

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
LEGAL ETHICS OPINION 1893**

(VSB Petition ID: 23-1)

PETITION OF THE VIRGINIA STATE BAR

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TABLE OF CONTENTS

I. Overview of the Issues	1
II. Publication and Comments	3
III. Proposed Legal Ethics Opinion 1893	4
IV. Conclusion	11

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
PROPOSED LEGAL ETHICS OPINION 1893**

PETITION

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

NOW COMES the Virginia State Bar (“VSB”), by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of Legal Ethics Opinion 1893, as set forth below. The proposed opinion was approved by 59-2 vote of the VSB Council on February 25 (Appendix, p. 1).

I. Overview of the Issues

The VSB Standing Committee on Legal Ethics (“committee”) has proposed Legal Ethics Opinion (“LEO”) 1893.

This proposed opinion addresses possible conflicts of interest, and how any conflicts that do arise may be resolved, when a lawyer represents a minor child with a parent serving as “next friend.” The opinion concludes that generally there is no conflict of interest because the interests of parent and child are aligned, and the parent’s special fiduciary relationship with the child creates a presumption that

the parent is acting in the best interests of the child. If a conflict does develop, for example if the parent gives the lawyer unreasonable instructions that place the parent's interests in conflict with the child's interests, the lawyer cannot accept consent to that conflict from the parent and may seek appointment of a guardian ad litem to protect the child's interests, may seek court approval of a settlement if the lawyer believes that is in the child's interests, or may petition a court to appoint a substitute "next friend."

There is a need for guidance in these cases because of the perceived tension between the fact that the child is the true client and the real party in interest in such a matter, but the parent as "next friend" makes decisions in the case and acts on behalf of the minor child. The basic question is whether, and under what circumstances, the lawyer can take direction from the parent when the parent might have their own interest in the case (such as a lien for medical expenses that the parent incurred on the child's behalf in a personal injury case) and likewise, under what circumstances the lawyer can oppose the parent's instructions if the lawyer believes those instructions are not in the child's interests.

The opinion identifies the presumption that the parent acts in the best interests of the child, along with examples of circumstances when a conflict might arise. The proposed opinion then discusses the fact that a minor child lacks capacity to waive conflicts on their own behalf before turning to a discussion of

what options are available to a lawyer who believes there is a conflict between the minor child client and their “next friend.” As stated above, the opinion concludes that a lawyer cannot reasonably accept consent from the parent on behalf of the child in these circumstances, but may seek appointment of a guardian ad litem, may petition for judicial approval of a settlement on their own, or may petition a court to appoint a substitute “next friend.” In any event, the parent must be advised to seek their own independent counsel.

The proposed opinion is included below in Section III.

II. Publication and Comments

The Standing Committee on Legal Ethics approved the proposed opinion at its meeting on June 24, 2021 (Appendix, p. 13). The VSB issued publication releases dated June 29, 2021, January 21, 2022, and September 15, 2022, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court (Appendix, p. 17, 19 and 21). Notice of the proposed opinion was also published in the Virginia State Bar’s July 2021, February 2022, October 2022, and December 2022 editions of E-News (Appendix, p. 23, 28, 33 and 38), on the Virginia State Bar’s website on the “Actions on Rule Changes and Legal Ethics Opinions” page (Appendix, p. 42), and in the *Virginia Lawyer Register*, Vol. 71 at page 45 in the October 2022 issue (Appendix, p. 46).

The committee received comments on the proposed Legal Ethics Opinion from three lawyers/organizations: David Corrigan (on behalf of the Local Government Attorneys) (Appendix, p. 72), August Bequai (Appendix, p. 74), and multiple comments on behalf of the VTLA (Valerie O'Brien and Elliott Buckner) (Appendix, p. 47, 61 and 62). In response to many of the issues raised by the VTLA comments, the committee revised the opinion to make it more generally applicable to any situation with a child client and to remove many references to the specific legal issues present in a personal injury matter when the parent may have a lien against the child's recovery.

III. Proposed Rule

LEGAL ETHICS OPINION 1893—REPRESENTING CHILD WITH PARENT AS “NEXT FRIEND”

This legal ethics opinion addresses possible conflicts of interest that may arise when a parent, guardian, or other person as “next friend” engages a lawyer to represent a minor child.

Questions

1. Can the lawyer have a conflict of interest in representing the child if the parent's directions, in the lawyer's judgment, are not in the child's best interest?
2. If the answer to Question 1 is “yes,” and a conflict does arise, may that conflict of interest be waived, and if so, how?

Short Answers

1. Generally, no, there is no conflict of interest because the interests of the parent and the child are usually mutually aligned, and the parent's fiduciary relationship with the child raises a presumption that the parent is acting in the child's best interests.
2. If a conflict arises between the interests of the child and parent who is acting as "next friend," the lawyer should petition the court to appoint a guardian ad litem to protect the child's interests, or a different "next friend" to replace the parent, and must advise the parent to consult independent counsel.

Applicable Rules and Legal Ethics Opinions

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) the consent from the client is memorialized in writing.

