George Mason University School of Law
16TH ANNUAL ETHICS UPDATE
October 14, 2015
9:30am – 11:30am

Ryan A. Brown, Esq.
Arlington Law Group
703-842-3025 x40
rbrown@arlingtonlawgroup.com

1. **Updates on Technology and The Law**
   Rules 1.1, 1.3, 1.4, 1.6, 1.15, 3.3, 3.4, 3.6, 7.1, 7.4, 7.5
   30 minutes
   a. Privacy
      i. **Searches and Technology**

At least 50 law enforcement agencies have equipped themselves with radar detectors that work as motion sensors and effectively allow them to see through walls. In 2014, the U.S. Marshall Service used a radar detector to determine that a parole violator was inside his home. Though they did not have a search warrant, the information gathered by the radar detector allowed them to enter the home on an arrest warrant.

A 2013 Virginia moratorium banned the use of drones for warrantless searches and carrying weapons, while still allowing their use in National Guard training and emergency situations. Five bills before the General Assembly would limit the use of unmanned drones in Virginia, including those used by hobbyists flying model aircraft.

A hidden camera was used by the Charlottesville Fire Department to justify terminating an employee. Police installed a camera in the city employee's office, raising concerns about his expectation of privacy in his office, and editing of video surveillance prior to its admittance into evidence.

Stalkers and abusers are increasingly using spyware to monitor their victims. Tracking and listening devices can be disguised as everyday objects and often retail for very little. Spyware, like the recently shutdown StealthGenie, allows can be installed on a smartphone in a matter of minutes, after which it is "invisible" on the phone but all communication to and from the phone can be monitored remotely.

For the first time, The Supreme Court heard a case considering the threats and the limits of speech on social media. In a case of a man

posting threatening rap lyrics on Facebook, the Court held that conviction of threatening another person over interstate lines requires proof of subjective intent to threaten. *Elonis v. United States* (US Supreme Court 2015)

ii. Wearables

1. The FTC is in talks with Apple to ensure that health data collected by its mobile and wearable devices will not be used without owners' consent. Both iOS 8 and Apple Watch track a wealth of user health data, which is not covered by HIPAA, and the FTC is interested in how the data will be used. Apple has reassured agency officials that the company will not sell users' data to third parties, nor will it allow third-party developers to do so.
2. The introduction of Fit Bit data in court is not necessarily a good thing. There is no standard of movement measurement in the industry - from Nike to Jawbone to Fit Bit – and the data is easily manipulated. Additionally, vital signs are unique to the person and not easily comparable. Finally, the data provided may be irregular and unreliable – and no better than relying on human memory.

b. Social Media in Litigation

i. Victims who seek damages for emotional stress or loss of enjoyment can expect their online profiles to be scrutinized to disprove loss of enjoyment claims – even updates that are not publicly shared can be subpoenaed. But upbeat posts may be misleading, as a 2012 paper confirmed, this not posting depressing news on Facebook does not mean you are over it.
ii. Social media posts may be used to prove bad behavior – for instance, courts may look at photos of defendants drinking to show lack of remorse or prove parole violations.

c. Social Media in your Practice

i. A Court in D.C. recently allowed Service by Text Message where the defendant was shown to be proficient in text message communication. Other courts have also allowed service by email, Facebook, and LinkedIn.
ii. In Florida, text ads are considered a form of written advertisement and must comply with the same legal ethics rules as other ads.
iii. Lawsuits over negative reviews have risen in recent years with the growing popularity of sites such as Yelp!. First Amendment watchdogs are using the opportunity to try to encourage Virginia legislators to pass an anti-SLAPP law that would allow quick dismissal of a case deemed to be targeting First Amendment rights.

d. Bring Your Own Device (BYOD) programs[1]

BYOD programs, where companies allow their employees to bring their own laptop or purchase a laptop through the firm of firm specified brands, have several security issues. BYOD also allows attorneys to access the firms network from these devices, their smartphones, tablets, and other such devices. The biggest problem that has come about because of the increased security breach problem, due to BYOD programs, is that law firms do not tell their attorneys about the breaches. Disclosure of the breaches tends to be on a "need to know" basis and as a result, firms refrain from telling their attorneys and in turn notifying their clients. However, this is unlikely an ethical practice.

Example Security Issues

i. A major flaw in Android phones would allow a hacker access to phone data, microphone, and camera merely by sending a text message to the phone. While Google sent a patch to its partner smartphone makers, the partners have not necessarily sent the patch out to users.
ii. Spotify updated its privacy policy to allow access to users' contact phone numbers, pictures, sensor data, and social media activity. The terms and conditions also state that it is up to the user to ensure that the persons in their contact list are happy to have their contact information shared with Spotify.

Internal Policies

i. Identify & clearly state your BYOD Policy's purpose.
ii. Determine & define the "permissible use" of personal devices.
iii. Set up a clear, unambiguous procedure for registering devices.
iv. Determine what security requirements to make part of your BYOD Policy.
v. Define your data policy.
vi. Determine and describe how you're going to protect your employees' privacy.
vii. Make sure your employees read and sign!

e. Practice of Law

i. Online Legal Services

The presiding judge of the Los Angeles Superior Court is a proponent of eliminating procedural rules, which lengthen and complicate the legal process. She is in favor of implement a Turbo Tax-like form to guide users through basic filings. In fact, the court has already introduced an avatar to guide people through online traffic-ticket filings.

---

[1] Mark Rosch, *70% of Large Firm Lawyers Don't Know If Their Firm has Been Breached*, ABA TECHSHOW (Jan. 14, 2014), *available at* http://www.techshow.com/2014/01/70-of-large-firm-lawyers-dont-know-if-their-firm-has-been-breached/.

ii. "Nurse Practitioners" for the Law?

This year Washington State introduced the Limited License Legal Technician Program. In an attempt to address the large number of pro se litigants, Washington opened the door for licensed individuals who are not lawyers and meet certain educational requirements to advise and assist clients in approved practice areas of law.

