

# Virginia Lawyer Register

The Official Publication of the Virginia State Bar

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# DISCIPLINARY PROCEEDINGS

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Robert Max Jenkins	Radford, VA	April 14, 2009		n/a
<b>Suspension – Failure to Pay Disciplinary Costs</b>		<b>Effective Date</b>	<b>Lifted</b>	
Michael Christopher Bruno	Hampton, VA	February 24, 2009		n/a
Adam Harrison Bryant	Austin, TX	April 13, 2009		n/a
Dale Alan Gipe	Richmond, VA	February 25, 2009		n/a
Robert Max Jenkins	Radford, VA	March 30, 2009		n/a
Peter Campbell Sackett	Lynchburg, VA	March 24, 2009	March 30, 2009	n/a
<b>Suspension – Failure to Comply with Subpoena</b>		<b>Effective Date</b>	<b>Lifted</b>	
Vincent Francis Bonzagini	Front Royal, VA	April 15, 2009		n/a
Paul Michael Childers	Grundy, VA	February 4, 2009		n/a
Kathleene Anne Cipriano	Virginia Beach, VA	March 13, 2009	March 20, 2009	n/a
Richard Francis Papcun	Colonial Heights, VA	February 19, 2009		n/a
Robert Henry Smallenberg	Richmond, VA	March 24, 2009	March 30, 2009	n/a
William L. Stables Jr.	Harrisonburg, VA	April 15, 2009		n/a
Carlotta Bernice Thompson	Richmond, VA	January 27, 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.

## Virginia Lawyer Register

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

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## DISCIPLINARY SUMMARIES

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

### DISCIPLINARY BOARD

#### ANDREW GEORGE ADAMS III

Richmond, Virginia

08-033-072151, 08-033-075263, 09-033-075888, 09-033-075986, 09-033-076249, 09-033-076317, 09-033-076871, 09-033-076942, 09-033-076963, 09-033-077931, 09-033-078019, 09-033-078152

On March 9, 2009, the Virginia State Bar Disciplinary Board revoked Andrew George Adams III's license to practice law. In consenting to the revocation, Mr. Adams acknowledged as true the material facts in twelve disciplinary cases that were pending against him, and stated that he could not defend himself against the allegations if they were prosecuted. The twelve cases involved bankruptcy and domestic relations. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Adams\\_3-11-09.pdf](http://www.vsb.org/docs/Adams_3-11-09.pdf)

#### JASON HOWARD ARTHUR

Kingsport, Tennessee

09-000-078042

On April 2, 2009, the Virginia State Bar Disciplinary Board suspended Jason Howard Arthur's Virginia license to practice law for thirty days, with all time suspended. The board's action was based on a November 3, 2008, order of the Supreme Court of Tennessee, which suspended Mr. Arthur's Tennessee license for thirty days, also suspended, placed him on monitored probation for one year, and ordered him to pay restitution to a client. This was an agreed disposition. Rules Part 6, §IV, ¶13.L.7

[http://www.vsb.org/docs/Arthur\\_4-3-09.pdf](http://www.vsb.org/docs/Arthur_4-3-09.pdf)

#### KRISTINA MARIE CARDWELL

Virginia Beach, Virginia

09-000-077709

On April 14, 2009, the Virginia State Bar Disciplinary Board revoked Kristina Marie Cardwell's license to practice law. She pled guilty on December 4, 2008, to wire fraud in U.S. District Court for the Eastern District of Virginia. She consented to the revocation after her license was summarily suspended March 26, 2009. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Cardwell\\_4-14-09.pdf](http://www.vsb.org/docs/Cardwell_4-14-09.pdf)

#### MAXIME AUSTRIA FRIAS

Virginia Beach, Virginia

09-000-077782

On March 27, 2009, the Virginia State Bar Disciplinary Board revoked Maxime Austria Frias's license to practice law. On December 10, 2008, Mr. Frias pled guilty in the U.S. District Court for the Eastern District of Virginia to charges of making a false statement for the purpose of obtaining permanent residency for an immigration client, based on a fraudulent marriage. Mr. Frias consented to the revocation. His license has been suspended since February 27, 2009, pending a show case hearing. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Frias\\_Consent.pdf](http://www.vsb.org/docs/Frias_Consent.pdf)

