

---

---

# VIRGINIA LAWYER REGISTER

The Official Publication of the Virginia State Bar | [www.vsb.org](http://www.vsb.org)

---

---

Vol. 61/No. 2 | August/September 2012

---

In this issue:

- 2 Disciplinary Proceedings
- 3 Disciplinary Summaries
- 5 Reinstatement Petition
- 6 Proposals for Public Comment
- 7 Notices to Members
- 8 Clients' Protection Fund 2011–12 Payments

---

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 Virginia Supreme Court. All documents submitted to the state bar for inclusion in the *Register* are subject to alteration as to typography and formatting, in order to conform to the requirements of the *Register*, without changing the intent of any document.

---

## DISCIPLINARY PROCEEDINGS

Respondent's Name	Address of Record	Action	Effective Date	Page
<b>Circuit Court</b>				
John Wesley Bonney	Norfolk, VA	Suspension w/Terms — 45 Days	March 22, 2012	3
Clive Allen O'Leary	Fredericksburg, VA	Suspension w/Terms — 1 year	March 1, 2012	3
Mark John Sullivan	Fairfax, VA	Public Admonition	May 23, 2012	3
<b>Disciplinary Board</b>				
Stephen Joseph Caputo	Stony Brook, NY	Revocation	June 22, 2012	3
Dennis Philip Clarke	McLean, VA	Suspension — 90 Days with 60 Days stayed	June 22, 2012	3
Denny Pat Dobbins	Portsmouth, VA	Suspension w/Terms — 3 months	July 1, 2012	3
Olaf Francis Gebhart Jr.	Tifton, GA	Revocation	June 28, 2012	3
David Glenn Hubbard	Richmond, VA	Suspension — 30 Days	April 27, 2012	4
Kristen Grim Hughes	McLean, VA	Public Reprimand w/Terms	March 23, 2012	4
George Wells Rowe	Richmond, VA	Suspension — 30 Days	May 18, 2012	4
Thomas James Sehler	Reston, VA	Revocation	April 27, 2012	4
Robert Henry Smallenberg	Ashland, VA	Suspension — 3 years	May 18, 2012	4
Erin Marie Weber	Falls Church, VA	Revocation	April 27, 2012	4
<b>District Committees</b>				
Tinya Lynnette Banks	Norfolk, VA	Public Reprimand	April 20, 2012	4
Kathleene Anne Cipriano	Virginia Beach, VA	Public Reprimand	May 17, 2012	4
<b>Suspension — Failure to Pay Disciplinary Costs</b>				
		<b>Effective Date</b>	<b>Lifted</b>	
Barbara Lyn Brackett	Vienna, VA	April 6, 2012		n/a
Sara Davis Harman	Glen Allen, VA	June 22, 2012		n/a
Rachel Heather MacKnight	Chevy Chase, MD	June 12, 2012		n/a
Mary Meade	Fairfax, VA	May 2, 2012		n/a
Clive Allen O'Leary	Fredericksburg, VA	June 25, 2012		n/a
John Arthur Sutherland Jr.	Fairfax, VA	May 1, 2012		n/a
Lindsey Owen Sutherland	Fairfax, VA	April 6, 2012		n/a
Joseph Louis Tantoh Tibui	San Diego, CA	June 1, 2012	June 7, 2012	n/a
Timothy James Wall	Fredericksburg, VA	July 19, 2012		n/a
David Benjamin Weinberg	Alexandria, VA	April 20, 2012		n/a
<b>Suspension — Failure to Comply with Subpoena</b>				
		<b>Effective Date</b>	<b>Lifted</b>	
Rebecca Louise Marquez	Arlington, VA	April 27, 2012	May 8, 2012	n/a
Richard Andrew Davis	Charlottesville, VA	June 1, 2012	June 4, 2012	n/a
Clive Allen O'Leary	Fredericksburg, VA	June 12, 2012		n/a
Jin-Ho Cynn	Fairfax, VA	March 13, 2012	May 7, 2012	n/a
David Benjamin Weinberg	Alexandria, VA	April 16, 2012		n/a
<b>Reinstatement Petition</b>				
Kenneth Dennis Sisk	Richmond, VA			5