2. Mental Health and the Law

Rules 1.1, 1.3, 1.4, 1.6, 1.14, 4.2, 4.3, 1.17, 8.3 and 8.4

40 minutes

a. Clients – Capacity or Mental Health Issues

Legal capacity refers to the ability to make a rational decision based upon all relevant facts and considerations. A person is presumed to have capacity and can only be found incapacitated upon a showing of clear and convincing evidence.[2]

i. Measuring/Establishing Capacity

In the state of Virginia, a person lacks capacity if he/she cannot:

1. Meet the essential requirements for his/her health, care, safety, or therapeutic needs without the assistance or protection of a guardian; OR
2. Manage property or financial affairs or provide for his/her support or for the support of his/her legal dependents without the assistance or protection of a conservator.

ii. Legal standards of capacity depend on the document to be executed or the action to be taken.

Testamentary Capacity

The testator must have the capacity to know the natural object of his/her bounty, to understand the nature and extent of his/her property, and to combine these elements to make a disposition of property according to a rational plan. Capacity is only required at the time the will is executed and does not require that the testator be capable of managing all of his/her affairs or making day-to-day business transactions.

Donative Capacity

Similar to testamentary capacity, except some states require not only that the donor understand the nature and purpose of the gift, but also that the donor knows the gift is irrevocable and will result in a permanent reduction in the donor's assets.

Contractual Capacity

---

[2] "The law presumes that every adult who executes an agreement is mentally competent to enter into a contract." *Drewry v. Drewry*, 8 Va. App. 460, 467, 383 S.E.2d 12 (1989).

The party must be able to understand the nature and effect of the act and the business being transacted. A higher level of understanding may be needed if the contractual arrangement is complicated.

Capacity to Convey Real Property
The grantor must be able to understand the nature and effect of the act at the time the conveyance is made.

Capacity to Execute a Durable Power of Attorney
Generally the same as contractual capacity, although some courts have held that the standard is similar to testamentary capacity.

Capacity to Make Health Care Decisions
From the Uniform Health Care Decisions Act: "Capacity" means an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health-care decision. Capacity in health care decisions is linked to informed consent, which is required for any health care decision.

Capacity to Mediate
The party must understand the nature of the mediation process, who the parties are, the role of the mediator, the parties' relationship to the mediator, and the issues at hand.

iii. Responsibilities if you suspect a capacity issue

1. **Rule 1.14**
   (a): When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
   (b): When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
   (c): Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal

information about the client, but only to the extent reasonably necessary to protect the client's interests.

2. **Duty at onset/during initial formation of/prior to Attorney-Client relationship.**
   A lawyer should take reasonable steps to optimize capacity. In an article published in 2000, Charles Sabatino outlined four measures to optimize capacity:[3]

   Interview the client alone
   The starting point of an attorney-client relationship is the client's decision to retain the lawyer and decide the objectives of representation. It is important to be clear from the beginning on the identity of the client and the ethical implications of that relationship.

   Adjust the interview environment to enhance communication
   Impaired vision or hearing often produces nonresponsive behaviors that may be interpreted as lack of mental capacity.

   Know the client
   The standard against which capacity is measured is the standard set by the individual's own standards of behavior, rather than against conventional standards held by others.

   Presume capacity
   Raising the issue of capacity can be damaging to the client-lawyer relationship. Thus the starting presumption should be one of capacity.

iv. When you begin to suspect a capacity issue after work has begun

1. The lawyer of a long-time client may already be familiar with the client's subjective frame of reference and may be able to determine whether a client's functionality appears to be slipping.
2. The lawyer may have long-term knowledge of the client's goals and desires, and should use that knowledge toward the best interest of the client.
3. A conflict may arise in situations where (a) a lawyer has an existing attorney-client relationship with a client with

[3]http://www.aaml.org/sites/default/files/representing%20a%20client%20with%20diminished-16-2.pdf

diminishing capacity and is approached by a concerned family member, or (b) where a lawyer has an attorney-client relationship with a couple, one of whom has diminishing capacity such that representation of both clients cannot be continued without conflict.

v. **Client Pushback on Capacity**

b. **Practitioners – Loss of Capacity**

i. **Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

ii. **Rule 1.16 Declining or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;
(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
(3) the lawyer is discharged.

iii. **Rule 8.3 Reporting Misconduct**

(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.

iv. **Substance Abuse Prevalence**

According to the Lawyers Helping Lawyers 2014 Annual Report, "Approximately 13% of Virginia attorneys (30% greater than the general population) have problems with substances, over 20% of attorneys have issues with mental health and ... 32% of lawyers in Virginia have had problems in their personal or professional lives due to mental health or substance abuse issues."[4]

1. **Drunk at CLE Example:**

A Virginia lawyer was suspended for six months on a finding that he was drunk and disorderly at a CLE session.

---

[4] Lawyers Helping Lawyers, *2013-2014 Annual Report,* http://www.valhl.org/wp-content/uploads/2013/06/2013-14Annual-Report-31.pdf

Witnesses reported that the lawyer snored loudly and then yelled at a video screen during a presentation. A bottle of liquor was found among his possessions. This was the lawyer's third run-in with the disciplinary system – he was reprimanded in 2010 and again in 2011 after he appeared in court with a BAC of 0.127. He was referred to Lawyers Helping Lawyers.

v. Reporting Misconduct

Rule 8.3 requires a lawyer to report another lawyer where there is reliable information that raises a substantial question about the first lawyer's fitness to practice law. Comment 3 leaves room for the reporting lawyer to make a judgment call in determining whether a substantial question of fitness has been raised, "Where a substantial question of fitness exists, a report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances."

It should be noted that Rule 8.3(a) does not require reporting impaired lawyers if no violation of the rules has occurred, particularly where a firm has complied with Rule 5.1, requiring a firm to make reasonable efforts to ensure that all lawyers in the firm conform to the Rules of Professional Conduct. If a violation raises a "substantial question" regarding an impaired lawyer's fitness to practice law, Rule 8.3(a) requires a lawyer with knowledge of this conduct to report the violation to the "appropriate professional authority." However, rumors or conflicting information about a lawyer and heavy drinking or impairment in social settings do not trigger a duty to report under Rule 8.3.