RULE 1.14 Client With Impairment

(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.

Legal Ethics Opinions 786, 957, 1304, 1725 and 1762.

Representation of Child

Lawsuits filed on behalf of a minor child are brought in the name of the child by a "next friend," typically the child's parent(s) or guardian(s). Va. Code § 8.01-8. Nonetheless, the child, not the parent/"next friend," is the real party in interest in such an action. *Herndon v. St. Mary's Hospital, Inc.*, 266 Va. 472

(2003). When a lawsuit is filed on behalf of a minor child or a petition seeking court approval of a settlement of the minor child's claim is filed, a guardian ad litem may be appointed by the court to represent the interests of the minor child pursuant to Virginia Code § 8.01-9. However, the statute further states that if an attorney is representing a person under disability, no guardian ad litem need be appointed.

The child is the real party in interest, but the lawyer must look to the child's "next friend" to speak for and act on behalf of the minor child and to make decisions in the child's best interests regarding the child's claim against the tortfeasor. The parent as "next friend" is a fiduciary of the child and thus part of the child's attorney-client relationship with the lawyer, however, the lawyer has no independent attorney-client relationship with the parent unless explicitly agreed to. The lawyer should communicate with the parent to ensure an understanding that the lawyer's client is the child, not the parent, and the lawyer's obligation is to the client.

For example, in a claim for a child's personal injuries, the parent ordinarily has a lien for medical expenses incurred on behalf of the child, and unless the parent waives the lien, it may be paid out of the minor child's recovery against the tortfeasor. Va. Code § 8.01-36. The lawyer is obligated to protect the parent's interest once there is a successful recovery for the child, to the same extent as the

lawyer would for any third party holding a lien against a settlement or recovery, but the lawyer does not represent the parent for recovery of their lien. *See* Rule 1.15(b)(4) and Cmt. [4].

Potential Conflicts Between Parent/“Next Friend” and Child

A conflict may arise when the parent, acting as “next friend,” directs and controls the lawyer’s representation in an unreasonable way that is detrimental to the best interests of the child. An example of this is if a parent, acting as “next friend,” unreasonably demands that the lawyer settle the child’s case for substantially less than what the lawyer believes is a realistic settlement amount, but for an amount that will fully satisfy the parent’s lien for medical expenses. Generally, however, the parent’s and child’s interests are not at odds because the lawyer’s goal is to pursue the maximum recovery for the child’s tort claim from which third-party liens can be satisfied.

The committee believes that generally a lawyer may presume that the child’s parent is acting in the best interests of the child even though the parent may have a lien on the settlement or recovery obtained on the child’s case. This presumption may be relied upon until the lawyer has reason to believe that the parent is no longer placing the child’s interests first. Maine Professional Ethics Comm’n Op. 154 (November 12, 1996):

This presumption is fundamental to the legal relationship between parents and children in our society. Failure to acknowledge this presumption would impose unacceptable costs on the resolution of disputes including the expense of obtaining and paying a guardian ad litem to act on behalf of the child throughout the case, a step that will usually disrupt family relationships and should not be required unless necessary to serve the best interests of the child.

While the committee acknowledges the presumption, a conflict between the parent and child may arise. The parent's lien may not be the only source of a potential conflict. The parent/"next friend" might act unreasonably in some other way or make decisions that conflict with the lawyer's professional judgment. The lawyer will have to examine the facts and circumstances on a case-by-case basis. Using the child's personal injury claim example, a lawyer may need to consider information such as the relationship between the parent and child; the value of the child's claim compared to the parent's lien and whether the parent has agreed to waive or reduce their lien; the age and maturity of the child; the amount of any available insurance proceeds or other financial resources to pay the claim and liens; the type/amount of reimbursement the parent is seeking; the responsibility of the parent in causing or contributing to the child's injuries; liability, and the respective positions and expectations of the parties. The committee recognizes that issues that may create a conflict may not be known at the outset, making it necessary for the lawyer to frequently reassess potential conflict throughout the representation. Moreover, if the "next friend" is not a parent or guardian but some

other third party, the presumption discussed in the Maine ethics opinion does not apply.

Can a Conflict Between Parent/“Next Friend” and the Child be Cured?

Turning to Question #2, if there is a conflict caused by the “next friend” directing the lawyer for their benefit rather than the best interests of the child, the lawyer must determine whether the conflict can be cured with the informed consent of the client under Rule 1.7(b). The most essential requirement is that “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to [the] affected client” notwithstanding the conflict. Some conflicts are too great to be cured with informed consent, as Comment [19] to Rule 1.7 states:

A client may consent to representation notwithstanding a conflict. However, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.

Another problem for the lawyer in this hypothetical is the ability to obtain the client’s consent when his client is a minor. This committee has consistently opined that a minor cannot provide the consent required by provisions of the Rules of Professional Conduct. Legal Ethics Opinions 786, 957, 1304, 1725 and 1762. Thus, this attorney cannot obtain any required consent from the child.