### Virginia Lawyer Register

The Official Publication of the Virginia State Bar

Editor: Rodney A. Coggin  
Assistant Editor: Gordon R. Hickey  
Design & Production: Madonna G. Dersich

*Virginia Lawyer* (USPS 660-120, ISSN 0899-9473) is published ten times a year in alternating formats by the Virginia State Bar, Eighth & Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800;

telephone (804) 775-0500. Subscription Rates: \$18.00 per year for nonmembers. This material is presented with the understanding that the publisher and the authors do not render any legal, accounting, or other professional service. It is intended for use by attorneys licensed to practice law in Virginia. Because of the rapidly changing nature of the law, information contained in this publication may become outdated. As a result, an attorney using this material must always research original sources of authority and update information to ensure accuracy when dealing with a specific client's legal matters. In no event will the authors, the reviewers, or the publisher be liable for any direct, indirect,

or consequential damages resulting from the use of this material. The views expressed herein are not necessarily those of the Virginia State Bar. Periodical postage paid at Richmond, Virginia, and other offices.

POSTMASTER:  
Send address changes to  
Virginia State Bar Membership Department  
Eighth & Main Building  
707 East Main Street, Suite 1500  
Richmond, Virginia 23219-2800

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Virginia Supreme Court Part 6, ¶ II, eff. Jan. 1, 2000) or another of the Supreme Court Rules.

Copies of 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.

---

## CIRCUIT COURTS

---

### JOHN WESLEY BONNEY

Norfolk, Virginia

10-021-084287, 11-021-085707

Effective March 22, 2012, a three-judge panel of the Circuit Court for the City of Norfolk suspended John Wesley Bonney's license to practice law for forty-five days with terms for violating professional rules that govern fees, confidentiality of information, conflict of interest: former client, safekeeping property, declining or terminating representation, meritorious claims and contentions, fairness to opposing party and counsel, and misconduct. RPC 1.5(b)(c); 1.6(a); 1.9(c)(1), (c)(2); 1.15(a)(1)(2)(b)(c)(3)(e)(1)(iii); 1.16(d); 3.1; 3.4(j); 8.4(a)

[http://www.vsb.org/docs/Bonney\\_final\\_07-23-12.pdf](http://www.vsb.org/docs/Bonney_final_07-23-12.pdf)

### CLIVE ALLEN O'LEARY

Fredericksburg, Virginia

10-060-080220, 11-060-084890

Effective March 1, 2012, a three-judge panel of the Stafford County Circuit Court suspended Clive Allen O'Leary's license to practice law for one year with terms for violating professional rules that govern diligence, communication, fees, safekeeping property, declining or terminating representation, bar admission and disciplinary matters, and misconduct. RPC 1.3(a); 1.4(a); 1.5(a); 1.15(a),(e); 1.16(d); 8.1(a); 8.4(c)

<http://www.vsb.org/docs/Oleary-032712.pdf>

### MARK JOHN SULLIVAN

Fairfax, Virginia

10-051-082247

On May 23, 2012, a three-judge circuit court issued a public admonition to Mark John Sullivan for violating a professional rule that governs candor to the tribunal. RPC 3.3(a)(4)

<http://www.vsb.org/docs/Sullivan-060612.pdf>

---

## DISCIPLINARY BOARD

---

### STEPHEN JOSEPH CAPUTO

Stony Brook, New York

12-000-090762

Effective June 22, 2012, the Virginia State Bar Disciplinary Board revoked Stephen Joseph Caputo's license to practice law. His license had been summarily suspended on May 24, 2012, based on his disbarment by the Supreme Court of the State of New York: Appellate Division. Part 6, § IV, ¶ 13-24.

<http://www.vsb.org/docs/Caputo-072012.pdf>

### DENNIS PHILIP CLARKE

McLean, Virginia

12-000-091223

Effective June 22, 2012, the Virginia State Bar Disciplinary Board suspended Dennis Philip Clarke's license to practice law for ninety days with all but thirty days stayed. The board placed Mr. Clarke on probation for two years. The action was based on the suspension of Mr. Clarke's District of Columbia license by the District of Columbia Court of Appeals. Part 6, § IV, ¶ 13-24.