Notably, where the model rules make a reporting exception for any information gained in a lawyer assistance program, Virginia limits the exception to information that is gained for fulfilling the recognized objectives of that program. Specifically, Comment 5 to this rule states that a lawyer who receives confidences within a program would be "Required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to personal use."

vi. Lawyers Helping Lawyers

Lawyers Helping Lawyers is a nonprofit organization that assists lawyers engaged in substance abuse or suffering from mental illness. Though not associated with the Virginia State Bar, LHL receives 75% of its funding from the Bar. In April of this year,

LHL celebrated its 30th Anniversary. At the time it was monitoring 36 lawyers and law students.

1. **Confidentiality** Comment 5to Rule 8.3 (d) equates the intervenor/impaired lawyer to the relationship of lawyer/client in the Lawyers Helping Lawyers Program so that matters learned or developed in the course of the program will have the same privilege as exists in any lawyer/client relationship. In addition, lawyer-volunteers are exempt from the Virginia State Bar's requirement to report lawyer misconduct when they are performing authorized activities of the Lawyers Helping Lawyers Program.

   Rule 8.3 Comment 5
   Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in or cooperation with an approved lawyers or judges assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such program. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The duty to report, therefore, does not apply to a lawyer who is participating in or cooperating with an approved lawyer assistance program such as the Virginia Bar Association's Committee on Substance Abuse and who learns of the confidences and secrets of another lawyer who is the object of a particular assistance effort when such information is obtained for the purpose of fulfilling the recognized objectives of the program. Such confidences and secrets are to be protected to the same extent as the confidences and secrets of a lawyer's client in order to promote the purposes of the assistance program. On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to personal use.

3. **Rules and Ethics Opinions Update**
   50 minutes

a. **LEO 1875 – Conflict Issues when a Government Lawyer is Furloughed from Employment and Asked to Continue Representing the Agency – Rules 1.2(b), 1.6(b)(2), 1.7, 1.9(a) & (c)**
LEO 1875 asks a number of questions regarding a conflict of interest between a lawyer and the federal agency that employs him during a furlough. On the days the lawyer is in the office, the Agency asks the lawyer to work defending against challenges to the very furlough he himself is subject to. The Agency is prepared to sign a conflict of interest waiver, allowing the Lawyer to work on these cases, even though if he decides to challenge the furlough individually, he would be an adverse party to the agency.

The Committee found this to be an ethical violation. The lawyer representing the agency while he pursues his own challenge to the furlough gives the lawyer a vested interest in not rigorously defending the Agency. If there are positive outcomes against the Agency in furlough matters, it makes it more likely he may have a favorable outcome. This conflict is also too strong for the Agency to waive. The lawyer could not be expected to represent the Agency with proper diligence.

The conflict of interest waiver would be valid and enforceable if the lawyer were to limit the scope of his representation of the Agency to non-furlough related matters. If the Agency waives the conflict of the Lawyer being adverse in a pending matter, and that lawyer is not representing the Agency in any related matters that could effect his own, then there is nothing stopping the Lawyer form providing diligent representation to the Agency.

The potential conflict may also be waived if the Lawyer is not going to bring his own challenge to the furlough against the Agency. That scenario the Lawyer has no personal interest in the outcome of the cases, and his ability to diligently represent the Agency should not be impeded.

b. **LEO 1876 – Ethical Obligations of a Prosecutor who Plea Bargains with an Unrepresented Defendant whom the Prosecutor has been Informed is a Non-Citizen Subject to Deportation Under Immigration Law upon Conviction of the Offense which is the Subject of the Plea Offer – Rules 3.8, 4.3, 7C:6 and 8:18.**
In Virginia a defendant is not entitled to court appointed counsel when charged with a misdemeanor and that misdemeanor is not punishable by jail time, or when it is represented to the court by the prosecutor jail time will not be sought for any misdemeanor charged if that misdemeanor would ordinarily carry jail time. The latter is often the subject of a plea bargain. In exchange for a defendant confession, jail time is taken off the table.

When the defendant is an immigrant to this country, a plea of guilty may save him jail time, but may also subject him to consequences with the immigration department. Often times these consequences are as severe as deportation. The question posed by LEO 1876 is weather or not it is unethical for a prosecutor to offer and accept a plea bargain, knowing it subjects the defendant to deportation, and does not advise him of this fact.

The Ethical Board believes there is an ethical violation if the prosecutor knows a plea of guilty in a plea bargain carries the risk of deportation and fails to either: advise the defendant of his potential need to consult with an immigration attorney OR request a plea colloquy to determine if the defendant understands the potential immigration consequences he may face. The prosecutor shall not, however, give the unrepresented defendant legal advice in violation of 4.3(b).

c. **LEO 1879 – Application of Rules 3.1 and 3.8 to an Administrative Prosecutor in a Non-Criminal Proceeding – Rules 3.1 and 3.8**
LEO 1879 asks when a governmental lawyer is acting as an administrative prosecutor in a non-criminal proceeding, do rules 3.8 and 3.1 governing ethical conduct apply? In the example given an administrative prosecutor believes the case she is bringing forth does not meet the probable cause burden required to win the case, and is concerned she is committing an ethical violation by moving forward with what she believes is an unwinnable suit.

In the case of rule 3.8 the committee found the rule does not apply. Despite Virginia's deviation from the wording in the ABA model rule, broadening the scope some, the intent is clear from the comments on the rule it was intended for criminal proceedings only, and would not apply to an "administrative" prosecutor.