#### STEVEN LIEBERMAN

Norfolk, Virginia

07-022-070561, 08-022-074382

On February 20, 2009, the Virginia State Bar Disciplinary Board revoked Steven Lieberman's license to practice law. In consenting to the revocation, Mr. Lieberman admitted that he violated disciplinary rules that govern fees, diligence, safekeeping property, and misconduct that reflects adversely on the lawyer's fitness to practice. The violations occurred in his representations in a divorce and a lawsuit to determine real estate interests in a former business partnership. In both cases, Mr. Lieberman mishandled client funds. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Lieberman\\_2-25-09.pdf](http://www.vsb.org/docs/Lieberman_2-25-09.pdf)

#### STEPHEN LEE MCPHERSON

Chesapeake, Virginia

09-000-078314

On March 13, 2009, the Virginia State Bar Disciplinary Board revoked Stephen Lee McPherson's license to practice law. In consenting to the revocation, Mr. McPherson acknowledged that he was facing a disciplinary investigation based on his guilty pleas on January 23, 2009, in Chesapeake Circuit Court to four sexual crimes against minors in his custody and care, and that he is facing similar charges in Virginia Beach Circuit Court. The board summarily suspended his license on February 27, 2009, pending a show cause hearing. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/McPherson\\_3-20-09.pdf](http://www.vsb.org/docs/McPherson_3-20-09.pdf)

#### JAMES EDWARD MOYLER JR.

Franklin, Virginia

09-010-076281

On April 13, 2009, the Virginia State Bar Disciplinary Board revoked James Edward Moyler's license to practice law. Mr. Moyler admitted that he had acknowledged in court proceedings that he had "loaned" himself more than \$3.5 million from an estate for which he was executor. The bar had scheduled an April 14, 2009, expedited hearing after learning that he had been ordered by the Southampton County Circuit Court to account for funds in at least two estates. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Moyler\\_4-17-09.pdf](http://www.vsb.org/docs/Moyler_4-17-09.pdf)

#### BADA PHU NGUYEN

Falls Church, Virginia

09-000-078277

On March 24, 2009, the Virginia State Bar Disciplinary Board revoked Bada Phu Nguyen's license to practice law. Mr. Nguyen consented to the revocation. He pled guilty in Fairfax County General District Court to a charge of embezzlement. His license had been suspended since February 27, 2009, pending a show cause hearing. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Nguyen\\_Consent.pdf](http://www.vsb.org/docs/Nguyen_Consent.pdf)

#### LINDSEY OWEN SUTHERLAND

Fairfax, Virginia

08-051-074583

On February 20, 2009, the Virginia State Bar Disciplinary Board suspended Lindsey Owen Sutherland's license to practice law for forty-

## DISCIPLINARY SUMMARIES

five days, effective February 24, 2009, for violating disciplinary rules that govern competence, diligence, communication, declining or terminating representation, and bar admission and disciplinary matters. The violations occurred in a debt collection matter. RPC 1.1; 1.3(a); 1.4(a); 1.16(d); 8.1(c)

[http://www.vsb.org/docs/Sutherland\\_3-11-09.pdf](http://www.vsb.org/docs/Sutherland_3-11-09.pdf)

### NATHAN HAROLD WASSER

Cumberland, Maryland

09-000-078453

On March 24, 2009, the Virginia State Bar Disciplinary Board revoked Nathan Harold Wasser's license to practice law in Virginia. Mr. Wasser consented to the revocation. He was disbarred in Maryland on February 3, 2009, and his Virginia license was suspended on February 26, 2009, pending a show cause hearing. Rules Part 6, §IV, ¶13.L.2

[http://www.vsb.org/docs/Wasser\\_3-24-09.pdf](http://www.vsb.org/docs/Wasser_3-24-09.pdf)

## DISTRICT COMMITTEES

### SPENCER DEAN AULT

Lovettsville, Virginia

07-070-1279

On February 24, 2009, a Virginia State Bar Seventh District Subcommittee imposed a public reprimand on Spencer Dean Ault for violating professional rules that govern diligence, communication, and declining or terminating representation. Mr. Ault neglected an employment matter for more than a year, failed to communicate with the client, did not provide the file upon request, and did not withdraw from representation as the rules require. This was an agreed disposition of misconduct charges. RPC 1.3; 1.4(a); 1.16(e)