<http://www.vsb.org/docs/Clarke-072012.pdf>

### DENNY PAT DOBBINS

Portsmouth, Virginia

10-010-082581, 10-010-080201

Effective July 1, 2012, the Virginia State Bar Disciplinary Board suspended Denny Pat Dobbins's license to practice law for three months with terms for violating professional rules that govern diligence, communication, and declining or terminating representation. This was an agreed disposition of misconduct charges. RPC 1.3(a); 1.4(a); 1.16(c)(d)

<http://www.vsb.org/docs/Dobbins-060712.pdf>

### OLAF FRANCIS GEBHART JR.

Tifton, Georgia

12-010-089603

On June 28, 2012, the Virginia State Bar revoked Olaf Francis Gebhart Jr.'s license to practice law. In consenting to the revocation, Mr. Gebhart admitted that disciplinary charges pending against him are true and that he could not successfully defend against them. Part 6, § IV, ¶ 13-28.

[http://www.vsb.org/docs/Gebhart\\_final\\_07-23-12.pdf](http://www.vsb.org/docs/Gebhart_final_07-23-12.pdf)

## DISCIPLINARY BOARD

**DAVID GLENN HUBBARD**

Vienna, Virginia

10-051-084288

On April 27, 2012, the Virginia State Bar Disciplinary Board suspended license to practice law for thirty days for violating a professional rule that governs bar admission and disciplinary matters. RPC 8.1(c)

[http://www.vsb.org/docs/Hubbard\\_Final-05182012.pdf](http://www.vsb.org/docs/Hubbard_Final-05182012.pdf)

**KRISTEN GRIM HUGHES**

McLean, Virginia

11-052-084557

On March 23, 2012, the Virginia State Bar Disciplinary Board issued a public reprimand with terms to Kristen Grim Hughes for violating a professional rule that governs unauthorized practice of law; multijurisdictional practice of law. RPC 5.5(c)

<http://www.vsb.org/docs/Hughes-072012.pdf>

**GEORGE WELLS ROWE**

Richmond, Virginia

11-031-086546, 12-000-091393

On May 18, 2012, the Virginia State Bar Disciplinary Board suspended George Wells Rowe's license to practice law for thirty days for violating rules that govern unauthorized practice of law and committing a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law. The board also fined Mr. Rowe \$5,000 for violating the Virginia Consumer Real Estate Settlement Protection Act, (now Real Estate Settlement Agents). RPC 5.5(c); 8.4(b); 15 VAC 5-80-30

<http://www.vsb.org/docs/Rowe-060712.pdf>

**THOMAS JAMES SEHLER**

Reston, Virginia 20190

11-052-087689, 12-052-090918

On April 27, 2012, the Virginia State Bar Disciplinary Board revoked Thomas James Sehler's license to practice law for violating rules that govern competence, scope of representation, diligence, communication, fees, safekeeping property, declining or terminating representation, candor toward the tribunal, fairness to opposing party and counsel, truthfulness in statements to others, and misconduct. RPC 1.1; 1.2(c); 1.3(a)(b)(c); 1.4(a)(b)(c); 1.5(a)(1-8); 1.15(a)(1)(2)(3)(i)(ii), (b)(1-5), (c)(1)(2)(i)(ii)(3)(4), (d)(1)(2)(3)(i-iv), (4); 1.16(d); 3.3(a)(1)(2)(4); 3.4(c)(d); 4.1(a)(b); 8.4(a)(b)(c)

<http://www.vsb.org/docs/Sehler-072012.pdf>

**ROBERT HENRY SMALLENBERG**

Ashland, Virginia

12-000-091299

On May 18, 2012, the Virginia State Bar Disciplinary Board suspended Robert Henry Smalленberg's license to practice law for three years for failing to notify clients, opposing attorneys, and the court of a prior suspension and five interim suspensions. Rules Part 6, §IV, ¶ 13-29

<http://www.vsb.org/docs/Smalленberg-062612.pdf>

**ERIN MARIE WEBER**

Falls Church, Virginia

12-000-090627

On April 27, 2012, the Virginia State Bar Disciplinary Board revoked Erin Marie Weber's license to practice law based on her January 10, 2012, guilty plea to and conviction of embezzlement in Fairfax County Circuit Court. Her license was summarily suspended on January 23, 2012.

