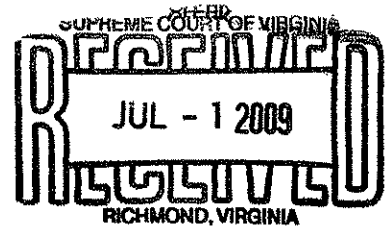


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VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

IN THE MATTER OF
SUPREME COURT RULES PART 6, § IV, PARAGRAPH 10
AND PART 6, § II, RULE OF PROFESSIONAL CONDUCT
7.2 (b) TO SUNSET SCOLAS

PETITION OF THE VIRGINIA STATE BAR

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VIRGINIA:

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SUPREME COURT RULES PART 6, § IV, PARAGRAPH 10
AND PART 6, § II, RULE OF PROFESSIONAL CONDUCT 7.2(b)
TO SUNSET SCOLAS**

PETITION

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

NOW COMES the Virginia State Bar, by its president
and executive director, pursuant to Part 6, § IV,
Paragraph 10(g) of the Rules of this Court, and
requests review and approval of amendments to Paragraph
10, Part 6, § IV of the Rules of Virginia Supreme
Court, and Rule of Professional Conduct 7.2(b), Part 6,
§ II. The proposed amendments were approved by Council
by a vote of 58 to 1 (4 abstentions) on June 18, 2009,
after Council reinserted the language originally
deleted in Paragraph 10(b)(i) and (ii) (Record, Page 1).
If the Court approves the proposed amendments, the role
previously served by the Standing Committee on Lawyer
Advertising and Solicitation ("SCOLAS") will be

undertaken by the Standing Committee on Legal Ethics, and SCOLAS will cease to exist.

I. Overview of the Issues

Upon the recommendation of Ethics Counsel and with the approval of SCOLAS and the Standing Committee on Legal Ethics ("Ethics Committee"), the Virginia State Bar is proposing that SCOLAS be sunsetted. Staff has recently undertaken an extensive evaluation of SCOLAS and its work over the 15 years since its inception and found that the work of SCOLAS has waned. Staff believes the functions of SCOLAS can efficiently and economically be handled by staff and the Ethics Committee. Much of SCOLAS' work involved the monitoring of lawyer advertising, which is done primarily by staff through pre-screening and monitoring functions. There have been only eleven complaints filed with the VSB Professional Regulation Department during the period 2002-2008 alleging improper advertising.¹ Additionally, since its creation in 1991,

¹ The number of bar complaints alleging improper lawyer advertising were:

SCOLAS has issued less than twenty advisory opinions and generated minimal rule revisions.

Ethics Counsel has provided a primary function in the role of SCOLAS. In order to timely address lawyer advertising issues, Ethics Counsel routinely monitors and reviews lawyer advertising and identifies non-compliance issues. Non-compliance letters are immediately issued alerting lawyers to problematic advertisements. Additionally, Ethics Counsel reviews and advises lawyers on their advertisements in advance of dissemination on a timely basis.

A primary responsibility of SCOLAS has been the educational function of advising lawyers regarding their ethical responsibility as applied to lawyer

-
- 2002-0
 - 2003-1
 - 2004-5
 - 2005-0
 - 2006-0
 - 2007-0
 - 2008-5

None of these complaints were filed by members of the public or clients. In every case, they involved a lawyer complaining about another lawyer's advertising.

advertising and solicitation. That function includes drafting advisory opinions and education through continuing legal education ("CLE") programs, as well as responses to advertising inquiries, and will continue to be incorporated into the staff's work and CLE programs provided throughout the state.

While this matter is pending, SCOLAS' meetings have been suspended, and ethics staff and the Ethics Committee have continued their work of providing these functions and documenting their continued progress.² Lawyers can continue to have their ads reviewed and persons who have a complaint about a law firm's advertisements can continue to voice their concerns by directing them to the Ethics Committee. Public protection from misleading advertising will continue to be provided by Ethics Counsel and the Ethics Committee.

The proposed changes are included below in Section III, with deletions stippled and additions underlined.