Rule 3.1 does apply, as the committee states, "As it applies to any lawyer, regardless of the type of matter involved or the nature of the lawyer's employment." The committee makes a distinction between the requirements of 3.1 and the exact situation presented in the initial question. 3.1 states that there be a basis for bringing the suit that is not frivolous, which may be true and the requirement for which may be met while still falling short of the inquiring attorney's burden needed for a prevailing suit of probable cause. She may still bring forth a suit that is not frivolous but lacks the probable cause to prevail without committing a violation under 3.1.

d. **LEO 1880 – Obligation of Court Appointed Attorney to advise indigent client of Right of Appeal Following Conviction Upon a Guilty Plea; Duty of Court Appointed Attorney to follow the indigent client's instructions to appeal following a guilty plea when the attorney**

believes the appeal would be frivolous – Rules 1.1, 1.2(a), 1.3(a), 1.4(b), and 3.1
LEO 1880 asked the ethical committee to examine certain potential ethical violations or duties arising from a court appointed attorney's representation of an indigent client in the appellate process when a plea of guilty was entered prior to conviction. The three questions boiled down to (1) is there a duty to notify the indigent client he or she has a right to an appeal, even when the attorney believes such an appeal would be frivolous, (2) is it ethical to file such an appeal if the attorney believes it to be frivolous, and (3) must the attorney file such an appeal if his client requests he do so, even if the attorney believes the appeal to be frivolous? The committee found the answer to all three questions was yes.

In the first question the attorney has a duty to inform the client of his right to an appeal. The committee finds that under 1.4(b) effective communication, just as in any other legal proceeding, the attorney has a duty to inform the client of his or her right to appeal. The fact that the attorney believes the appeal lacks merit is not a consideration in fulfilling this duty.

The answer to the second question assures court appointed attorneys that it is ethical to file an appeal, even one he or she may find groundless and potentially frivolous, on behalf of their indigent client. It is an action the attorney is compelled to perform if it is their indigent clients wish.

For question three, an attorney must file an appeal on behalf of their indigent client, even if they believe it to be frivolous. In the appeal they may give their candid assessment that the appeal is without merit, but the appeal nevertheless must be filed on the client's behalf. The committee goes out of its way to point out that it is not the court appointed attorney in these matters, but the appellate court of jurisdiction, who has the final say on whether or not an appeal is meritless. The committee dictates the procedure an attorney who does not support the appeal of their indigent client to use to withdraw from representation of the client after the appeal has been filed.

e. **LEO 1882 – Conflict between criminal clients when one client expresses a desire to testify against the other – Rules 1.4, 1.7 and 1.9.**
LEO 1882 examines a situation where a single lawyer represents two criminal clients (to avoid confusion labeled A and B) in unrelated matters, where A would like to offer incriminating evidence against B in the matter for which the lawyer is representing B. The question posed is whether or not it is the attorney must withdraw from representation of both clients?

In most cases the attorney must withdraw representation from both clients. While a few different hypothetical cures are offered, such as the

prosecutor in B's case stating he or she is not interested in the information under any circumstances, ultimately the only remedy for such a situation is to withdraw from representation of both clients. If you were to withdraw from A and not B, your duty to confidentiality to A would conflict with your duty to inform owed to B. If you withdrew from B and not A, you would be directly adverse to B in the same matter in which you represented B, which is impermissible. The prosecutor having no interest in the evidence one way or another has no influence on either of the above listed conflicts, and doesn't change the analysis or outcome at all.

The lone exception, where representation would only need to be terminated for one of these clients, is when the information offered by A is not related to the matter in which the lawyer is representing B, then lawyer could cure the conflict by withdrawing from representation B. B would be treated as a former client, and it is permissible to be adverse to a former client in a matter which was not the subject of your former representation.

f. LEO 1883 – Ethical obligations of a Lawyer for a Chapter 7 Bankruptcy petitioner in handling fixed fees advanced by the client – Rules 1.15(a)(1) and 1.15(b)(4)

LEO 1883 pertains to the handling of fixed fees advanced by a debtor to an attorney in exchange for filing for and representing the client in a Chapter 7 bankruptcy proceeding. The question specifically asks if it is ethically permissible to withdraw the balance of the fixed fee from Trust immediately prior to filing the Chapter 7 petition?

Ordinarily the rules handling fixed fees paid in advanced are fairly straightforward and uncomplicated. You place the fees in trust and remove the entirety upon the completion of the project or you remover certain portions of the fees at certain benchmarks. However, by placing advanced fees for a bankruptcy client in trust, thereby acknowledging they are still the property of the client, the fees may become a part of the bankruptcy estate upon filing of a bankruptcy petition, preventing the lawyer from gaining access to the fees he has earned.

The ethics committee spends a tremendous amount of time examining the unique circumstances and potential conflicts of interest that may arise under a lawyer's representation of a client in a bankruptcy proceeding when funds are left in trust. The lawyer may become directly adverse to the client if the lawyer's fees are listed as a debt on the petition or the lawyer may be tempted to illegally apply funds from the bankruptcy estate to his compensation.

The committee concluded that not only is the method outlined in the initial question, taking the entire fixed fee out of trust immediately before the bankruptcy petition is filed, an ethical method of handling advanced funds

in a bankruptcy case with fixed fee for services, it is the only method being practiced (after a survey of practitioners) that is ethical. The other common methods (taking the fixed fee as "earned when paid" up front before any work is performed or removing the funds from trust after the petition is filed) violate either statute or ethical guidelines.

g. Adopted Rule Changes

i. **New Rule 5.8 – Procedures for Notification to Clients when a Lawyer leaves a Law Firm or when a Law Firm Dissolves** – The Virginia Supreme Court approved adoption of last year's proposed rule 5.8, setting out clear provisions and steps that need to be taken when a lawyer is leaving a law firm or a Law Firm dissolves, as well as placing limits on communications to prevent solicitation and misrepresentation to existing clients.

–

(a) Absent a specific agreement otherwise:

(1) Neither a lawyer who is leaving a law firm nor other lawyers in the firm shall unilaterally contact clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer and an authorized representative of the law firm have conferred or attempted to confer and have been unable to agree on a joint communication to the clients concerning the lawyer leaving the law firm; and

(2) A lawyer in a dissolving law firm shall not unilaterally contact clients of the law firm unless authorized members of the law firm have conferred or attempted to confer and have been unable to agree on a method to provide notice to clients.

(b) When no procedure for contacting clients has been agreed upon:

(1) Unilateral contact by a lawyer who is leaving a law firm or the law firm shall not contain false or misleading statements, and shall give notice to the clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms; and

(2) Unilateral contact by members of a dissolving law firm shall not contain false or misleading statements, and shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(c) Timely notice to the clients shall be given promptly either by agreement or unilaterally in accordance with Rule 5.8(a) or (b).