If a conflict arises because the parent's and child's interests conflict, the lawyer cannot reasonably accept consent of the parent on behalf of the child. Assume, for example, that the parent acting as "next friend" directs the lawyer to settle the child's case for an amount that is less than the lawyer believes is a reasonable settlement value for the child's case, but that is sufficient to fully satisfy the parent's lien. In that event, a conflict exists. The lawyer cannot reasonably accept consent of the parent on behalf of the child. The lawyer may seek appointment of a guardian ad litem to address the competing interests of the child and parent, or may seek judicial approval of the infant settlement, and must advise the parent to seek independent counsel. Alternatively, if the parent/"next friend" is acting unreasonably, the lawyer may petition a court to appoint a substitute "next friend."

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 VSB. 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. Proposed LEO 1893 was developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the VSB requests that the Court approve the proposed Legal Ethics Opinion 1893 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

By 
Stephanie E. Grana, President

By 
Cameron M. Rountree, Executive Director

Dated this 10th day of March, 2023.

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APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

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TABLE OF CONTENTS

I.	VSB Council Minutes for February 25, 2023	1
II.	Ethics Committee Minutes for	13
III.	Publication Notifications seeking public comment: Publication Releases; VSB E-News; VSB Rule Changes; VL Register	17
IV.	Comments	47

**MINUTES OF THE VIRGINIA STATE BAR
COUNCIL MEETING**

Date: February 25, 2023, 9:00 am
Location: Omni Richmond Hotel, 100 S. 12th Street, Richmond

The VSB Council met in-person on Saturday, February 25, 2023. At 9:05 a.m., President Stephanie E. Grana called the meeting to order. Sixty-two (62) Council members attended in-person satisfying Pt. 6., § IV, Para. 7 of the Rules of the Supreme Court of Virginia. There was no remote participation.

Council members in attendance:

President Stephanie E. Grana	Member Susan M. Butler
President-elect Chidi I. James	Member Gary V. Davis
Member D.J. Hansen	Member Kyung “Kathryn” N. Dickerson
Member Ryan G. Ferguson	Member Brian C. Drummond
Member Naveed Kalantar	Member Sandra L. Havrilak
Member Bretta Zimmer Lewis	Member Tamika D. Jones
Member Corrynn J. Peters	Member Luis A. Perez-Pietri
Member Thomas G. Shaia	Member Susan M. Pesner
Member Derek A. Davis	Member Robert B. “Bob” Walker
Member Benjamin M. Mason	Member Michael M. York
Member Veronica E. Meade	Member R. Penn Bain
Member Susan B. Tarley	Member Susan F. Pierce
Member E. M. Wright, Jr.	Member Daniel P. Frankl
Member P. George Eliades II	Member Kevin W. Holt
Member Timothy R. Baskerville	Member Eugene N. Butler
Member Mark D. Dix	Member William T. Wilson
Member Samuel T. Towell	Member Peter K. McDermott II
Member Susheela Varky	Member W. Grant Back
Member Henry I. Willett III	Member Bruce H. Russell II
Member Thomas A. Edmonds	Member Bradley D. Fleming
Member Joel R. McClellan	Member D. Sue Baker
Member Allen F. Bareford	Member Anna B. Bristle
Member Richard H. Howard-Smith	Member at Large James W. Hundley
Member Ann Marie Park	Member at Large Lenard T. “Len” Myers, Jr.
Member Carole H. Capsalis	Member at Large Molly E. Newton
Member Jennifer S. Golden	Member at Large Lonnie D. “Chip” Nunley III
Member Adam M. Krischer	Member at Large Patricia E. Smith
Member David E. Sher	Member at Large Nicole E. Upshur
Member Nicholas J. Gehrig	Member at Large Lisa A. Wilson
Member Sebastian M. Norton	CLSBA Chair Luis A. Perez-Pietri
Member Todd A. Pilot	Young Lawyers Conference President Craig E. Ellis

Absent:

Immediate Past President Jay B. Myerson
 Member W. Huntington "Hunter" Byrnes, Sr.
 Member Craig B. Davis
 Member G. L. "Rex" Flynn, Jr.
 Member Matthew R. Foster
 Member Stephen K. Gallagher
 Member G. Andrew Hall
 Member Carly J. Hart
 Member Shaun R. Huband
 Member Neil S. Lowenstein
 Member Charlene A. Moring
 Member Nathan J. Olson
 Member Debra L. Powers
 Member Cullen D. Seltzer
 Member Neil S. Talegaonkar
 Member at Large Joanna L. Suyes
 Diversity Conference Chair Alicia R. Johnson
 Senior Lawyer Conference Chair Gary C. Hancock

Council Invitees:

Valerie O'Brien	Virginia Trial Lawyers Association
K. Danielle Payne	Virginia Association of Criminal Defense Lawyers

Also attending:

Cameron M. Rountree	VSB	Executive Director and Chief Operating Officer
Janet P. Van Cuyk	VSB	Deputy Executive Director
Renu M. Brennan	VSB	Bar Counsel
Marni E. Byrum	VSB	Budget and Finance Committee chair
Rhetta M. Daniel		
Sylvia S. Daniel	VSB	Assistant to the Deputy Executive Director
DaVida M. Davis	VSB	Director of Regulatory Compliance
Edward J. "Ed" Dillon	VSB	Deputy Bar Counsel
Nancy L. Donner	VSB	Office Services Coordinator & Council Liaison
Courtney M. Frazier	VSB	Diversity Conference member
JW Grenadier		American Legal News
Emily F. Hedrick	VSB	Ethics Counsel
Crystal T. Hendrick	VSB	Director of Finance and Procurement
R. Braxton Hill IV	VSB	Committee on Lawyer Discipline chair
Nicholas J. "Nick" Kuriger	VSB	Director of Information Technology
Shawne D. Moore	VSB	Assistant to the Executive Director
Caryn B. Persinger	VSB	Director of Communications
Dolly C. Shaffner	VSB	Meetings Coordinator
Aidan Stengel	VSB	IT Specialist
Maureen D. Stengel	VSB	Director of Bar Services

I. Reports and Information Items

A. President's Report

Stephanie Grana reported on her activities. Her written report was included in the materials provided to Council.

B. Executive Director's Report

Cameron Rountree reported on matters relating to the VSB. His written report was included in the materials provided to Council.

C. Financial Report

Crystal Hendrick presented the financial report as of December 31, 2022. Her written report was included in the materials provided to Council.

D. Bar Counsel Report

Renu Brennan reported on the activities in the Office of Bar Counsel. Her written report was included in the materials provided to Council.

E. Conference of Local & Specialty Bar Associations Report

Chair Luis Perez reported on the activities of the Conference of Local & Specialty Bar Associations. His written report was included in the materials provided to Council.

F. Diversity Conference Report

Member Courtney Frazier reported on the activities of the Diversity Conference. The Chair's Report was included in the materials provided to Council.

G. Senior Lawyers Conference Report

Member Thomas Edmonds reported on the activities of the Senior Lawyers Conference. The Report of the Senior Lawyers Conference was included in the materials provided to Council.

H. Young Lawyer Conference Report

Conference President Craig Ellis reported on the activities of the Young Lawyers Conference. His written report was included in the materials provided to Council.

I. Opportunity for Questions, Comments, Ideas

The following individuals were given an opportunity to speak:

- William T. "Bill" Wilson, Bar Council member, 25th Judicial Circuit
- JW Grenadier
- Rhetta M. Daniel

II. Action Items

A. Minutes of the October 21, 2022 Meeting

A motion was made by Chidi James and seconded by Thomas Edmonds, to vote to approve the minutes of the October 21, 2022 meeting. Bar Council approved the minutes of the June 16, 2022 meeting. Members Timothy Baskerville, Thomas Edmonds, David Sher, and William Wilson voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

B. Fiscal Year 2024 Proposed Budget

Marni Byrum presented the Fiscal Year 2024 Proposed Budget. A copy of the memorandum dated February 2, 2023, from the Director of Finance, was included in the materials provided to Bar Council. After a discussion, a motion was made by William Wilson and seconded by Leonard Myers, to vote to approve the proposed budget and send it to the Supreme Court for approval. Bar Council voted to approve the Fiscal Year 2024 Proposed Budget and send it to the Supreme Court for approval. Members Timothy Baskerville, Thomas Edmonds, and William Wilson voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

C. Review of Proposed Paragraph 13 changes clarifying the meaning of “shall” in Paragraph 13

R. Braxton Hill IV presented a review of the proposed Paragraph 13 changes clarifying the meaning of “shall” in Paragraph 13. A copy of the memo dated February 1, 2023, from Bar Counsel and Senior Assistant Bar Counsel, re: the Review of the Committee on Lawyer Discipline’s Proposed Changes Clarifying the Meaning of “Shall” in the Rules of the Supreme Court, Part Six, Section IV, Paragraph 13 (“Paragraph 13”) was included in the materials provided to Bar Council. After a discussion, a motion was made by Bradley Fleming and seconded by Bruce Russell, to vote to accept the recommendations of the Committee on Lawyer Discipline and to forward the recommendations to the Supreme Court. Bar Council voted to send the committee’s recommended changes to the Supreme Court. Members Timothy Baskerville and Thomas Edmonds voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

D. Approval of Nominating Committee Recommendations for Volunteer Entity Vacancies

Susan Tarley presented the Nominating Committee Report dated January 17, 2023. Copies of the report were included in the materials provided to the Bar Council. A motion was made by Chidi James and seconded by Bruce Russell, to vote to accept the Committee’s recommendations for American Bar Association House of Delegates and Client’s Protection Fund for appointment, and to accept and send the Committee’s candidate recommendations for Council Member at Large, Disciplinary Board and Mandatory Continuing Legal Education Board to the Supreme Court for appointment to the appropriate

entity. Members Timothy Baskerville and Thomas Edmonds voted “yes” verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

- American Bar Association House of Delegates
 - Biberaj, Buta
 - James, Chidi I.
 - Little, Melissa A.
 - McQuade, Martha JP
 - VSB President-elect
 - YLC committee member

- Clients’ Protection Fund
 - Bentley, Lori J.
 - Gibney, Yvonne S.
 - Mellette, Peter M.

