice law for thirty days, effective retroactively to May 27, 2009. Ms. Brackett pled guilty on March 23, 2009, in Fairfax County General District Court to writing a bad check. Her license was summarily suspended on May 26, pending the June 26 board hearing. Rules Part 6, § IV, ¶13-22

http://www.vsb.org/docs/Brackett_08-24-09.pdf

DAVID EUGENE CECIL

Grundy, Virginia

09-102-076303

On September 25, 2009, the Virginia State Bar Disciplinary Board revoked David Eugene Cecil's license to practice for violating disciplinary rules that govern misconduct, safekeeping property, fees, and communication. He committed the violations as a trustee and fiduciary and in his handling of a late client's estate. RPC 1.15(a)(1), (2), (b), (c)(1-4), (d)(1)(i-iv), (2)(i-iii), (e)(1)(i-v), (2)(i-iii), (f)(2), (3), (4)(i)(ii), (5)(i-iii), (6); 1.4(a), (b); 1.5(a)(1-8), (b); and 8.4(a-c)

<http://www.vsb.org/docs/Cecil-Revocation-101309.pdf>

JAMES KEVIN CLARKE

Richmond, Virginia

08-031-071682, 07-031-070760, 07-031-064896, 08-031-073850, 08-031-073851

Effective October 25, 2009, the Virginia State Bar Disciplinary Board imposed a one-year suspension with terms of James Kevin Clarke's license to practice law, for violating disciplinary rules that govern diligence, communication, declining or terminating representation, and bar admission and disciplinary matters. This was an agreed disposition of misconduct charges in five cases. RPC 1.3(a),(b); 1.4(a); 1.16(d),(e); 8.1(c)

http://www.vsb.org/docs/Clarke-J_09-25-09.pdf

WALTER FRANKLIN GREEN IV

Harrisonburg, Virginia

05-070-4678, 06-070-0739, 06-070-2089, 06-070-2259

Mr. Green appealed the following decision with the Supreme Court of Virginia on August 25, 2008, and amended the appeal notice on November 20, 2008. On December 12, 2008, the Court granted a stay of his suspension pending the appeal. The Court denied the

DISCIPLINARY SUMMARIES

petition for rehearing on September 24, 2009, and affirmed the VSB Disciplinary Board's decision on October 15, 2009. On October 19, 2009, the board suspended his license for the balance of the eighteen months originally imposed.

On August 22, 2008, the Virginia State Bar Disciplinary Board suspended Walter Franklin Green IV's license to practice law for eighteen months for violating professional rules that govern communication, safekeeping property, and declining or terminating representation. The violations occurred during Mr. Green's representations in a criminal matter and a lawsuit against an insurance company. Two cases against Mr. Green were dismissed. RPC 1.4(a-c); 1.15(a)(2); 1.16(d)

Original Disciplinary Board order:

http://www.vsb.org/docs/Green_Walter_2-19-09.pdf

Supreme Court opinion:

<http://www.courts.state.va.us/opinions/opnscvwp/1082530.pdf>

Final suspension order by Disciplinary Board

http://www.vsb.org/docs/Green_Walter_2-19-09.pdf

REUBEN VOLL GREENE

Richmond

07-033-070166, 08-033-071684, 08-033-074146

On June 26, 2009, the Virginia State Bar Disciplinary Board imposed a public reprimand with terms on Reuben Voll Greene for violating disciplinary rules that govern diligence and communication. The misconduct occurred in three criminal matters. RPC 1.3(a), 1.4(a)

http://www.vsb.org/docs/Greene_07-29-09.pdf

THOMAS DIXON JOHNSTON

Richmond, Virginia

10-000-080283

On August 11, 2009, the Virginia State Bar Disciplinary Board revoked Thomas Dixon Johnston's license to practice law, based on his July 2, 2009, guilty plea in the U.S. District Court for the Eastern District of Virginia to a charge of receipt of child pornography. Mr. Johnston consented to the revocation. His license had been suspended since July 30, 2009, pending a show cause hearing. Rules Part 6, § IV, ¶ 13-28

http://www.vsb.org/docs/Johnston_08-24-09.pdf

VAUGHAN CHRISTOPHER JONES

Richmond, Virginia

08-033-072262, 08-033-072447, 08-033-072448

Effective August 7, 2009, the Virginia State Bar Disciplinary Board imposed a public reprimand with terms on Vaughan Christopher Jones for violating disciplinary rules that govern safekeeping property. This was an agreed disposition of misconduct charges. RPC 1.15(a)(1),(2)