² In the 2008-2009 fiscal year, the bar sent 102 non-compliance letters, 97 of which were sent between January 1, 2009 and June 1, 2009. In 2007-2008, 70

II. Publication and Comments

The Ethics Committee approved the proposed amendments to Paragraph 10 of Part 6, § IV of the Rules of Virginia Supreme Court, and Rule of Professional Conduct 7.2(b) of Part 6, § II at its meeting on March 26, 2009 (Record, Page 1). The Virginia State Bar issued a press release dated April 28, 2009, pursuant to Paragraph 10(c)(iii) of Part 6, § IV of the Rules of this Court (Record, Page 6). Notices of the proposed amendments were also published in the *Virginia Lawyer Register*, Vol. 57, No. 8 at page 6 in the March, 2009 issue and Vol. 57 No. 10 at page 8 in the May, 2009 issue (Record, Page 19); on the bar's website on the "Proposed Rule Changes" page (Record, Page 21); and in the bar's E-News on April 1, 2009 (Record, Page 28).

III. Proposed Rule Changes

Paragraph 10 of Part 6, § IV of the Rules of Virginia Supreme Court

10. PROMULGATION OF LEGAL ETHICS, ~~LAWYER ADVERTISING,~~
~~SOLICITATION~~ AND UNAUTHORIZED PRACTICE OF
LAW OPINIONS AND RULES OF COURT.—

non-compliance letters were sent, and 40 of them were sent between January 1, 2009 and June 1, 2009.

(a) *Definitions.*

- (i) "Bar" shall mean the Virginia State Bar.
- (ii) "Committee" shall mean the Legal Ethics Committee, and the Unauthorized Practice of Law Committee, ~~the Committee on Lawyer Advertising and Solicitation, or all of them,~~ as required by the context in which it is used.
- (iii) "Council" shall mean the Council of the Virginia State Bar.
- (iv) "Court" shall mean the Supreme Court of Virginia.
- (v) "Member" shall mean any active member of the Virginia State Bar.
- (vi) "Executive Director" shall mean the Executive Director of the Virginia State Bar.
- (vii) "Advisory Opinion" shall mean a written statement of the subject involved, the question presented, the Rule of Court or other precedents relied upon, the opinion reached and the reasons therefor; if dealing with a subject of general application, an advisory opinion may be stated in the form of a proposed Rule of Court or amendment thereto.
- (viii) "Ethics Counsel" shall mean the Ethics Counsel or an Assistant Ethics Counsel of the Virginia State Bar.
- (ix) "Rule" and "Rule of Court" shall mean throughout this paragraph only those rules proposed by either the Standing Committee on Legal Ethics, ~~the Standing~~

~~Committee on Lawyer Advertising and Solicitation,~~ or the Standing Committee on the Unauthorized Practice of Law.

(x) "*Informal Staff Opinion*" shall mean advice and opinions provided to Members requesting same from Ethics Counsel.

(b) *Requests for Advisory Opinions.*

(i) A legal ethics, ~~lawyer advertising, solicitation,~~ lawyer advertising, solicitation, or unauthorized practice of law advisory opinion of the Bar concerning contemplated or actual conduct may be requested by any member.

(ii) All requests for advisory opinions shall be in writing, addressed to the appropriate Committee, in the hypothetical, and on a form prepared by the Committee calling for such information as the Committee may request; ~~provided, however, that a request for an opinion as to the propriety of advertising or solicitation may include the specific advertisement or solicitation in question,~~ provided, however, that a request for an opinion as to the propriety of advertising or solicitation may include the specific advertisement or solicitation in question.

LEGAL ETHICS OPINION REQUEST FORM

VIRGINIA STATE BAR STANDING COMMITTEE ON LEGAL ETHICS

Eighth & Main Building 707 East Main Street, Suite 1500

Richmond, Virginia 23219-2800

(804) 775-0564

1. Name: _____

Firm: _____

Address: _____

Telephone: (_____) _____

VSB Membership Number: _____

2. Pursuant to Section 10(b)(i) of Part Six: Section IV of the Rules of the Supreme Court of Virginia, an advisory legal ethics opinion may be requested by any member of the Virginia State Bar concerning contemplated or actual professional conduct which may be violative of the Virginia Rules of Professional Conduct. Please indicate the nature of your inquiry.