- Council Member at Large
 - Newton, Molly E.
 - Nunley III, Lonnie D.
 - Wilson, Lisa A.

- Disciplinary Board
 - Anderson, Alan S.
 - Boyce, Dawn E.
 - Davis, Reba H.
 - Nash, Mary Beth
 - Simon, Alexander N.
 - Smith, Dr. Theodore
 - Wilks, Reiss F.

- Mandatory Continuing Legal Education Board
 - Armstrong, Thomas A.
 - Carmichael, Jessica N.
 - Martingayle, Kevin E.
 - Stephenson, Scott A.

E. Legal Ethics Opinion 1893

Michael York presented the memo from Ethics Counsel to Bar Council for Proposed Legal Ethics Opinion 1893, Representing Child with Parent as “Next Friend” and a draft opinion revised January 12, 2023. A copy of the memo and draft opinion were included in the materials provided to Bar Council. After a discussion, a motion was made by Chidi James and seconded by Bruce Russell, to vote to accept the recommendations of the Ethics Committee and forward the memo and draft opinion to the Supreme Court. Bar Council voted to send the memo and draft opinion to the Supreme Court. Members Timothy Baskerville and Thomas Edmonds voted “yes verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

F. Approval of 2023-2024 Disciplinary Board Chair and Vice-Chair Recommendations

Sandra Havrilak presented a Memorandum dated January 30, 2023, from the Clerk of the Disciplinary System requesting Approval of 2023-2024 Disciplinary Board Chair and Vice-Chair Recommendations. A copy of the memorandum was included in the materials provided to Bar Counsel. A motion was made by Chidi James, and seconded by Bruce Russell, to vote to accept the chair and vice-chair recommendations of the Disciplinary Board and refer the recommendations of the Board to the Supreme Court. Bar Council voted to accept and send the Board's recommendations to the Supreme Court for appointment. Members Timothy Baskerville and Thomas Edmonds voted "yes" verbally. All other members voted using the electronic Poll Everywhere voting tool. The electronic voting results are appended to these minutes.

1. Elevate Kamala H. Lannetti, First Vice-Chair, to Chair.
2. Elevate David J. Gogal, Second Vice-Chair, to First Vice-Chair.
3. Recommend Jennifer D. Royer to fill the Second Vice-Chair vacancy created by Mr. Gogal's elevation to First Vice-Chair.

At 11:04 a.m. the meeting was adjourned.

Response #	Started At (CST)	Screen Name	Public ID	A. Do you approve the minutes from the October 21, 2022 meeting?
1	2/25/2023 9:24	e m wright jr	212938	Yes
2	2/25/2023 9:24	Ann Marie Park	714069	Yes
3	2/25/2023 9:24	Richard Howard-Smith	715799	Yes
4	2/25/2023 9:24	Kyung Dickerson	371439	Yes
5	2/25/2023 9:24	James W. Hundley	322877	Yes
6	2/25/2023 9:24	Patricia Smith	551990	Yes
7	2/25/2023 9:24	Daniel P. Frankl	176603	Yes
8	2/25/2023 9:24	Michael York	111233	Yes
9	2/25/2023 9:24	Gary V Davis	496895	Yes
10	2/25/2023 9:25	Susan Pesner	414709	Yes
11	2/25/2023 9:24	Peter McDermott	806722	Yes
12	2/25/2023 9:25	Courtney Frazier (DC)	879427	Yes
13	2/25/2023 9:24	Nicole Upshur	778172	Yes
14	2/25/2023 9:24	Carole capsalis	717866	Yes
15	2/25/2023 9:24	Robert B Walker	1015697	Yes
16	2/25/2023 9:24	Luis Perez	987392	Yes
17	2/25/2023 9:24	DJ Hansen	301522	Yes
18	2/25/2023 9:24	Ryan Ferguson	585455	Abstain
19	2/25/2023 9:24	Penn Bain	211938	Yes
20	2/25/2023 9:24	W. Grant Back	440765	Yes
21	2/25/2023 9:24	Anna Bristle	228589	Yes
22	2/25/2023 9:24	Susan Butler	746936	Yes
23	2/25/2023 9:24	Tamika Jones	955325	Yes
24	2/25/2023 9:24	Corrynn Peters	761655	Yes
25	2/25/2023 9:24	Adam Krischer	860581	Yes
26	2/25/2023 9:25	Todd Pilot	222112	Yes
27	2/25/2023 9:24	Joel McClellan	433892	Yes
28	2/25/2023 9:24	Chidi James	372570	Yes
29	2/25/2023 9:24	Mark Dix	621535	Yes
30	2/25/2023 9:24	Susan Pierce	118933	Yes
31	2/25/2023 9:24	Lenard Myers	814450	Yes
32	2/25/2023 9:24	Tom Shaia	29116	Yes
33	2/25/2023 9:24	Derek Davis	421154	Yes
34	2/25/2023 9:24	Sam Towell	684491	Yes
35	2/25/2023 9:24	George Eliades	910071	Yes
36	2/25/2023 9:24	Brad Fleming	228543	Yes
37	2/25/2023 9:24	Allen Bareford	241823	Yes
38	2/25/2023 9:24	Brian Drummond	245414	Yes
39	2/25/2023 9:24	Susheela Varky	159472	Abstain
40	2/25/2023 9:24	David P. Weber	996770	Abstain
41	2/25/2023 9:24	EUGENE BUTLER	939393	Yes
42	2/25/2023 9:24	Susie Baker	32859	Yes
43	2/25/2023 9:24	Lonnie Nunley	893841	Yes
44	2/25/2023 9:24	Benjamin Mason	617045	Yes
45	2/25/2023 9:24	Stephanie Grana	24911	Yes
46	2/25/2023 9:24	Craig Ellis YLC	944654	Yes
47	2/25/2023 9:24	Sandra Havrilak	236715	Yes
48	2/25/2023 9:24	Nick Gehrige	802971	Yes
49	2/25/2023 9:24	Sebastian Norton	11606	Yes
50	2/25/2023 9:24	Jennifer Golden	692358	Yes
51	2/25/2023 9:24	Kevin W Holt	205036	Yes
52	2/25/2023 9:24	Bretta Lewis	930775	Yes
53	2/25/2023 9:25	Lisa Wilson	766788	Yes
54	2/25/2023 9:24	Bruce Russell	952365	Yes
55	2/25/2023 9:25	Veronica Meade	104849	Yes
57	2/25/2023 9:25	Molly Newton	469441	Yes