[http://www.vsb.org/docs/Ault\\_3-12-09.pdf](http://www.vsb.org/docs/Ault_3-12-09.pdf)

### SCOTT NADER KAZEM

Leesburg, Virginia

07-070-1280

On March 2, 2009, a Virginia State Bar Seventh District Subcommittee imposed a public admonition with terms on Scott Nader Kazem for violating the disciplinary rule that governs lawyer as witness. Mr. Kazem accepted a domestic relations case in which he was likely to be a witness. RPC 3.7(a)

[http://www.vsb.org/docs/Kazem\\_3-12-09.pdf](http://www.vsb.org/docs/Kazem_3-12-09.pdf)

### SUE ELLA EASTERLING KOBAK

Pennington Gap, Virginia

07-102-070344, 07-102-070249, 07-102-064898, 07-102-070665, 08-102-071254

On February 23, 2009, a Virginia State Bar Tenth District, Section II Subcommittee imposed a public reprimand with terms on Sue Ella Easterling Kobak for violating professional rules that govern safekeeping property and responsibilities regarding nonlawyer assistants. Ms. Kobak delegated her professional obligation to manage her escrow and trust accounts to an administrative assistant, who embezzled money from the accounts. This was an agreed disposition of misconduct charges. RPC 1.15(e)(1)(i-v), (2)(i-iii), (f)(2), (3), (4)(i), (ii), (5)(i-iii), (6); 5.3(a), (b), (c)(1), (2)

[http://www.vsb.org/docs/Kobak\\_3-11-09.pdf](http://www.vsb.org/docs/Kobak_3-11-09.pdf)

### DANIEL JASON MILLER

Virginia Beach, Virginia

08-022-074392

On February 20, 2009, the Virginia State Bar Second District Committee imposed a public reprimand with terms on Daniel Jason Miller for violating the disciplinary rule that governs declining or terminating representation. The violation occurred when Mr. Miller failed to appear on behalf of a client in a child support hearing and did not withdraw from the case and protect his client's interests as the rules require. This was an agreed disposition of misconduct charges. RPC 1.16(c),(d)

[http://www.vsb.org/docs/Miller\\_2-25-09.pdf](http://www.vsb.org/docs/Miller_2-25-09.pdf)

### PATRICK ALLEN ROBBINS

Accomac, Virginia

08-021-074543

On February 25, 2009, a Virginia State Bar Second District Subcommittee imposed a public reprimand with terms on Patrick Allen Robbins for violating the professional rule that governs competence. In a court-appointed representation of a criminal appeal, Mr. Robbins filed a petition that failed to cite any legal authority in support of his argument. This was an agreed disposition of misconduct charges. RPC 1.1

[http://www.vsb.org/docs/Robbins\\_3-11-09.pdf](http://www.vsb.org/docs/Robbins_3-11-09.pdf)

### ALFRED LINCOLN ROBERTSON JR.

Fairfax, Virginia

08-052-071661

On April 1, 2009, a Virginia State Bar Fifth District, Section II, Subcommittee imposed a public reprimand with terms on Alfred Lincoln Robertson Jr. for violating professional rules that govern diligence, communication, and safekeeping property. The misconduct occurred in a domestic relations case and included failure to deposit client funds in a trust account, as the rules require. This was an agreed disposition. RPC 1.3(a); 1.4 (a-c); 1.15(a)(2)

[http://www.vsb.org/docs/Robertson\\_4-13-09.pdf](http://www.vsb.org/docs/Robertson_4-13-09.pdf)

### J. PATTERSON ROGERS III

Danville, Virginia

09-090-075922

On March 3, 2009, a Virginia State Bar Ninth District Subcommittee imposed a public reprimand with terms on J. Patterson Rogers III for violating the professional rule that governs diligence. The misconduct occurred in a personal injury representation. This was an agreed disposition. RPC 1.3(a)

[http://www.vsb.org/docs/Rogers\\_3-11-09.pdf](http://www.vsb.org/docs/Rogers_3-11-09.pdf)