(d) In the event that a client of a departing lawyer fails to advise the lawyer and law firm of the client's intention with regard to who is to provide future legal services, the client shall be deemed a

client of the law firm until the client advises otherwise or until the law firm terminates the engagement in writing.
(e) In the event that a client of a dissolving law firm fails to advise the lawyers of the client's intention with regard to who is to provide future legal services, the client shall be deemed to remain a client of the lawyer who is primarily responsible for the legal services to the client on behalf of the firm until the client advises otherwise.

ii. **Amendment to Military Spouse Provisional Admission Rule 1A:8**

3. Issuance, Admission, Duration, and Renewal

(a) *Issuance* – The Board having certified that all prerequisites have been complied with, the applicant for provisional admission shall, upon payment of applicable dues and completion of the other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, become an active member of the Virginia State Bar, and all legal services provided in Virginia by a lawyer admitted pursuant to this Rule shall be deemed the practice of law in Virginia, including the Rules of Professional Conduct.
(b) *Admission*- Upon notification by the Board that the applicant's application has been approved, the applicant shall take and subscribe to the oath required of attorneys at law. The applicant may take the time required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an appointed date and time or by appearing before a judge of a court of record in Virginia. Once the attorney has taken the oath, it shall remain effective until the attorney's provisional admission is terminated pursuant to paragraph 5 of this rule.
(c) *Duration* – A provisional admission may be renewed by July 31 of each year, upon filing with the Virginia State Bar (i) a written request for renewal, (ii) an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney's continuing employment by or association with Local Counsel and to Local Counsel's adherence to the supervision requirements as provided under this Rule, and (iii) compliance with membership obligations of part 6, Section IV of the Rules of the Supreme Court of Virginia applicable to active members of the Virginia State Bar.
(d) *Renewal* – When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Virginia, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

iii. Amendments to the Client's Protection Fund Rules regarding claim limits on payments from the fund

The claim limit per petitioner set forth section 7(b) of the Client Protection Fund Rules was increased to $75,000 for clients whose losses were incurred after July 1, 2015

–

7(b): The loss to be paid to any one Petitioner shall not exceed $75,000 for losses incurred on or after July 1 2015, or $50,000 for losses incurred on or after July 1, 2000, and prior to July 1 2015, or $25,000 for losses incurred prior to July 1 2000. For purposes of this provision, the Board may regard two or more persons, firms, or entities as one Petitioner with respect to a Lawyer's dishonest conduct in handling a given matter where the facts and entities are found to justify such a conclusion.

iv. Amendments to Bylaws regarding council election procedures

The VSB amended the bylaws regarding elections to all members to vote for fewer candidates than the number of vacancies to be filled.

–

Bylaws of the Virginia State Bar and Council Part II Article II-Sec. 2. Ballot. On or about March 1, the executive director shall cause to be distributed by mail or electronic means to every member eligible to vote in the circuit a notice of any vacancy or vacancies on Council, and a brief description of the method of nomination and voting. All members whose Virginia State Bar membership mailing addresses are maintained in the circuit are eligible to vote.

Nominations for election to Council shall be by petition filed by the candidate with the executive director. Such petition shall be signed by not fewer than ten other members eligible to vote in the circuit, and shall be accompanied by a statement of qualifications not exceeding one hundred and fifty words. Nominations must be filed in the office of the executive director on or before April 1. Any petition failing to comply with these requirements shall be rejected.

On or before April 15, the executive director shall distribute by mail or electronic means to all eligible members of the circuit a ballot containing the names of all persons nominated, along with each nominee's statement of qualifications.

The form of the ballot and the procedure for distribution, collection and tabulation of ballots shall be determined by the executive director. In the event of a tie vote, the executive director shall pick

the winner by lot. No ballot received by the executive director after May 1 shall be counted.

Write-in votes shall be permitted, but the executive director may exclude illegible write-in votes and shall exclude write-in votes for any candidate ineligible to serve pursuant to these bylaws, if elected. In those instances where there are more candidates for Council positions than there are positions to be filled from the circuit, the ballot will contain instructions to vote only for the same number of persons or fewer person(s) as there are positions to be filled; ballots which do not conform to this requirement will not be counted.

v. **Amendments to Paragraph 13-4E regarding service on district committees by certain ex-officio members of Council**
The procedures for establishing district committees were amended to allow certain ex-officio members of the Council (i.e. chair or presidents of conferences) to serve on the District Committees.
–
13. Procedure for Disciplining, Suspending, and Disbarring Attorneys.
13-4 ESTABLISHMENT OF DISTRICT COMMITTEES
E. Qualification of Members. Before nominating any individual for membership on a District Committee, the Council members making such recommendation shall first determine that the nominee is willing to serve on the District Committee and will conscientiously discharge the responsibility as a member of the District Committee. Council members making the nominations shall also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the District Committee, if elected. In order to be considered as a potential appointee to a District Committee, each potential appointee shall execute the following: (1) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending complaints and a release allowing production of his or her Disciplinary Record and any pending Complaints from any jurisdiction for purposes of the appointment process; and (2) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process. No member of Council shall be a member of a District Committee; however, this rule shall not apply to the chair or president of any conference of the Virginia State Bar, such as the Conference of Local Bar Associations, Diversity Conference, Senior Lawyers Conference, or Young Lawyers Conference, who are ex officio members of Council. An ex-officio member of

Council who is also a member of a District Committee shall not vote on the selection or confirmation of nominees for any District Committee.

vi. **13.4 Insurance Coverage Requirement for Respondents under Va. Code § 54.1-3935 (D).**

The Supreme Court of Virginia approved last year's proposed addition to Part Six Section Four of the Rules of the Supreme Court of Virginia, adding a paragraph 13.4, regarding the requirements for malpractice insurance for Attorneys who have violated the Rules of Professional Conduct.