http://www.vsb.org/docs/Jones-072262_08-24-09.pdf

JOHN CRANE KING

Plano, Texas

09-000-079421

On June 26, 2009, the Virginia State Bar Disciplinary Board revoked John Crane King's license to practice law, based on his October 15, 2004, disbarment by the Kansas Supreme Court. His Virginia license was summarily suspended on May 26, 2009, pending a hearing on the matter. Rules Part 6, § IV, ¶ 13-24

http://www.vsb.org/docs/King_08-02-09.pdf

ANN MARIE MILLER

Roanoke, Virginia

10-080-080300

On October 20, 2009, the Virginia State Bar Disciplinary Board revoked Ann Marie Miller's license to practice law. In consenting to the revocation, Ms. Miller admitted that, in bankruptcy cases, she had violated disciplinary rules that govern diligence, communication, safekeeping property, communications concerning a lawyer's services, and misconduct that reflects adversely on the lawyer's fitness to practice law. She acknowledged that at the time of the revocation, the bar was investigating allegations of misconduct. RPC 1.3(a); 1.4(a); 1.15; 7.1; 8.4(b),(c)

On September 30, 2009, the Circuit Court of the City of Roanoke appointed a receiver to take control of her practice, at the request of the Virginia State Bar. All inquiries regarding Ms. Miller's cases should be directed to the receiver:

Archibald Carter Magee Jr.

Magee Goldstein Lasky & Sayers PC

310 First Street SW, Suite1200

P.O. Box 404

Roanoke, VA 24003-0404

Phone: (540) 343-9800 Fax: (540) 343-9898

<http://www.vsb.org/docs/Miller-Consent-102609.pdf>

ROBERT E. MILLER

Newman, Georgia

09-000-078525

On June 26, 2009, the Virginia State Bar Disciplinary Board revoked Robert E. Miller's license to practice law in response to his March 9, 2006, disbarment by the Supreme Court of Florida. His Virginia license was summarily suspended on May 26, 2009, pending a hearing on the matter. Rules Part 6, § IV, ¶ 13-24

http://www.vsb.org/docs/Miller_08-02-09.pdf

RALPH E. MIRARCHI

Wayne, Pennsylvania

10-000-081115

On October 20, 2009, the Virginia State Bar Disciplinary Board revoked Ralph E. Mirarchi's license to practice law, based on his April 29, 2008, guilty plea colloquy to and conviction of theft in the Chester County Court of Common Pleas in Chester, Pennsylvania. Mr. Mirarchi's license was summarily suspended on September 25, 2009, pending a hearing before the board. Rules Part 6, § IV, ¶ 13-28

PETER CAMPBELL SACKETT

Lynchburg

09-000-080072

Effective October 1, 2009, the Virginia State Bar Disciplinary Board suspended Peter Campbell Sackett's license to practice law for eighteen months. Mr. Sackett failed to notify clients, opposing counsel, and the Campbell County Circuit Court of a previous thirty-day suspension, as the Rules of the Supreme Court of Virginia require. This was an agreed disposition of misconduct charges. Rules Part 6, § IV, ¶ 13.M (effective before May 1, 2009)

http://www.vsb.org/docs/Sackett_09-15-09.pdf

DISCIPLINARY SUMMARIES

ALFRED M. TRIPP

Norfolk, Virginia

08-021-073929

On October 20, 2009, the Virginia State Bar Disciplinary Board revoked Alfred M. Tripp's license to practice law. In consenting to the revocation, Mr. Tripp acknowledged that he provided false information on judicial selection questionnaires provided to the General Assembly to support his applications for a judgeship. Rules Part 6, § 4, ¶ 13-28

http://www.vsb.org/docs/Tripp_11-06-09.pdf

BRUCE HAROLD TROXELL

Annandale, Virginia

08-052-075518

On October 1, 2009, the Virginia State Bar Disciplinary Board revoked Bruce Harold Troxell's license to practice law. In consenting to the revocation, Mr. Troxell acknowledged that a disciplinary complaint was pending against him at the time, and if disciplinary proceedings were brought based upon the facts of the complaint he could not defend against them. The case involved payments to the U.S. Patent and Trademark Office that were denied for insufficient funds. Rules Part 6, § IV, ¶ 13-28