### ROBERT W. SPESSARD JR.

Floyd, Virginia

08-101-071407

On March 31, 2009, a Virginia State Bar Tenth District, Section I, Subcommittee imposed a public reprimand with terms on Robert W. Spessard Jr. for violating disciplinary rules that govern competence, scope of representation, communication, conflict of interest, and misconduct that reflects adversely on the lawyer's fitness to practice. The violations occurred in a case in which Mr. Spessard was settlement agent in a land purchase. This was an agreed disposition of misconduct charges. RPC 1.1; 1.2(c); 1.4(b); 1.7(a)(1),(2), (b)(1-4); 8.4(c)

[http://www.vsb.org/docs/Spessard\\_4-1-09.pdf](http://www.vsb.org/docs/Spessard_4-1-09.pdf)

## DISCIPLINARY SUMMARIES

### JAMES FRED SUMPTER

Midlothian, Virginia

06-032-4173, 07-032-1740

On April 1, 2009, a Virginia State Bar Third District Subcommittee imposed a public reprimand on James Fred Sumpter for violating professional rules that govern diligence, communication, fees, disregarding court rules or orders, discovery abuse, and misconduct. The matter involved Mr. Sumpter's representations in a domestic relations case and a court-appointed criminal appeal. This was an agreed disposition of misconduct charges. RPC 1.3(a-c); 1.4(a); 1.5(a)(1-8); 3.4(d), (e); 8.4(a)

[http://www.vsb.org/docs/Sumpter\\_4-13-09.pdf](http://www.vsb.org/docs/Sumpter_4-13-09.pdf)

### PAUL GRANVILLE WATSON IV

Eastville, Virginia

08-022-071777

On March 23, 2009, a Virginia State Bar Second District Subcommittee imposed a public reprimand on Paul Granville Watson IV for violating professional rules that govern diligence and bar admission and disciplinary matters. The violations occurred in a divorce representation and Mr. Watson's subsequent failure to cooperate with a bar investigation of the complaint. This was an agreed disposition of misconduct charges. RPC 1.3(a), 8.1(c)

[http://www.vsb.org/docs/Watson\\_071777.pdf](http://www.vsb.org/docs/Watson_071777.pdf)

### PAUL GRANVILLE WATSON IV

Eastville, Virginia

08-022-073510

On March 23, 2009, a Virginia State Bar Second District Subcommittee imposed a public reprimand on Paul Granville Watson IV for violating professional rules that govern communication and bar admission and disciplinary matters. The violations occurred in a criminal appeal and Mr. Watson's subsequent failure to cooperate with a bar investigation of the complaint. This was an agreed disposition of misconduct charges. RPC 1.4(a), 8.1(c)

[http://www.vsb.org/docs/Watson\\_073510.pdf](http://www.vsb.org/docs/Watson_073510.pdf)

### PAUL GRANVILLE WATSON IV

Eastville, Virginia

08-022-075543

On March 23, 2009, a Virginia State Bar Second District Subcommittee imposed a public reprimand on Paul Granville Watson IV for violating professional rules that govern bar admission and disciplinary matters. The violation occurred when Mr. Watson failed to respond with the bar's attempt to informally resolve a complaint about a criminal representation, and then failed to cooperate when the bar opened an active investigation. This was an agreed disposition of misconduct charges. RPC 8.1(c)

[http://www.vsb.org/docs/Watson\\_075543.pdf](http://www.vsb.org/docs/Watson_075543.pdf)

## PROPOSALS FOR PUBLIC COMMENT

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

### PROPOSED AMENDMENT TO RULE 1.17, RULES OF PROFESSIONAL CONDUCT REGARDING SALE OF A LAW PRACTICE

Deadline for comment: June 11, 2009

The Ethics Committee proposes an amendment to Rule 1.17(a). Rule 1.17 permits a lawyer to sell or purchase a law practice partially or in its entirety, including good will, but requires the seller to cease practicing law in the geographic area in which the practice has been conducted. As currently written, the rule prohibits the seller from practicing law entirely in the geographic area, even when that seller has sold only a particular portion of the practice but continues to retain other portions. To give effect to the seller's ability to sell a particular portion of the practice, the seller should have the option to continue practicing in those areas that were not sold in the geographic area where the practice was conducted.

The proposed rule amendment will prohibit the selling lawyer from engaging in the private practice of law in the geographic area only with respect to the particular practice area that has been sold. Adopting the proposed amendment will avoid the unintended effect of unnecessarily restricting the seller's ability to continue to practice law in the geographic area as to their other areas of legal practice.