Response #	Started At (CST)	Screen Name	Public ID	B. Do you approve the FY 2024 Proposed Budget subject to General Assembly action?
1	2/25/2023 9:32	e m wright jr	212938	Yes
2	2/25/2023 9:32	Ann Marie Park	714069	Yes
3	2/25/2023 9:33	Richard Howard-Smith	715799	Yes
4	2/25/2023 9:32	Kyung Dickerson	371439	Yes
5	2/25/2023 9:33	James W. Hundley	322877	Yes
6	2/25/2023 9:32	Patricia Smith	551990	Yes
7	2/25/2023 9:32	Daniel P. Frankl	176603	Yes
8	2/25/2023 9:33	David Sher	861134	Yes
9	2/25/2023 9:33	Michael York	111233	Yes
10	2/25/2023 9:33	Gary V Davis	496895	Yes
11	2/25/2023 9:32	Susan Pesner	414709	Yes
12	2/25/2023 9:32	Susan Tarley	312285	Yes
13	2/25/2023 9:32	Peter McDermott	806722	Yes
14	2/25/2023 9:34	Courtney Frazier (DC)	879427	Yes
15	2/25/2023 9:33	Nicole Upshur	778172	Yes
16	2/25/2023 9:32	Carole capsalis	717866	Yes
17	2/25/2023 9:32	Robert B Walker	1015697	Yes
18	2/25/2023 9:32	Luis Perez	987392	Yes
19	2/25/2023 9:32	DJ Hansen	301522	Yes
20	2/25/2023 9:32	Ryan Ferguson	585455	Yes
21	2/25/2023 9:32	William Wilson	641442	Yes
22	2/25/2023 9:32	Penn Bain	211938	Yes
23	2/25/2023 9:33	W. Grant Back	440765	Yes
24	2/25/2023 9:32	Anna Bristle	228589	Yes
25	2/25/2023 9:32	Susan Butler	746936	Yes
26	2/25/2023 9:32	Tamika Jones	955325	Yes
27	2/25/2023 9:32	Corrynn Peters	761655	Yes
28	2/25/2023 9:32	Adam Krischer	860581	Yes
29	2/25/2023 9:33	Todd Pilot	222112	Yes
30	2/25/2023 9:32	Joel McClellan	433892	Yes
31	2/25/2023 9:32	Chidi James	372570	Yes
32	2/25/2023 9:32	Mark Dix	621535	Yes
33	2/25/2023 9:32	Susan Pierce	118933	Yes
34	2/25/2023 9:32	Lenard Myers	814450	Yes
35	2/25/2023 9:33	Tom Shaia	29116	Yes
36	2/25/2023 9:33	Derek Davis	421154	Yes
37	2/25/2023 9:33	Sam Towell	684491	Yes
38	2/25/2023 9:32	George Eliades	910071	Yes
39	2/25/2023 9:32	Brad Fleming	228543	Yes
40	2/25/2023 9:33	Naveed Kalantar	298562	Yes
41	2/25/2023 9:32	Allen Bareford	241823	Yes
42	2/25/2023 9:32	Brian Drummond	245414	Yes
43	2/25/2023 9:32	Susheela Varky	159472	Yes
44	2/25/2023 9:33	David P. Weber	996770	Yes
45	2/25/2023 9:32	EUGENE BUTLER	939393	Yes
46	2/25/2023 9:32	Susie Baker	32859	Yes
47	2/25/2023 9:32	Lonnie Nunley	893841	Yes
48	2/25/2023 9:32	Benjamin Mason	617045	Yes
49	2/25/2023 9:33	Craig Ellis YLC	944654	Yes
50	2/25/2023 9:32	Sandra Havrilak	236715	Yes
51	2/25/2023 9:33	Nick Gehrig	802971	Yes
52	2/25/2023 9:33	Sebastian Norton	11606	Yes
53	2/25/2023 9:33	Jennifer Golden	692358	Yes
54	2/25/2023 9:32	Kevin W Holt	205036	Yes
55	2/25/2023 9:32	Bretta Lewis	930775	Yes
56	2/25/2023 9:33	Lisa Wilson	766788	Yes
57	2/25/2023 9:32	Veronica Meade	104849	Yes
58	2/25/2023 9:32	Molly Newton	469441	Yes
59	2/25/2023 9:32	Bruce Russell	3939	Yes
60	2/25/2023 9:33	Henry I. Willett III	273049	Yes