–

Pursuant to Va. Code § 54.1-3935(D), when an attorney who has been found guilty of engaging in criminal activity that violates the Rules of Professional Conduct and results in the loss of property of one or more of the attorney's clients and has been required by a three-judge court to maintain professional malpractice insurance during the time he or she is licensed to practice law in the Commonwealth of Virginia, that attorney shall carry such coverage in the minimum amount of $500,000 per claim and $1 million in the aggregate with a maximum $10,000 deductible, with a Virginia licensed insurer, eligible surplus line insurer or registered risk retention group. The coverage provider must have an A.M. Best minimum rating of A-.

The attorney shall require the insurer to include language in the policy specifying that the VSB be given notice of cancellation or nonrenewal. The attorney shall certify such coverage and the notice requirement to the VSB on a yearly basis with a certificate of insurance provided to the VSB by an agent or broker licensed in Virginia. This certificate must be received initially within 10 days after inception or reinstatement of the policy.

vii. **Amendment to Rule 1A:1 Reciprocity: Admission on Motion Rule 1A:1. Admission to Practice in This Commonwealth Without Examination**

(a) Reciprocity. -- Any person who has been admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia may file an application to be admitted to practice law in this Commonwealth without examination l if counsel licensed to practice law in this Commonwealth may be admitted in that jurisdiction without examination

Regulations Governing Applications for Admission to Virginia Bar Pursuant to Rule of the Supreme Court of Virginia 1A:1, Effective October 31, 2014.

INTRODUCTION

Each person who has met the educational requirements and has proved that he or she satisfies the character and fitness requirements as established by the law of Virginia may seek admission to the Virginia Bar by taking the Virginia Bar Examination. A primary purpose of the Virginia Bar Examination is to determine whether an applicant is able to demonstrate his or her current minimum competency to engage in the general practice of law in Virginia.

In addition to admission to the Bar by examination, the Supreme Court of Virginia, in its discretion under Code § 54.1-3931, has determined that a person who has been admitted to practice law before the court of last resort of a state or territory of the United States or of the District of Columbia for a minimum of five years, who has been admitted to the bar of a Reciprocal Jurisdiction, hereinafter defined, and who has been engaged in the lawful practice of law on a full-time basis for at least three of the immediately preceding five years, may seek to demonstrate that he or she has made such progress in the practice of law that it would be unreasonable to require the person to take an examination to demonstrate current minimum competency. In other words, an applicant's experience in the practice of law may, at the discretion of the Court, be accepted as adequate evidence of current minimum competency in lieu of the bar examination. The Supreme Court of Virginia has assigned to the Virginia Board of Bar Examiners (the "Board ll) the responsibility to assess the information furnished by an applicant for admission without examination and to determine, from the information so furnished, whether the applicant's experience in the practice of law is sufficient to demonstrate his or her current competence, good character, and fitness to practice law in Virginia. In order to guide the Board in its determinations, the Court has adopted the following criteria to be applied by the Board in assessing applications for admission to the bar of Virginia without examination:

THRESHOLD REQUIREMENTS

1. Reciprocity. The Board shall consider an application for admission without examination only from a person who has been admitted to practice before the court of last resort of a jurisdiction (i.e., a state or territory of the United States, or the District of Columbia) that permits lawyers licensed in Virginia to be admitted to practice without examination in such jurisdiction (a "Reciprocal Jurisdiction"). The purpose of the reciprocity requirement is to

encourage other jurisdictions to grant the same privilege to Virginia lawyers.

2. Minimum Period of Bar Admission. Before being eligible to apply for admission without examination, the applicant must have been admitted to practice law before the court of last resort of a state or territory of the United States, or of the District of Columbia, for at least five (5) years.

viii. Supreme Court of Virginia Technical Rule Changes

Rule 5:6A

Allows parties to bring to the court's attention "pertinent and significant authorities" that they discover after briefing or oral argument. The Court may refuse to consider the supplemental authorities if they unfairly expand the scope of the arguments on brief, raise matters that should have been previously briefed, appear to be untimely, or are otherwise inappropriate to consider.

Rule 5:26

An amicus brief is no longer granted an unchanging length of 50 pages - the number of pages is now limited to the number of pages to which the supported party is entitled. Additionally, there is a change that reflects changes in technology: email addresses are now *required* in signature blocks.

Rule 5:32

Appellant is responsible for compiling an appendix containing everything germane to the granted assignments of error, and both parties are encouraged to come to an agreement regarding the materials included in the appendix.

Rule 5A:4

Email address of counsel required; a case may be dismissed for failure to comply with clerk of the Court's request that a document be redone in compliance with this rule.

Rule 5A:19

Copies must be filed with the clerk of the Court and on opposing counsel in PDF format. Persons filing electronically have the same responsibility as a person filing in person, however, if a technical problem occurs on the Court's side, the person filing may resubmit the document together with proof of the earlier attempt and error message received.

Rule 5A:20 & 5A:21

Email address in signature is no longer optional.

Rule 5A:25
Appellant must file four paper copies and one PDF copy of an appendix.

h. Proposed Rule Changes

i. Amendment to Rule 5.5 Comment [1a]
The Virginia State Bar offers an amendment to Rule 5.5 comment [1a] removing the reference to Paragraph (c) in defining what the term "Lawyer" represents.
–
Rule 5.5 Unauthorized Practice of Law; Multi Jurisdictional Practice of Law
(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
Comment [1a] For purposes of paragraphs (a), and (b), ~~and (c)~~ "Lawyer," denotes a person authorized by the Supreme 1Proposed deletions are indicated by stippling, and additions are denoted by underlining. 11 Court of Virginia or its Rules to practice law in the Commonwealth of Virginia including persons admitted to practice in this state pro hac vice.

ii. Amendment to Rule 8.3(e) Reporting Misconduct
(e) A lawyer shall inform the Virginia State Bar if:
(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;
(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court;
(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.
<u>The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.</u>

iii. Amendment to Paragraph 13-11 (Limited Right to Discovery)
The VSB voted to adopt an amendment to Paragraph 13-11, concerning disclosure of confidential materials. Generally, information found in bar complaints, bar investigations, and private disciplinary actions, is confidential and not to be disclosed. Paragraph 13-11 provides that some of this information may be disclosed during the course of certain disciplinary investigations or

hearings. The paragraph is amended to include provisions for notifying attorneys and complainants when otherwise confidential information regarding them has been disclosed.