3. The Rules of Court require that requests for advisory opinions shall state in detail all operative facts, in the hypothetical, upon which the request is based. Please provide a brief and concise statement of the facts with no identifying information as to persons or entities involved.

Additional narrative and exhibits may be attached if necessary. If a request for an opinion regards the propriety of lawyer advertising or solicitation, a copy of the specific advertisement or solicitation in question may be included.

4. State specific issue(s)/question(s) regarding ethical conduct you wish answered by the Committee.

5. I certify that I have researched the Virginia State

Bar's Rules of Professional Conduct, Ethical Considerations, prior Legal Ethics Opinions and appropriate case law and believe the following to be relevant:

Rules: _____

Ethical Considerations: _____

Prior LEOs: _____

Case Law: _____

6. Why do you believe the proposed conduct would or would not violate the Rules of Professional Conduct?

7. Please note that in accordance with Part Six: Section IV: Paragraph 10(c)(ii) of the Rules of the Supreme Court of Virginia, the Committee may in its discretion decline to render an opinion regarding any matter which is currently the subject of any disciplinary proceeding or litigation. Please indicate if the inquiry concerns:

- _____ Pending Litigation
- _____ Civil
- _____ Criminal
- _____ Pending Disciplinary Proceeding

8. _____ 9. _____
Signature Date

Please cite to the current Rules of Professional Conduct, Part 6, Section II, effective January 2000, which can be found at vsb.org/profguides/rules.pdf

**Rule of Professional Conduct 7.2 of the
Rules of Virginia Supreme Court, Part 6, § II**

RULE 7.2 Advertising

* * *

(b) A recording of the actual electronic media advertisement shall be approved by the lawyer prior to its broadcast and retained by the lawyer for a period of one year following the last broadcast date, along with a record of when and where it was used, which recording and date shall be provided to the Standing Committee on ~~Lawyer Advertising and Solicitation~~ Legal Ethics upon its request.

* * *

Council also approved a bylaw change, subject to the Court approving the proposed rule changes. This bylaw change is as follows:

BYLAWS OF THE VIRGINIA STATE BAR AND COUNCIL

* * *

PART II -BYLAWS OF THE COUNCIL

* * *

ARTICLE VIII

Standing Committees

* * *

~~Sec. 5. Committee on Lawyer Advertising and Solicitation. There shall be a standing committee to be appointed by the president and to be known as the Committee on Lawyer Advertising and Solicitation. The committee shall consist of twelve persons, ten of whom shall be active members of the bar and two shall be non lawyers. At least two of the lawyers who are members shall be members of the Council. All members shall serve for a three year term. No member shall serve more than two consecutive three year terms. A member appointed to fill an unexpired term shall be eligible to serve two additional full three year terms. An eligible member wishing to be reappointed shall be required to reapply in writing under procedures established by Council and administered by the executive director. All powers and duties of the Council with respect to monitoring compliance with the Code of Professional Responsibility governing lawyer advertising and solicitation, including the issuance of advisory opinions regarding the same, not otherwise delegated or reserved, shall be exercised and discharged by the committee.~~

The bylaw change does not have to be approved by the Court. If the Court does not approve the proposed changes to Paragraph 10 and Rule 7.4(d), the bylaw change will not go into effect.

IV. Conclusion

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to

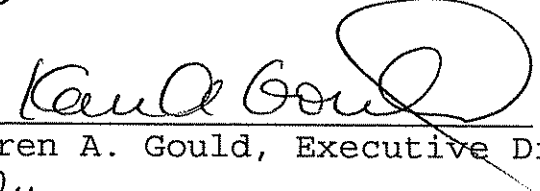
prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the Virginia State Bar. Va. S. Ct. R., Pt. 6, § IV. Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and rules of professional conduct are promulgated and implemented. The amendments to Paragraph 10, Part 6, § IV of the Rules of Virginia Supreme Court, and Rule of Professional Conduct 7.2(b), Part 6, § II, were developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the bar requests that the Court approve the proposed amendments to Paragraph 10, Part 6, § IV of the Rules of Virginia Supreme Court, and Rule of Professional Conduct 7.2(b), Part 6, § II, for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

By 
Jon D. Huddleston, President

By 
Karen A. Gould, Executive Director

Dated this 15th day of ~~June~~ July, 2009.