Response #	Started At (CST)	Screen Name	Public ID	C: Do you approve the Proposed Paragraph 13 changes clarifying the meaning of "shall"?
1	2/25/2023 9:40	e m wright jr	212938	Yes
2	2/25/2023 9:40	Ann Marie Park	714069	Yes
3	2/25/2023 9:40	Richard Howard-Smith	715799	Yes
4	2/25/2023 9:40	Kyung Dickerson	371439	Yes
5	2/25/2023 9:40	James W. Hundley	322877	Yes
6	2/25/2023 9:40	Patricia Smith	551990	Yes
7	2/25/2023 9:41	Daniel P. Frankl	176603	Yes
8	2/25/2023 9:40	David Sher	861134	Yes
9	2/25/2023 9:41	Michael York	111233	Yes
10	2/25/2023 9:40	Gary V Davis	496895	Yes
11	2/25/2023 9:40	Susan Pesner	414709	Yes
12	2/25/2023 9:40	Susan Tarley	312285	Yes
13	2/25/2023 9:41	Peter McDermott	806722	Yes
14	2/25/2023 9:41	Courtney Frazier (DC)	879427	Yes
15	2/25/2023 9:40	Nicole Upshur	778172	Yes
16	2/25/2023 9:41	Carole capsalis	717866	Yes
17	2/25/2023 9:40	Robert B Walker	1015697	Yes
18	2/25/2023 9:40	Luis Perez	987392	Yes
19	2/25/2023 9:40	DJ Hansen	301522	Yes
20	2/25/2023 9:41	William Wilson	641442	Yes
21	2/25/2023 9:41	Penn Bain	211938	Yes
22	2/25/2023 9:40	W. Grant Back	440765	Yes
23	2/25/2023 9:41	Anna Bristle	228589	Yes
24	2/25/2023 9:41	Susan Butler	746936	Yes
25	2/25/2023 9:40	Tamika Jones	955325	Yes
26	2/25/2023 9:40	Corrynn Peters	761655	Yes
27	2/25/2023 9:40	Adam Krischer	860581	Yes
28	2/25/2023 9:40	Todd Pilot	222112	Yes
29	2/25/2023 9:40	Joel McClellan	433892	Yes
30	2/25/2023 9:40	Chidi James	372570	Yes
31	2/25/2023 9:40	Mark Dix	621535	Yes
32	2/25/2023 9:40	Susan Pierce	118933	Yes
33	2/25/2023 9:40	Lenard Myers	814450	No
34	2/25/2023 9:40	Tom Shaia	29116	Abstain
35	2/25/2023 9:41	Derek Davis	421154	Yes
36	2/25/2023 9:40	Sam Towell	684491	Yes
37	2/25/2023 9:41	George Eliades	910071	No
38	2/25/2023 9:40	Brad Fleming	228543	Yes
39	2/25/2023 9:41	Naveed Kalantar	298562	Yes
40	2/25/2023 9:40	Allen Bareford	241823	Yes
41	2/25/2023 9:40	Brian Drummond	245414	Yes
42	2/25/2023 9:40	Susheela Varky	159472	Yes
43	2/25/2023 9:40	David P. Weber	996770	No
44	2/25/2023 9:40	EUGENE BUTLER	939393	Yes
45	2/25/2023 9:40	Susie Baker	32859	Yes
46	2/25/2023 9:40	Lonnie Nunley	893841	Yes
47	2/25/2023 9:40	Benjamin Mason	617045	Yes
48	2/25/2023 9:41	Stephanie Grana	24911	Yes
49	2/25/2023 9:40	Craig Ellis YLC	944654	Yes
50	2/25/2023 9:40	Sandra Havrilak	236715	Yes
51	2/25/2023 9:40	Nick Gehrig	802971	Yes
52	2/25/2023 9:40	Sebastian Norton	11606	Yes
53	2/25/2023 9:41	Jennifer Golden	692358	Yes
54	2/25/2023 9:40	Kevin W Holt	205036	Yes
55	2/25/2023 9:40	Bretta Lewis	930775	Yes
56	2/25/2023 9:40	Lisa Wilson	766788	Yes
57	2/25/2023 9:40	Veronica Meade	104849	Yes
58	2/25/2023 9:40	Molly Newton	469441	Yes
59	2/25/2023 9:41	Henry I. Willett III	273049	Yes
60	2/25/2023 9:40	Bruce Russell	431368	Yes
61	2/25/2023 9:41	Ryan Ferguson	38867	Yes