<http://www.vsb.org/docs/Weber-060712.pdf>

## DISTRICT COMMITTEES

**TINYA LYNNETTE BANKS**

Norfolk, Virginia

12-021-089222

On April 20, 2012, a Virginia State Bar Second District - Section I Subcommittee issued a public reprimand to Tinya Lynnette Banks for violating professional rules that govern diligence and communication. This was an agreed disposition of misconduct charges. RPC 1.3(a)(b), 1.4(a)(b)

[http://www.vsb.org/docs/Banks\\_Tinya-05192012.pdf](http://www.vsb.org/docs/Banks_Tinya-05192012.pdf)

**KATHLEENE ANNE CIPRIANO**

Virginia Beach, Virginia

11-022-086778

On May 17, 2012, a Virginia State Bar Second District Subcommittee issued a public reprimand to Kathleene Anne Cipriano for violating professional rules that govern communication and declining or terminating representation. This was an agreed disposition of misconduct charges. RPC 1.4(a); 1.16(e)

<http://www.vsb.org/docs/Cipriano-060112.pdf>

**KENNETH DENNIS SISK**

Deadline for comment: October 17, 2012.

The Virginia State Bar Disciplinary Board seeks information about Mr. Sisk's fitness to practice law. Written comments or requests to testify at the hearing may be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, or to [clerk@vsb.org](mailto:clerk@vsb.org) by the date of the deadline. Comments will become part of the public record.

Pursuant to Part 6, Section IV, Paragraph 13-25 of the Rules of the Supreme Court of Virginia, Kenneth Dennis Sisk petitioned the Court on May 20, 2011, for reinstatement of his license to practice law. The Virginia State Bar Disciplinary Board will hear the petition on October 26, 2012, at 9:00 a.m. in House Room D, at the General Assembly Building, First Floor, 910 Capitol Street, Richmond. After hearing evidence and oral argument, the Disciplinary Board will make factual findings and recommend to the Supreme Court whether the petition should be granted or denied.

The Virginia State Bar Disciplinary Board revoked Mr. Sisk's license by Order of Revocation Upon Consent entered on August 31, 2005, based on an Affidavit of Consent to Revocation in which Mr. Sisk acknowledged the truthfulness of the material facts underlying a pending complaint involving allegations that Mr. Sisk: i) engaged in the unauthorized practice of law by making two appearances on behalf of a criminal defendant in the United States District Court for the Eastern District of Virginia, Richmond Division, while his license to practice law in the Commonwealth of Virginia was suspended for failure to comply with mandatory continuing legal education requirements; and ii) misrepresented to the Court that the criminal defendant was being represented by another lawyer on whose behalf Mr. Sisk was appearing. In the Affidavit of Consent to Revocation, Mr. Sisk also acknowledged the truthfulness of allegations that he had threatened to burn down a house resulting in the issuance of a protective order and had been involved in the unauthorized taking of certain personal property.

At the time of the revocation of Mr. Sisk's law license, he had no prior disciplinary record.

In his petition for reinstatement, Mr. Sisk stated that: he was licensed to practice law in the Commonwealth of Virginia in 1978, in the State of New York in 1986, and in the State of Georgia in 1992; he self-reported his unauthorized practice of law in 2005; the criminal charge arising from the allegation that he threatened to burn down a house was dismissed and the related protective order was withdrawn; he pled guilty and was convicted in the Richmond General District Court to three counts of petit larceny arising from the allegation of his unauthorized taking of certain personal property; following his disbarment he pled guilty in the Richmond General District Court and Richmond Circuit Court to multiple criminal offenses, specifically, six felonies (five forgery charges and one grand larceny charge) arising from his forging of checks from the business account of an attorney for the purpose of obtaining monies to purchase and consume controlled substances, and eight misdemeanors (three accessory to forgery charges, failure to report, failure to appear, concealed weapon, driving without an operator's license and driving on a suspended license); all of his ethical misconduct and criminal conduct resulted from his substance addiction; he successfully completed the Richmond Adult Drug Treatment Court program in October 2008; he was employed in a litigation support position from 2006-2008 and has been employed as a paralegal since 2008; he has completed more than sixty hours of continuing legal education courses during the five years preceding the filing of his petition for reinstatement; he took the Multistate Professional Responsibility Exam in November 2010 and received a scaled score of 108; he owes the Bar's Client Protection Fund no monies; he is making regular payments in compliance with a child support and arrears order entered against him in the Northampton County Juvenile and Domestic Relations District Court in July 2010; and he has paid all delinquent taxes he owed the United States Government pursuant to offers in compromise accepted by the Internal Revenue Service.