http://www.vsb.org/docs/Troxell_10-01-09.pdf

DISTRICT COMMITTEES

CHRISTOPHER JASON AGRESTO

Leesburg, Virginia

08-070-072679, 09-070-076620

On October 9, 2009, a Virginia State Bar Seventh District Subcommittee issued a public reprimand with terms to Christopher Jason Agresto for violating disciplinary rules that govern diligence and safekeeping property. This was an agreed disposition of misconduct charge in two cases. RPC 1.3(a); 1.15(c)(3), 1.15(e)(1)(i-v)

http://www.vsb.org/docs/Agresto_11-05-09.pdf

PAUL MICHAEL CHILDERS

Grundy, Virginia

08-102-073221

On August 28, 2009, the Virginia State Bar Tenth District Committee imposed a public reprimand on Paul Michael Childers for violating professional rules that govern competence, scope of representation, declining or terminating representation, and bar admission and disciplinary matters. The misconduct occurred in Mr. Childers's representation in a court-appointed appeal of a criminal matter. RPC 1.1; 1.2(a); 1.16(c),(e); 8.1(c)

http://www.vsb.org/docs/Childers_09-18-09.pdf

ANTHONY ELMER COLLINS

Wise, Virginia

08-102-062602

On August 18, 2009, a Virginia State Bar Tenth District Subcommittee imposed a public reprimand on Anthony Elmer Collins for violating the disciplinary rule that governs communication. The misconduct occurred while Mr. Collins was serving as a guardian ad litem for a prisoner who was seeking visitation with his daughter. This was an agreed disposition of misconduct charges. RPC 1.4(a)

http://www.vsb.org/docs/collins_090209.pdf

MICHAEL BRUCE HAMAR

Norfolk, Virginia

08-021-072364

On July 13, 2009, a Virginia State Bar Second District Subcommittee imposed a public reprimand with terms on Michael Bruce Hamar for violating professional rules that govern scope of representation, diligence, communication, conflict of interest, safekeeping of property, and declining or terminating representation. The misconduct occurred in his representation of a purchaser in a real estate closing. This was an agreed disposition of disciplinary charges. RPC 1.2(a); 1.3(a),(c); 1.4(a),(b); 1.7(a)(1),(2); 1.15(b),(c)(4); 1.16(a)(1)

http://www.vsb.org/docs/Hamar_08-25-09.pdf

RAPHAEL BENEDICT HARTLEY III

Pulaski, Virginia

09-101-077793, 09-101-077744

On October 9, 2009, a Virginia State Bar Tenth District-Section I Subcommittee imposed a public reprimand with terms on Raphael Benedict Hartley III for violating a professional rule that governs safekeeping property. Mr. Hartley did not audit and reconcile his attorney escrow and trust accounts as the rules require, which led to overdrafts and checks returned for nonsufficient funds. This was an agreed disposition of misconduct charges. RPC 1.15(a)(1),(2), (c)(3), (d)(1)(i-iv),(2)(i-iii), (e)(1)(i-v),(2)(i-iii), (f)(2),(3),(4)(i),(ii),(5)(i-iii),(6)

http://www.vsb.org/docs/Hartley_11-05-09.pdf

VAUGHAN CHRISTOPHER JONES

Richmond, Virginia

08-033-072291, 08-033-073778

On July 23, 2009, the Virginia State Bar Third District, Section III, Subcommittee imposed a public admonition on Vaughan Christopher Jones for violating professional rules that govern competence and diligence. The matter involved a court-appointed appeal of a criminal case in which the client lost his right of appeal because Mr. Jones missed filing deadlines and did not pursue available remedies. This was an agreed disposition of misconduct charges. The subcommittee dismissed a second case against Mr. Jones for lack of clear and convincing evidence. RPC 1.1; 1.3(a)

http://www.vsb.org/docs/Jones-073778_08-24-09.pdf

DAVID LASSITER JR.

Richmond, Virginia

06-032-0336, 06-032-1293, 06-032-1725, 07-032-071140, 08-032-073414

On September 11, 2009, a Virginia State Bar Third District Subcommittee imposed a public reprimand on David Lassiter Jr. for violating professional rules that govern competence, diligence, declining or terminating representation, meritorious claims and contentions, and misconduct that reflects adversely on a lawyer's fitness to practice. The sanctions were imposed in five criminal law cases. This was an agreed disposition of misconduct charges. RPC 1.1; 1.3(a-c); 1.16(c); 3.1; 8.4(c)