–

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

* * *

13-11 LIMITED RIGHT TO DISCOVERY

There shall be no right to discovery in connection with disciplinary matters, including matters before three judge Circuit Courts, except:

A. Issuance of such summonses and subpoenae as are authorized; and

B. Bar Counsel shall furnish to Respondent a copy of the Investigative Report considered by the Subcommittee when the Subcommittee set the Complaint for hearing before the District Committee or certified the Complaint to the Board, with the following limitations:

1. Bar Counsel shall not be required to produce any information or document obtained in confidence from any law enforcement or disciplinary agency, or any documents that are protected by the attorney-client privilege or work product doctrine, unless attached to or referenced in the Investigative Report;

2. Bar Counsel shall not be required to reveal other communications between the Investigator and Bar Counsel, or between Bar Counsel and the Subcommittee; and

3. Bar Counsel shall make a timely disclosure to the Respondent of all known evidence that tends to negate the Misconduct of the Respondent or mitigate its severity or which, upon a finding of Misconduct, would tend to support imposition of a lesser sanction than might be otherwise imposed. Bar Counsel shall comply with the duty to disclose this evidence regardless of whether the information is confidential under this Paragraph. If Bar Counsel discloses under this subparagraph information that is otherwise confidential, Bar Counsel shall promptly notify the Attorney or Complainant who is the subject of the disclosure unless Bar Counsel decides that giving such notice will prejudice a disciplinary investigation. Notice shall be in writing and shall be deemed effective when mailed by first-class mail to the Bar's last known address of the subject Complainant or Attorney.

iv. Amendment to Paragraph 13-25 (Reinstatement Proceedings)

The VSB voted for Paragraph 13-25, regarding the procedure for a disbarred attorney to be reinstated, to beamended and restated for

clarity, to reflect technological advances, and to more closely resemble as read the procedure to be carried out for reinstatement.
–
For the full text of the new rule visit http://www.vsb.org/docs/SCV-petition-1311-1325-062915.pdf. (Rule prohibitively long for inclusion in its entirety)

v. **Amendments to Rules 1.1 (Competence) and 1.6 (Confidentiality)**
The VSB Voted to adopt amendments to Rules 1.1. Competence and 1.6 confidentiality to match amendments made to the ABA Model Rules.
–
RULE 1.1 Competence
* * * *
Comment

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

RULE 1.6 CONFIDENTIALITY
* * * *
(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.

Comment

Acting Reasonably to Preserve Confidentiality

[19] Paragraph (d) requires a lawyer to act reasonably to safeguard information protected under this Rule against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access

to, or the inadvertent or unauthorized disclosure of, confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the employment or engagement of persons competent with technology, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

19[a] A lawyer shall either (1) comply with a client's request to implement special security measures to protect the confidentiality of information or forgo the representation; or (2) obtain the client's informed consent to forego security measures that would otherwise be appropriate under this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other laws, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of this Rule.

vi. Amendment to Paragraph 13-24 regarding Disbarment, Revocation, or Suspension in another jurisdiction

The Committee on Lawyer Discipline (COLD) approved amendments to Part 6, Section IV, Paragraph 13-24 to clarify the authority held by the discipline board to impose or not to impose the same discipline as another jurisdiction in disciplinary matters. The amendments afford more flexibility, removing strict default provisions, and permitting leniency.

–

13. PROCEDURE FOR DISCIPLING, SUSPENDING AND DISBARRING ATTORNEYS

* * *

13-24 Board Proceedings Upon Disbarment, Revocation Or Suspension In Another Jurisdiction

A. Definitions Specific to Paragraph 13-24. The following terms shall have the meaning herein stated unless the context clearly requires otherwise:

1. "Jurisdiction" means a state or federal licensing or disciplinary authority; a state or federal agency; a court in any state, United States territory, foreign nation, or District of Columbia authorized to discipline attorneys; or a United States military tribunal.

2. "License" has the meaning given that term in Paragraph 13-1, but it also includes any similar license, authority or privilege to practice law granted by another Jurisdiction.
3. "Revoked" or "Revocation" has the same meaning given the term in Paragraph 13-1, but when referring to the action of another Jurisdiction shall be deemed to include action of another Jurisdiction forbidding an attorney from making appearances before that Jurisdiction on behalf Of clients permanently or for an indefinite period of time, with or without conditions or terms.
4. "Suspension" has the same meaning given the term in Paragraph 13-1, but when referring to the action of another Jurisdiction shall be deemed to include action of a Jurisdiction forbidding an attorney from making appearances before that Jurisdiction on behalf of clients for a stated or indefinite period of time, with or without conditions or terms.

~~A.~~B. Initiation of Proceedings.
Upon receipt of a notice from the Clerk of the Disciplinary System that another jurisdiction has suspended or revoked the License of the Respondent and that such action has become final (the "Suspension or Revocation Notice"), any Board member shall enter on behalf of the Board an order of Suspension against such Respondent to show cause why the same or similar discipline imposed in the other jurisdiction should not be imposed by the Board. The Board shall serve upon such Respondent by certified mail the following: a copy of the Suspension or Revocation Notice; a copy of the Board's order; and a notice fixing the date, time and place of the hearing before the Board to determine what action should be taken in response to the Suspension or evocation Notice and stating that the purpose of the hearing is to provide Respondent an opportunity to show cause why the same or similar discipline that was imposed in the other jurisdiction should not be imposed by the Board.