A copy of the Order of Revocation Upon Consent entered on August 31, 2005, revoking Mr. Sisk's law license is available from the clerk at [clerk@vsb.org](mailto:clerk@vsb.org) or (804) 775-0539.

## *Virginia Lawyer Register Online*

For easier access to the documents cited in this magazine, the *Virginia Lawyer Register* is posted with live Internet links at [http://www.vsb.org/docs/valawyerregister/Register\\_2012-08.pdf](http://www.vsb.org/docs/valawyerregister/Register_2012-08.pdf).



The following proposals are published for public comment, which should be submitted in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219 or [gould@vsb.org](mailto:gould@vsb.org), no later than the end of the business day on the day of the deadline.

### PROPOSED VSB BYLAWS REVISIONS TO ELECTION PROCEDURES FOR PRESIDENT-ELECT AND COUNCIL

Deadline for comment: September 30, 2012

The Membership Task Force of the Virginia State Bar (VSB) proposes that the VSB bylaws be amended to permit the use of means, other than U.S. mail, for election notification and balloting.

Details: <http://www.vsb.org/docs/prop-bylaws-071312.pdf>

### PROPOSED PAYEE NOTIFICATION STATUTE

Deadline for comment: September 30, 2012

On April 25, 2012, the Virginia State Bar Payee Notification Task Force approved the proposed statute. The task force has recommended unanimously that insurance companies be required to notify claimants or judgment creditors that the insurer has issued a payment of \$5,000 or more in settlement of a liability claim or judgment to the attorney or other representative of the claimant or judgment creditor. The proposed statute will be presented to the VSB Council in October.

Details: <http://www.vsb.org/site/news/item/payee-notification-2012-06>

The Standing Committee on Legal Ethics requests public comment on the following proposed ethics opinions. Comments should be submitted in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219 or [gould@vsb.org](mailto:gould@vsb.org), no later than the end of the business day on the day of the deadline.

### PROPOSED LEGAL ETHICS OPINION 1863

*May a lawyer communicate with an insurance adjuster when the insured is represented by a lawyer provided by the insurer?*

Deadline for comment: September 7, 2012

This proposed opinion reconsiders previous LEOs that conclude that a plaintiff's lawyer may not contact the insurance adjuster in a personal injury case where the defendant/insured is represented by counsel provided by the insurer. The Supreme Court of Virginia has never directly answered the question of whether the insurer is also a client of the defendant/insured's lawyer when that lawyer is provided to the defendant/insured pursuant to his contract of insurance with the insurer. The leading authority on the duties of the lawyer for the insured, *Norman v. Insurance Company*, 218 Va. 718, 239 S.E.2d 902 (1978), emphasizes that the lawyer for the defendant/

insured owes the same duty to his client as if he were privately retained by the insured – thereby strongly suggesting that the defendant/insured is the only client of the lawyer. Unauthorized Practice of Law Opinion 60 (Approved by the Supreme Court of Virginia, March 8, 1985) and Legal Ethics Opinion 1723 (Approved by the Supreme Court of Virginia, September 29, 1999) also suggest the same conclusion.

The Committee believes that, based on these authorities, it is not accurate to say that the defendant/insured's lawyer necessarily or always represents the insurer as well. In this proposed opinion, the Committee concludes that unless the plaintiff's lawyer is aware that the defendant/insured's lawyer also represents the insurer, the plaintiff's lawyer may communicate with the insurance adjuster or other employees of the insurer without consent from the defendant/insured's lawyer. LEOs 550, 687, 1169, and 1524 are overruled to the extent that they state or imply that the lawyer for the defendant/insured always represents the insurer as well.