http://www.vsb.org/docs/Lassiter_10-09-09.pdf

BRADLEY GLENN POLLACK

Woodstock, Virginia

09-070-077437

On September 28, 2009, a Virginia State Bar Seventh District Subcommittee imposed a public reprimand with terms on Bradley Glenn Pollack for violating the disciplinary rule that governs fairness to opposing party and counsel by threatening to present disciplinary charges against another attorney solely to obtain an advantage in a civil matter, and by

asserting a position and taking action on behalf of a client when it was obvious that such action would serve merely to harass another. This was an agreed disposition of misconduct charges. RPC 3.4(i),(j)

http://www.vsb.org/docs/Pollack_10-09-09.pdf

NOTICES TO MEMBERS

AMENDMENT TO RULE 1.17(A), RULES OF PROFESSIONAL CONDUCT

SALE OF LAW PRACTICE

Effective: January 4, 2010

The Supreme Court of Virginia amended Rule 1.17 to permit a lawyer who sells a portion of a law practice to continue practicing law in the same geographical jurisdiction, but not in the same practice area that was sold. Previously, lawyers were required to discontinue all practice in a geographical area when they sold even a portion of a practice.

The amendment also will require a lawyer who sells a practice to sell the entire practice or area of practice to prevent the buyer from retaining the most attractive or lucrative cases at the expense of clients whose cases are not as desirable, thereby protecting clients who may find it difficult to secure substitute counsel.

Details: <http://www.vsb.org/site/regulation/rule-117>

AMENDMENTS TO RULES OF THE SUPREME COURT PART 6, § IV, ¶¶ 1, 2, 3

ORGANIZATION AND GOVERNMENT OF THE VIRGINIA STATE BAR

Effective: January 4, 2010

The Supreme Court affirmed amendments proposed by the VSB Membership Task Force regarding membership registration and classes of membership. The rules now require that:

- Attorneys licensed or admitted to practice in Virginia must register with the VSB within a specified time period.
- Associate members must be attorneys.
- Associate members can apply for the disabled and retired class of membership.

Details: http://www.vsb.org/docs/part6_para-1-2-3_110209.pdf

RULES 1.9 AND 1.11, RULES OF PROFESSIONAL CONDUCT

CONFLICTS OF INTEREST

Effective: January 4, 2010

The Supreme Court amended Rule 1.11, which addresses special conflicts of interest for former and current government officers and employees. The amendment moves previous Comment [10] into the body of the rule, where it can direct the conduct of lawyers, rather than provide guidance only. The change was recommended by the VSB Standing Committee on Legal Ethics. The text of Comment [10] deals with the issue of disqualification of other lawyers in an agency when one of the lawyers is disqualified from a matter.

In addition, the Court amended Rule 1.9 to include complementary language that provides direction to lawyers regarding law firm disqualifications when lawyers move from private to public employment. This amendment also was recommended by the Ethics Committee.

Details: <http://www.vsb.org/site/regulation/rules-19-and-111>

PROPOSALS FOR PUBLIC COMMENT

The Virginia State Bar is seeking public comment on the following proposals. Comments should be sent in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on the date of deadline.

LEGAL ETHICS OPINION 1852

EMPLOYMENT LIMITATIONS FOR SUSPENDED OR REVOKED LAWYERS

Deadline for comment: November 30, 2009

Summary: This proposed opinion addresses a hypothetical situation of a lawyer convicted of a felony for alleged actions taken on behalf of a client while employed with his former firm. The lawyer assumes his license will be suspended or revoked in the future and seeks advice from the Ethics Committee as to the permissible extent of his involvement with both former firms and other law firms.

The opinion first opines that the lawyer may not be employed in any capacity by the law firm he had previously been associated with at any time on or after the date of the acts that resulted in a suspension or revocation.

The opinion clarifies the trigger date for the employment prohibition in Rule 5.5(a): “the date of the acts which resulted in suspension or revocation” is the date of the alleged misconduct resulting in suspension or revocation of the lawyer’s license and not the date of the felony conviction nor the date that the Disciplinary Board suspends or revokes the lawyer’s license. However, the actual trigger date is both a factual and legal determination beyond the Committee’s purview. The Committee then addresses the employment constraints outlined in Rule 5.5(b) and opines that the lawyer may be employed in a new firm in the capacities specifically listed in Rule 5.5(b) as well as in any position or title, regardless of name, if the work is typically performed by a “consultant, law clerk or legal assistant”; however, the employing firm then may not represent any former client of lawyer or his former law firm.

Conversely, it would be permissible under Rule 5.5(b) for the new firm to employ the lawyer in any other capacity except as a “consultant, law clerk or legal assistant” and continue to represent former clients of the lawyer or his former law firm.