~~B~~.C. Opportunity for Response. Within 14 days of the date of mailing of the Board order, via certified mail, ~~return receipt requested~~, to the last address of record of the Respondent with the Bar, Respondent shall file with the Clerk of the Disciplinary System an original and six copies of any written response and any communications or other materials, which shall be confined to ~~allegations that~~: the following (hereinafter referred to as "Specific Contentions")
1. The record of the proceeding in the other Jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process, and that the Respondent resisted the proceeding to exhaustion, both

directly and collaterally;
2. The imposition by the Board of the same or similar discipline upon the same proof would result in a grave injustice; or
3. The same conduct would not be grounds for disciplinary action or for the same or similar discipline in Virginia.
~~C.~~D.. Scheduling and Continuance of Hearing. Unless continued by the Board ~~for good cause~~, the hearing shall be set not less than 21 nor more than 30 days after the date of the Board's order of Suspension.
~~D.~~E.. Provision of Copies. The Clerk of the Disciplinary System shall furnish to the Board members designated for the hearing and make available to Respondent copies of the Suspension or Revocation Notice, the Board's order of Suspension against the Respondent, the notice of hearing, any notice of continuance of the hearing, and any response or materials filed by Respondent.
~~E.~~F. Hearing Procedures. Insofar as applicable, the procedures for Disciplinary Proceedings on allegations of Misconduct shall govern Proceedings under this ~~subp~~Paragraph 13-24.
~~F.~~G. Burden of Proof. The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard, and the burden of producing the ~~R~~record upon which the Respondent relies to support the Respondent's Specific Contentions, and shall be limited at the hearing to proof of the Specific Contentions ~~raised in any written response~~. Except to the extent the ~~allegations of the written response~~ Specific Contentions are established, the findings in the other Jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.
~~G.~~H. Action by the Board. If Respondent has not filed a timely written response, but expresses intent to present evidence or argument supporting Specific Contentions in defense, the Bar, upon motion, shall be entitled to a continuance. ~~or~~ If Respondent does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has failed to establish any of the Specific Contentions ~~of the written response~~ by clear and convincing evidence, the Board shall impose the same or similar discipline as was imposed in the other Jurisdiction. If the Board determines that the Respondent has established any of such Specific Contentions by clear and convincing evidence, the Board may dismiss the proceeding or impose less discipline than was imposed in the other Jurisdiction. A copy of any order imposing discipline shall be served upon the Respondent via certified mail, ~~return receipt requested~~. Any such order shall be final and binding, subject only to appeal as provided in this paragraph.
* * *

vii. **Amendments to Bylaws Regarding Better Annual Meeting Committee**

The VSB approved amendments to the Bylaws of the Virginia State Bar extending the term of committee members from three to five years. The stated purpose of the extension is, "a need for institutional memory."

–

PART 1 – BYLAWS OF THE VIRGINIA STATE BAR

ARTICLE V

Committees

…

Sec. 4. Members of special committees shall be appointed to three-year terms, with the exception of the Special Committee on the Better Annual Meeting and the Special Committee on Lawyer Malpractice Insurance whose members shall be appointed to five-year terms. No member shall serve more than two consecutive terms on such a committee. A member appointed to fill an unexpired term shall be eligible to serve two additional full terms. An eligible member wishing to be reappointed to a special committee shall be required to reapply in writing prior to the end of his or her current term under procedures established by Council and administered by the executive director. If any member of a committee fails to attend either three meetings during any bar year or two successive meetings of the committee without providing an explanation satisfactory to the committee chair, or in the case of a lawyer member, is declared not in good standing with the Virginia State Bar, such person's position shall automatically be considered vacated and filled as in the case of other vacancies.

i. **Disciplinary Cases: Embezzlement, Fraud, Incompetence and more**

i. **Ex-Lawyer Who Hid Fees From Law Firm Sentenced to 4 Months –**

1. A Virginia Bankruptcy attorney has been sentenced to 4 months in prison for depositing fees advanced by his bankruptcy clients into his own pockets. The attorney would charge a "service fee" in addition to his firm's usual fee for a bankruptcy proceeding, claiming the fee was to "cover expenses." All expenses were charged to the attorney's firm, and the "service fees," totaling over $70,000 was kept by the attorney for his own personal use.

ii. **Lawyer Pleads Guilty to Felony in Assistant's Theft**

1. A Virginia attorney has pleaded guilty to misprision of a felony. The attorney actively concealed the ongoing theft

and bank fraud being perpetrated by one of his staffers. The staffer was writing and cashing fraudulent checks out of a client's estate. The attorney confessed he was protecting his staffer because they had been engaging in a lengthy sexual relationship and did not want to see her incarcerated.

iii. **Bar: Lawyer Blamed Lapses on Phantom Assistant**
    1. A Virginia attorney has been disbarred for inventing a phantom assistant, and blaming numerous missed payments on her. "Sylvia Jacques" was supposed to have been mailing checks to make bankruptcy payments, pay condo-fees, and make mortgage payments for her boss. After numerous attempts to verify the employment – and subsequently, the existence- of Ms. Jacques, her "employer" admitted to inventing the assistant for the purpose of taking the blame.

iv. **VSB Revokes Lawyer After Settlement Money Goes Missing**
    1. A Virginia attorney representing a disabled school-child, injured on the school grounds, against the school district has been disbarred after nary a penny of the $60,000 settlement paid out by the district made it's way to the hands of the boy's family and disappearing without a trace. The attorney has yet to show for any of the disciplinary proceedings against him, despite warnings from the VSB they will cooperate fully with law enforcement in pursuing criminal charges.

v. **Lawyer Gives Up License After Probate Allegations**
    1. A Virginia attorney has surrendered his license to practice in the Commonwealth after accusations from his siblings of misconduct as the executor of their mother's estate. The attorney allegedly filed a probate inventory listing only $5,000 in assets with the County Clerk. The siblings, believing the estate to be worth in upwards of the $700,000 neighborhood, were undoubtedly surprised. After accusations began swirling, the attorney surrendered his license without any admissions being made.

vi. **Lawyer Who Faked Hospital Records Suspended for 2 Years**
    1. A Virginia attorney who produced hospital records explaining her absence from a custody hearing has been suspended for 2 years after investigators discover the records to be fabricated. The records produced by the attorney match word for word, with the exception of dates of stay, with the records of a hospitalization she underwent

two years earlier. This was not the first time the accused had missed a scheduled court date, having walked out before being called as a witness in an unrelated matter, forcing the trial to be postponed.

vii.

j. Other Updates

i. Comity with additional states after VSB changes on bar admission on motion. Both West Virginia and North Carolina attorneys may be admitted on motions to practice law in Virginia.
ii. Virginia Supreme Court opinions released as completed
iii. Retirement age for Virginia judges raised to 73

4. Questions & Answers
5 minutes