Details: <http://www.vsb.org/site/regulation/public-comment-leo-1863>

### PROPOSED LEGAL ETHICS OPINION 1864

*May a criminal defense lawyer agree that he will not give certain discovery materials to his client during the course of the representation, and that he will remove certain materials from his file prior to the end of the representation?*

Deadline for comment: September 7, 2012

This proposed opinion addresses an agreement offered by a prosecutor to criminal defense lawyers, which provides that in exchange for broad discovery provided by the prosecutor, the defense lawyer will not give copies of any such discovery materials to his client during the course of the representation, and that the lawyer will remove certain sensitive materials from his file prior to the termination of the representation so that the client will not receive those materials. The prosecutor asks whether this agreement will cause the defense lawyer to violate Rule 1.4, governing communication, and/or Rule 1.16(e), addressing the client's entitlement to materials from the file upon the termination of the representation.

In this proposed opinion, the Committee concludes that Rule 1.4 does not require that the lawyer provide copies of discovery materials during the representation, because the lawyer can explain all pertinent facts to the client without providing particular documents. However, in order to avoid a violation of Rule 1.16(e) if the lawyer's representation is unexpectedly terminated, the lawyer must seek the client's consent to the portion of the agreement that requires the lawyer to return documents to the prosecutor prior to the conclusion of the representation.

Details: <http://www.vsb.org/site/regulation/public-comment-leo-1864>

The VSB's Standing Committee on Legal Ethics issued the following LEO as final on June 6, 2012:

## LEGAL ETHICS OPINION 1859

*May a Criminal Defense Lawyer Disclose Information to a Government Lawyer After a Former Client Makes a Claim of Ineffective Assistance of Counsel?*

Details: <http://www.vacle.org/opinions/1859.htm>

---

The VSB's Standing Committee on Legal Ethics issued the following LEO as final on July 23, 2012:

## LEGAL ETHICS OPINION 1862

*"Timely Disclosure" of Exculpatory Evidence and Duties to Disclose Information in Plea Negotiations*

Details: <http://www.vacle.org/opinions/1862.htm>

---

The VSB's Standing Committee on Legal Ethics issued the following LEO as final on July 26, 2012:

## LEGAL ETHICS OPINION 1866

*"Of Counsel" Relationship*

Details: <http://www.vacle.org/opinions/1866.htm>

---

## NOMINATIONS COMMITTEE NAME CHANGE, POLICIES APPROVED

The name of the Judicial Nominations Committee has been changed to the Judicial Candidate Evaluation Committee. The VSB Council also approved changes to the committee's procedures at its meeting on June 14, 2012.

Details: <http://www.vsb.org/site/news/item/nominations-committee-changes-2012>.

---

## NOMINATIONS SOUGHT FOR BOARD AND COMMITTEE VACANCIES

Volunteers are needed to serve the Virginia State Bar's special boards and committees. The Nominating Committee will refer nominees to the VSB Council for consideration at its October 2012 meeting.

Vacancies in 2013 are listed below. All appointments or elections will be for the terms specified, beginning on July 1, 2013.

**Council Members at Large:** Three lawyer vacancies (of which two incumbents are eligible for reappointment to a second term and one incumbent is not eligible for reappointment). May serve two consecutive three-year terms.

**Disciplinary Board:** Seven lawyer vacancies and one lay member vacancy (of which three lawyer members are eligible for reappointment to a second three-year term, four lawyer members are not eligible for reappointment, and one lay member is eligible for reappointment to a second three-year term). District committee service is required. May serve two consecutive three-year terms.

**Mandatory Continuing Legal Education Board:** Three lawyer vacancies (of which one current member is eligible for reappointment to a second

term and two members are not eligible for reappointment). May serve two consecutive three-year terms.

Nominations, along with a brief résumé, should be sent by September 7, 2012, to George W. Shanks, Chair, VSB Nominating Committee, Virginia State Bar, 707 E. Main St., Suite 1500, Richmond, VA 23219, or emailed to [nominations@vsb.org](mailto:nominations@vsb.org).