Further, the committee finds nothing in the rules that prohibit the suspended or disbarred lawyer from owning or being employed by a business providing nonlegal services as long as that business did not provide services to one of the lawyer’s former law firms.

Details: <http://www.vsb.org/site/regulation/leo1852-comment>

PROPOSALS FOR PUBLIC COMMENT

LEGAL ETHICS OPINION I853

SEXUAL RELATIONSHIP WITH A CLIENT

Deadline for comment: November 30, 2009

Summary: This proposed opinion generally addresses the issues involved when a lawyer enters into a sexual relationship with a client during the course of the representation. While the Virginia Rules of Professional Conduct contain no specific prohibition against sexual relationships between lawyer and client, the Virginia State Bar Standing Committee on Legal Ethics advises that such conduct could result in situations deemed unethical under the rules.

The lawyer must determine whether in the specific circumstances such conduct:

- (1) jeopardizes the lawyer's ability to competently represent the client (Rule 1.1),
- (2) involves exploitation of the lawyer's fiduciary relationship with the client.
- (3) interferes with the lawyer's independent professional judgment (Rule 2.1),
- (4) creates a conflict of interest between the lawyer and the client (Rule 1.7(a)(2), Rule 1.7 Comment [10] or Rule 1.8(b)),
- (5) jeopardizes the duty of confidentiality owed to the client (Rule 1.6(a)), or
- (6) potentially prejudices the client's matter (Rule 1.3(c)).

Additionally, a lawyer who intentionally uses the fiduciary relationship of lawyer and client to coerce sexual favors from a client may be found to have violated Rule 8.4(b)'s prohibition against a "deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law."

In this proposed opinion, the Ethics Committee concludes that a lawyer should refrain from entering into a sexual relationship with a client as client consent will rarely be sufficient to eliminate any potential ethical violation. In most situations of this type the client's ability to give meaningful and cogent consent is vitiated by the lawyer's potential undue influence and the client's emotional vulnerability. If a problem arose, the lawyer would be called upon to show that the lawyer's conduct did not violate any of the aforementioned ethical concerns, in spite of the consent.

Details: <http://www.vsb.org/site/regulation/leo1853-comment>

RULES OF PROFESSIONAL CONDUCT

AMENDMENTS TO RULE 1.15

SAFEKEEPING PROPERTY

Deadline for comment: November 30, 2009

Proposal: To eliminate redundancy and make the requirements for record keeping by Virginia lawyers more specific. The proposed amended rule would:

- Combine the requirements that apply to lawyers and fiduciaries.
- Eliminate terms used to refer to certain records and replaced them with specific descriptions of the type of records that need to be maintained.
- Eliminate redundant definitions.
- Eliminate detailed requirements from the rule that were specifically applicable to financial institutions, as that information is included in the Regulations for the Approval of Financial Institutions as Depositories for Attorney Trust Accounts in Virginia.
- Require that a lawyer cannot disburse funds or use property of a client or third party without the client's consent. Nor can a lawyer convert or misappropriate funds or property of a client or third party, except as directed by a tribunal;
- Add language to Comment [6] that gives additional guidance to lawyers who use electronic banking transactions.
- Add specific language that requires a lawyer to hold funds in escrow when a third party has made a claim against those funds.
- Add titles to subparagraphs for simplicity and clarity.

(Rule 1.15 of the Rules of the Supreme Court of Virginia, Part 6, § II, Rules of Professional Conduct, effective January 1, 2000)

Details: http://www.vsb.org/docs/Rule-1-15_101909.pdf

MANDATORY CONTINUING LEGAL EDUCATION

Comments on the following proposals should be sent in writing to Gale Cartwright, MCLE Board, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on the date of deadline.

AMENDMENTS TO MCLE REGULATIONS

Deadline for comments: December 30, 2009

Proposal: To amend the MCLE Regulations so they reflect current policies that govern course approval standards, course sponsor responsibilities, and attorney compliance reporting procedures. The changes support the Virginia State Bar's plan to rely on VSB.org, the bar's website, to provide information and MCLE reporting capabilities.

The proposed amendments also include an eight-credit-hour limitation on pre-recorded CLE programs. The change would require attorneys to certify attendance at four or more hours of MCLE-approved live, interactive programs, which can include traditional classroom programs, live telephone seminar, and live Webcasts.

The proposed amendments were approved by the MCLE Board on October 19, 2009.

Details: <http://www.vsb.org/site/regulation/prop-amendments-mcle-regs>