Additionally, the proposed rule will require a lawyer selling 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, thereby protecting clients who may find it difficult to secure substitute counsel.

This proposal will be considered by the Virginia State Bar Council on June 18, 2009.

Details: [http://www.vsb.org/docs/Rule-1.17-11-17-08\\_.pdf](http://www.vsb.org/docs/Rule-1.17-11-17-08_.pdf)

### PROPOSED NEW RULE 1.18, RULES OF PROFESSIONAL CONDUCT REGARDING DUTIES TO PROSPECTIVE CLIENTS

Proposed new Rule 1.18 will give guidance to Virginia lawyers as to their duties to prospective clients. Rule 1.18 defines a prospective client and clarifies the distinction between the duty of confidentiality owed to someone who unilaterally gives information to a lawyer as opposed to one who communicates with a lawyer with a reasonable expectation of forming an attorney-client relationship.

Rule 1.18 removes the imputed disqualification and conflict of interest created from an initial consult that does not result in the formation of a lawyer-client relationship. The proposed rule allows the tainted lawyer to be screened, thereby avoiding disqualification of the entire firm. The tainted lawyer must take reasonable measures to control his exposure to disqualifying information, and the affected client must receive written notice that the firm is employing a screen regarding the consultation and the procedures employed in the screening process.

Proposed Rule 1.18 provides a better balance between a prospective client's right to protection under Rule 1.6 and the adverse party's right of access to and choice of counsel. Under the current rules and ethics opinions, even if a lawyer-client relationship does not ensue, an initial interview with a prospective client triggers the duty of confidentiality under Rule 1.6 and potentially conflicts the interviewing lawyer and any other lawyer associated with the firm from undertaking representation adverse to the interviewed prospective client. If the requirements of proposed Rule 1.18 are followed, the conflicts and imputed disqualification of a law firm triggered by an initial consult will be significantly reduced. The proposed rule provides an additional protection to the law firm that is not available under the

## PROPOSALS FOR PUBLIC COMMENT

existing rules, particularly in those instances in which a person contacts a lawyer or law firm merely for strategic elimination of the lawyer or law firm for that person's adversary. See, e.g., Legal Ethics Opinion 1794 (2004).

The proposal is under consideration by the VSB Standing Committee on Legal Ethics.

Details: [http://www.vsb.org/docs/Rule\\_1-18\\_3-26-09.pdf](http://www.vsb.org/docs/Rule_1-18_3-26-09.pdf)

### PROPOSED AMENDMENT TO PART 6, § IV, ¶ 13 BOARD PROCEEDINGS UPON A GUILTY PLEA OR AN ADJUDICATION OF A CRIME

Deadline for comment: May 29, 2009

On April 1, 2009, the VSB Standing Committee on Lawyer Discipline approved a proposed amendment that clarifies the process and burden of proof for a show cause proceeding when a respondent has pled guilty, been found guilty, or been convicted of a crime.

The proposal will be considered by the VSB Council at its meeting on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/6-iv-13-guilty-adjudication>

### PROPOSED AMENDMENT TO PART 6, § IV, (¶ 13-29) DUTIES OF DISBARRED OR SUSPENDED RESPONDENT

Deadline for comment: May 29, 2009

On December 3, 2008, the VSB Standing Committee on Lawyer Discipline approved proposed amendments. One requires a disbarred or suspended attorney to notify the Clerk of the Disciplinary System, inter alia, when he or she has no clients to whom to give notice of the revocation or suspension pursuant to Paragraph 13-29. Another amendment establishes a procedure for a show cause hearing resulting from failure to comply with the requirements of Paragraph 13-29.

The proposals will be considered by the VSB Council at its meeting on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/6-iv-13-disbarred-suspended>

### PROPOSED AMENDMENT TO PART 6, § IV, ¶¶ 1, 2, 3, ORGANIZATION AND GOVERNMENT OF THE VSB MEMBERSHIP REQUIREMENTS

Deadline for comment: June 11, 2009

The Virginia State Bar Membership Task Force recommends amendments to establish time limits for attorneys to register with the Virginia State Bar, permit members to request that their names and addresses be omitted from the membership list when it is distributed for nonofficial purposes, clarify that only attorneys may be associate members, and permit associate members to apply for disabled or retired status.