---

## INTERNET SCAMMERS CONTINUE TO TARGET LAWYERS AND LAW FIRMS

by James M. McCauley, Ethics Counsel, Virginia State Bar

The FBI continues to report that Internet scammers are targeting lawyers and law firms with fictitious collection cases in which a cashier's check is delivered to the lawyer's office. In all cases the identity of the debtor and creditor appear legitimate. The cashier's check tendered to the lawyer by the debtor turns out to be counterfeit, but the scammer hopes that this is not discovered until after the lawyer has deposited the check and disbursed funds to the creditor or client. Typically the lawyer's bank will tell the law firm that the deposited funds are available for disbursement and the lawyer disburses the funds to the creditor or client pursuant to the latter's direction. When the check is ultimately flagged and dishonored, the bank will charge back against the lawyer's trust account. The resulting overdraft (usually in amounts between \$250,000 and \$450,000) becomes a problem for the lawyer and for which the lawyer's bank disclaims liability. Further, the lawyer's professional liability insurer may deny coverage for the loss.

In a slight variation of the scheme's execution, the law firm receives an e-mail from what appears to be an attorney located in another state requesting assistance for a client. The client needs aid in collecting a debt from a company located in the law firm's state. In some cases, the name of the referring attorney and the debtor company used in the e-mail were verified as legitimate entities and were being used as part of the scheme. The law firm receives a signed retainer agreement and a check made payable to the law firm from the alleged debtor. The client instructs the law firm to deposit the check and to wire the funds, minus all fees, to an overseas bank account. The law firm discovers after the funds are wired that the check is counterfeit.

Here are some precautions you should consider:

1. If you decide to represent a client via e-mail, especially one who purports to reside overseas, add a paragraph to your fee agreement allowing you to hold funds collected from the debtor for a sufficient period of time to verify the validity of the paying instrument.
2. Consider including a similar provision for retainers paid by your client. (In one variation of this scam, the overseas client uses a counterfeit check to pay the lawyer's retainer then quickly fires the lawyer, demanding an immediate refund by wire transfer.)
3. Although the latest alert refers to counterfeit checks, lawyers have also been scammed by counterfeit money orders. If you collect a debt under the scenario described above, wait at least ten business days before disbursing any funds regardless of the instrument used to pay the debt. In some circumstances, it may be appropriate to double this waiting period.
4. If you are the victim of a scam, file a complaint with the Internet Crime Complaint Center at [www.ic3.gov](http://www.ic3.gov). No duty of confidentiality is owed by the lawyer to the scammer.

# CLIENTS' PROTECTION FUND BOARD PETITIONS PAID

Between July 1, 2011, and June 30, 2012, the Clients' Protection Fund Board approved payments to fifty-one clients. The matters involved twenty-five attorneys.