This proposal will be considered by the Virginia State Bar Council on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/part-6-section-iv>

### PROPOSED AMENDMENT TO PART 6, § IV, ¶ 13 PROCESSING OF COMPLAINTS BY BAR COUNSEL

Deadline for comment: May 29, 2009

On January 7, 2009, the VSB Standing Committee on Lawyer Discipline approved a proposed amendment which strikes language that has not been in use in the disciplinary system for many years. Mutual agreement of the complainant and respondent to the resolution of a bar complaint is not sought at any stage of the disciplinary process.

The proposal will be considered by the VSB Council at its meeting on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/6-iv-13-processing-complaints>

### PROPOSED LEGISLATION — § 54.1-3904, CODE OF VIRGINIA PENALTY FOR PRACTICING WITHOUT AUTHORITY

Deadline for Comment: June 11, 2009

The Virginia State Bar's Standing Committee on the Unauthorized Practice of Law proposes to increase the penalty for the unauthorized practice of law for in egregious situations.

The proposal will be considered by the VSB Council at its meeting on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/penalty-upl-felony>

### PROPOSED LEGAL ETHICS OPINION 1845 USE OF COVERT TACTICS BY THE VIRGINIA STATE BAR IN UNAUTHORIZED PRACTICE OF LAW INVESTIGATIONS

Deadline for comment: June 15, 2009

This opinion addresses the ethical propriety of staff counsel to the VSB Standing Committee on Unauthorized Practice of Law supervising an undercover investigation to determine whether someone is engaging in UPL. The staff counsel are not conducting the covert investigation, but have directed a lay staff investigator regularly employed by the VSB to perform the covert investigation. The tactics or techniques used by the investigator would involve some form of deception, such as misrepresentation of identity or purpose, in order to catch the suspect engaging in conduct that is unlawful or criminal.

The committee observes that one who engages in the unauthorized practice of law is committing a criminal act. It is generally known and well accepted that law enforcement authorities, including government lawyers, are authorized to conduct or supervise undercover operations that use deception to gather information about criminal conduct. The committee believes that use of an undercover or "sting" operation by a lay investigator under the direction of staff counsel does not violate the Rules of Professional Conduct. The Supreme Court of Virginia has specifically approved a legal ethics opinion that recognizes a "law enforcement" exception to Rule 8.4 (c). The committee also believes that, although undercover investigations involve some elements of misrepresentation and deceit, the conduct does not reflect adversely on the fitness or character of the lawyer directing or supervising a lawful criminal investigation.

This proposal is under consideration by the UPL Committee.

Details: [http://www.vsb.org/docs/LEO1845\\_4-14-09.pdf](http://www.vsb.org/docs/LEO1845_4-14-09.pdf)

## PROPOSED LEGAL ETHICS OPINION 1851 PARTICIPATION IN A THIRD-PARTY INTERNET WEBSITE

Deadline for comment: June 15, 2009

This proposed opinion generally addresses whether a lawyer may ethically participate in a third-party Internet website or organization that invites a prospective client to submit case information and then automatically forwards that information to a very limited number of participating lawyers if the service: 1) charges a fee based on an agreement to an exclusive geographical listing for the lawyer; 2) charges a fee based on very strict limitations on the number of participating lawyers in each geographical practice area; or 3) charges a set fee per referrals or client contact.

The Standing Committee on Legal Ethics opines that Rules 7.2(c) and 7.3(d) restrict a lawyer from giving something of value to a third-party Internet website or organization in exchange for recommending employment by a client or as a reward for having made a recommendation resulting in employment by the client. By restricting the number of lawyers who are listed, the website in the opinion's hypothetical is recommending participating lawyers to the prospective client. Furthermore, the committee considers the payment based on the number of referrals, which vary depending on the number of client contacts made, amounts to an impermissible quid pro quo for services because the fee paid by the lawyer is directly related to the number of prospective clients with whom the lawyer makes contact.

This proposal is under consideration by the Ethics Committee.

Details: [http://www.vsb.org/docs/LEO1851\\_4-14-09.pdf](http://www.vsb.org/docs/LEO1851_4-14-09.pdf)

## MCLE PROPOSALS

The Mandatory Continuing Legal Education (MCLE) Board is seeking comment on the following proposals, which it will consider at its meeting in August. Comments should be submitted in writing to MCLE Board, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, or to [Cartwright@vsb.org](mailto:Cartwright@vsb.org).

### PROPOSED MCLE OPINION 13 STANDARDS FOR APPROVAL FOR LEGAL ETHICS CREDIT

Deadline for comment: July 30, 2009

This proposal addresses legal ethics credit as it applies to programs or components relating to rules of procedure, rules of evidence, and litigation tactics.

Details: <http://www.vsb.org/site/regulation/mcle-opinion-13/>

### PROPOSED MCLE OPINION 19 SUBSTANCE ABUSE, MENTAL HEALTH DISORDERS, STRESS, AND WORK- AND LIFE-BALANCE TOPICS

Deadline for comment: July 30, 2009

The MCLE Board will consider approving courses on these topics for CLE credit. Standards for approval are set out in Opinion 19.

Details: <http://www.vsb.org/site/regulation/mcle-opinion-19/>

## PROPOSED AMENDMENT TO PART 6, § IV, ¶ 17.B.(3).(D), ORGANIZATION AND GOVERNMENT OF THE VSB ANNUAL MCLE CERTIFICATION FORM DISTRIBUTION

Deadline for comment: May 29, 2009

The Mandatory Continuing Legal Education Board recommends eliminating a requirement that the Virginia State Bar mail the annual certification form (Form 1, End of Year Report) to all active members.

The proposal will be considered by the VSB Council at its meeting on June 18, 2009.

Details: <http://www.vsb.org/site/regulation/paragraph-17-form/>

## NOTICES TO VSB MEMBERS

### FINAL OPINIONS

#### LEGAL ETHICS OPINION 1848 USE OF CREDIT CARDS FOR LEGAL SERVICES

Details: <http://www.vacle.org/opinions/1848.htm/>

#### UNAUTHORIZED PRACTICE OF LAW OPINION 213 ATTORNEY ON ASSOCIATE STATUS REPRESENTING MULTIPLE OWNERSHIP INTERESTS IN NEGOTIATION AND DRAFTING OF EASEMENT

Details: <http://www.vsb.org/site/regulation/upl-opinion-213>

#### UNAUTHORIZED PRACTICE OF LAW OPINION 214 NONLAWYER REPRESENTATION, FOR COMPENSATION, OF A PARTY TO ARBITRATION

Details: <http://www.vsb.org/site/regulation/upl-opinion-214>

## ADMINISTRATIVE SUSPENSIONS

A list of Virginia State Bar members who have been administratively suspended has been posted at <http://www.vsb.org/site/members/administrative-suspensions/>. The suspensions are for failure to comply with Part 6, § IV, ¶¶ 11, 16, 18, or 19, Rules of the Supreme Court of Virginia, Organization and Government of the Virginia State Bar. The VSB has been unable to contact some of these members. To advise the bench and bar of these suspensions and to establish contact with the suspended persons, the bar requests that members let the bar know of the present location and practice status of any person on the list by contacting the Membership Department at (804) 775-0530 or [membership@vsb.org](mailto:membership@vsb.org). The posted list is current as of March 5, 2009.

For easier access to the documents cited in this magazine, *Virginia Lawyer Register* is posted with live Internet links to the documents at [http://www.vsb.org/docs/valawyer magazine/Register\\_2009-05.pdf](http://www.vsb.org/docs/valawyer magazine/Register_2009-05.pdf).

## JUNE COUNCIL PROPOSALS

The Virginia State Bar is seeking public comment on the following proposals, which will be considered at its meeting on June 18, 2009. Comment should be sent in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on the date of deadline.

### DIVERSITY CONFERENCE AND MISSION ADDITION

Deadline for comment: May 26

Proposal: To establish a Diversity Conference; amend the VSB Mission Statement and powers of the VSB Council to include a diversity component; and add an ex officio seat for the Diversity Conference chair on the VSB Council and Executive Committee.

(Bylaws of VSB Diversity Conference; addition to VSB Mission Statement; addition to Part 6, § IV, ¶ 9, Powers of the Council; addition to Part 6, § IV, ¶ 5, The Council; and amendment to Article VI, Council Bylaws.)