Attorney/Location	FY 11–12 Amount	Paid To Date	Type of case
James Emmett Anderson, Deceased	\$1,731.11	\$1,731.11	Unearned fees/Unspecified matter
David Eugene Cecil, Grundy, VA	\$50,000		Embezzlement/Trust funds
David Eugene Cecil, Grundy, VA	\$50,000		Embezzlement/Trust funds
David Eugene Cecil, Grundy, VA	\$50,000		Embezzlement/Trust funds
David Eugene Cecil, Grundy, VA	\$50,000	\$200,000	Embezzlement/Trust funds
Crystal Anita Gist Fisher, Waldorf, MD	\$4,300	\$14,350	Unearned fees/Employment matter
Tracey S. Foughty-Deavers, Fairfax, VA	\$450		Unearned fees/Preparation of a QDRO
Tracey S. Foughty-Deavers, Fairfax, VA	\$262	\$712.00	Unearned fees/Name change petition
Stacy F. Garrett III, Midlothian, VA	\$1,500	\$3,500	Unearned fees/Criminal representation
Brian Gay, Virginia Beach, VA	\$50,000		Embezzlement/Trust and Estate
Brian Gay, Virginia Beach, VA	\$50,000	\$100,000	Embezzlement/Trust and Estate
Walter F. Green IV, Harrisonburg, VA	\$6,294	\$25,794	Unearned fees/Personal injury matter
John Warren Hart, Virginia Beach, VA	\$17,500		Embezzlement/Life insurance payout
			Unearned fees/Trust and Estate
John Warren Hart, Virginia Beach, VA	\$1,800		Unearned fees/Bankruptcy case
John Warren Hart, Virginia Beach, VA	\$7,000		Unearned fees/Administration of a trust
John Warren Hart, Virginia Beach, VA	\$5,500		Embezzlement/Business Transaction
John Warren Hart, Virginia Beach, VA	\$50,000		Embezzlement/Trust funds
John Warren Hart, Virginia Beach, VA	\$1,950		Unearned fees/Trust and Estate
John Warren Hart, Virginia Beach, VA	\$7,687		Unearned fees/Trust and Estate
John Warren Hart, Virginia Beach, VA	\$2,500	\$93,937	Unearned fees/Trust and Estate
Steven Frank Helm, Salem, VA	\$7,266.67	\$7,266.67	Embezzlement/Personal injury matter
Robert David Jacobs, Deceased	\$1,750		Unearned fees/Domestic relations matter
Robert David Jacobs, Deceased	\$1,500	\$3,250	Unearned fees/Domestic relations matter
Owaiian M. Jones, Fredericksburg, VA	\$3,500	\$143,419.59	Unearned fees/Civil matter
Joseph William Kaestner, Deceased	\$5,717.22	\$8,217.22	Unearned fees/Criminal matter
			Failure to return escrowed funds
Steven Lieberman, Norfolk, VA	\$7,500	\$173,782.15	Unearned fees/Divorce
John Coury Macdonald, Centreville, VA	\$28,400		Embezzlement/Trust Funds
John Coury Macdonald, Centreville, VA	\$28,400		Embezzlement/Trust Funds
John Coury Macdonald, Centreville, VA	\$28,400		Embezzlement/Trust Funds
John Coury Macdonald, Centreville, VA	\$28,400		Embezzlement/Trust Funds
John Coury Macdonald, Centreville, VA	\$28,400	\$146,925	Embezzlement/Trust Funds
Gerard Raymond Marks, Christiansburg, VA	\$575	\$12,775	Unearned fees/Divorce
Denis Joseph McCarthy, Blackstone, VA	\$1,000	\$1,000	Unearned fees/Divorce
Ann Marie Miller, Federal Heights, CO	\$621.64		Unearned fees/Bankruptcy
Ann Marie Miller, Federal Heights, CO	\$597.73	\$110,813.78	Unearned fees/Bankruptcy
Tina Elizabeth Orr, Norfolk, VA	\$6,712.50	\$6712.50	Unearned fees/Trust and Estate
Keh Soo Park, Fairfax, VA	\$4,875		Unearned fees/Immigration matter
Keh Soo Park, Fairfax, VA	\$4,875	\$9,750	Unearned fees/Immigration matter
James Berkley Priest, South Boston, VA	\$700	\$700	Unearned fees/Criminal matter
Sol Zalel Rosen, Arlington, VA	\$3,500	\$3,500	Unearned fees/Civil and medical malpractice matter
Lindsey Sutherland, Fairfax, VA	\$2,000	\$2,000	Unearned fees/Collection matter
Paul Hampton Thomson, Winchester, VA	\$3,000		Unearned fees/Employment matter
Paul Hampton Thomson, Winchester, VA	\$1,000	\$4,000	Unearned fees/DUI matter
Bradley Douglas Wein, Richmond, VA	\$620		Embezzlement/Landlord-Tenant dispute
Bradley Douglas Wein, Richmond, VA	\$2,700		Embezzlement/Landlord-Tenant dispute
Bradley Douglas Wein, Richmond, VA	\$3,660.27		Embezzlement/Landlord-Tenant dispute
Bradley Douglas Wein, Richmond, VA	\$2,700		Unearned fees/Divorce
Bradley Douglas Wein, Richmond, VA	\$1,700		Unearned fees/Bankruptcy matter
Bradley Douglas Wein, Richmond, VA	\$25,954.69		Unearned fees/Civil suit
Bradley Douglas Wein, Richmond, VA	\$1,600		Unearned fees/Landlord-Tenant dispute
Bradley Douglas Wein, Richmond, VA	\$1,000		Unearned fees/Bankruptcy matter
David Redd Young, Leesburg, VA	\$2,200	\$2,200	Unearned fees/Bankruptcy matter
<b>Total</b>		<b>\$649,300.33</b>	