Details: <http://www.vsb.org/site/news/item/diversity/>

### PAYEE NOTIFICATION

Deadline for comment: May 26

Proposal: To require insurers that pay third-party liability claims to notify claimants when they disburse settlement proceeds of \$5,000 or more to the claimants' attorneys.

(Legislation)

Details: <http://www.vsb.org/site/public/payee-notification>

### EXTENSION OF TERM ON MALPRACTICE INSURANCE COMMITTEE

Deadline for comment: May 26

Proposal: To extend the terms of members of the Special Committee on Lawyer Malpractice Insurance from three to five years, because of the time necessary to learn the subject matter.

(Bylaws, Article V, Committees)

Details: <http://www.vsb.org/site/regulation/prop-bylaws-cmtes>

### SUNSETTING OF SCOLAS

Deadline for comment: May 26

Proposal: To sunset the Standing Committee on Lawyer Advertising and Solicitation and reassign its duties to the Standing Committee on Legal Ethics and the ethics staff.

(Amendments to Bylaws, Part II, Article VIII, §5; Rules of Virginia Supreme Court, Part 6, §IV, ¶10; Rules, Part 6, §II, Rule 7.2)

Details: <http://www.vsb.org/site/regulation/scolas-sunset>

### PROCEDURE FOR SHOW CAUSE HEARING AFTER A CRIME

Deadline for comment: May 29

Proposal: To clarify the process and burden of proof for a show cause proceeding when a respondent has pled guilty, been found guilty, or been convicted of a crime.

(Amendment to Paragraph 13-22\* — Part 6, § IV, ¶13, Board Proceedings upon a Guilty Plea or an Adjudication of a Crime)

Details: <http://www.vsb.org/site/regulation/6-iv-13-guilty-adjudication>

### DUTIES OF DISBARRED OR SUSPENDED ATTORNEYS

Deadline for comment: May 29

Proposal: To require a disbarred or suspended attorney to notify the Clerk of the Disciplinary System when he or she has no clients to whom to give notice of the revocation or suspension pursuant to Paragraph 13-29. Also, to establish a procedure for a show cause hearing resulting from failure to comply with the requirements of Paragraph 13-29.

(Amendment to Paragraph 13-29\* — Part 6, § IV, ¶13, Duties of Disbarred or Suspended Respondent )

Details: <http://www.vsb.org/site/regulation/6-iv-13-disbarred-suspended>

### “MUTUAL AGREEMENT” OF COMPLAINANT AND RESPONDENT

Deadline for comment: May 29

Proposal: To strike language that has not been in use in the disciplinary system for many years. Mutual agreement of the complainant and respondent to the resolution of a bar complaint is not sought at any stage of the disciplinary process.

(Amendment to Paragraph 13-10\* — Part 6, § IV, ¶13, Processing of Complaints by Bar Counsel)

Details: <http://www.vsb.org/site/regulation/6-iv-13-processing-complaints>

### SALE OF LAW PRACTICE

Deadline for comment: June 11

Proposal: To remove a requirement that requires a lawyer who sells a portion of a practice to discontinue all private practice in the geographic area that the portion was conducted in. Also, to require a seller to sell an entire practice or an entire portion of a practice.

(Amendment to Rules of Professional Conduct, Rule 1.17)

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

### CREATION OF FELONY PENALTY FOR UPL

Deadline for comment: June 11

Proposal: To increase the penalty for egregious unauthorized practice of law to a class 6 felony.

(Legislation)

Details: <http://www.vsb.org/site/regulation/penalty-upl-felony>

### MEMBERSHIP REQUIREMENTS

Deadline for comment: June 11, 2009

(Amendments to Rules of Virginia Supreme Court, Part 6, §IV, ¶¶ 1, 2, 3)  
(See page 7.)

### ANNUAL MCLE CERTIFICATION FORM DISTRIBUTION

Deadline for comment: May 29

(Amendment to Rules of Virginia Supreme Court, Part 6, § IV, ¶ 17.B.(3).(d))

(See page 7.)

\*The reformatted Rules of Court of the Supreme Court of Virginia, Paragraph 13 goes into effect May 1, 2009, and is available at [http://www.vsb.org/docs/p6-sIV\\_P13\\_web.pdf](http://www.vsb.org/docs/p6-sIV_P13_web.pdf).