Response #	Started At (CST)	Screen Name	Public ID	D. Do you approve the Nominating Committee Recommendations for Volunteer Entity Vacancies?
1	2/25/2023 9:53	e m wright jr	212938	Yes
2	2/25/2023 9:53	Ann Marie Park	714069	Yes
3	2/25/2023 9:53	Richard Howard-Smith	715799	Yes
4	2/25/2023 9:53	Kyung Dickerson	371439	Yes
5	2/25/2023 9:53	James W. Hundley	322877	Yes
6	2/25/2023 9:53	Patricia Smith	551990	Yes
7	2/25/2023 9:53	Daniel P. Frankl	176603	Yes
8	2/25/2023 9:53	David Sher	861134	Yes
9	2/25/2023 9:53	Michael York	111233	Yes
10	2/25/2023 9:53	Gary V Davis	496895	Yes
11	2/25/2023 9:53	Susan Pesner	414709	Yes
12	2/25/2023 9:53	Susan Tarley	312285	Yes
13	2/25/2023 9:54	Peter McDermott	806722	Yes
14	2/25/2023 9:53	Courtney Frazier (DC)	879427	Yes
15	2/25/2023 9:53	Nicole Upshur	778172	Yes
16	2/25/2023 9:53	Carole capsalis	717866	Yes
17	2/25/2023 9:53	Robert B Walker	1015697	Yes
18	2/25/2023 9:53	Luis Perez	987392	Yes
19	2/25/2023 9:53	DJ Hansen	301522	Yes
20	2/25/2023 9:53	William Wilson	641442	Yes
21	2/25/2023 9:53	Penn Bain	211938	Yes
22	2/25/2023 9:53	W. Grant Back	440765	Yes
23	2/25/2023 9:53	Anna Bristle	228589	Yes
24	2/25/2023 9:53	Susan Butler	746936	Yes
25	2/25/2023 9:53	Tamika Jones	955325	Yes
26	2/25/2023 9:53	Corrynn Peters	761655	Yes
27	2/25/2023 9:53	Adam Krischer	860581	Yes
28	2/25/2023 9:53	Todd Pilot	222112	Yes
29	2/25/2023 9:53	Joel McClellan	433892	Yes
30	2/25/2023 9:53	Chidi James	372570	Yes
31	2/25/2023 9:53	Mark Dix	621535	Yes
32	2/25/2023 9:53	Susan Pierce	118933	Yes
33	2/25/2023 9:53	Lenard Myers	814450	Yes
34	2/25/2023 9:53	Tom Shaia	29116	Yes
35	2/25/2023 9:53	Derek Davis	421154	Yes
36	2/25/2023 9:53	Sam Towell	684491	Yes
37	2/25/2023 9:53	George Eliades	910071	Yes
38	2/25/2023 9:53	Brad Fleming	228543	Yes
39	2/25/2023 9:53	Naveed Kalantar	298562	Yes
40	2/25/2023 9:53	Allen Bareford	241823	Yes
41	2/25/2023 9:53	Brian Drummond	245414	Yes
42	2/25/2023 9:53	Susheela Varky	159472	Yes
43	2/25/2023 9:54	David P. Weber	996770	Yes
44	2/25/2023 9:53	EUGENE BUTLER	939393	Yes
45	2/25/2023 9:53	Susie Baker	32859	Yes
46	2/25/2023 9:54	Lonnie Nunley	893841	Yes
47	2/25/2023 9:53	Benjamin Mason	617045	Yes
48	2/25/2023 9:54	Stephanie Grana	24911	Yes
49	2/25/2023 9:53	Craig Ellis YLC	944654	Yes
50	2/25/2023 9:53	Sandra Havrilak	236715	Yes
51	2/25/2023 9:53	Nick Gehrig	802971	Yes
52	2/25/2023 9:54	Sebastian Norton	11606	Yes
53	2/25/2023 9:53	Jennifer Golden	692358	Yes
54	2/25/2023 9:53	Kevin W Holt	205036	Yes
55	2/25/2023 9:53	Bretta Lewis	930775	Yes
56	2/25/2023 9:53	Lisa Wilson	766788	Yes
57	2/25/2023 9:53	Veronica Meade	104849	Yes
58	2/25/2023 9:53	Molly Newton	469441	Yes
59	2/25/2023 9:53	Henry I. Willett III	273049	Yes
60	2/25/2023 9:54	Ryan Ferguson	38867	Yes
61	2/25/2023 9:53	Bruce Russell	717797	Yes

Response #	Started At (CST)	Screen Name	Public ID	E: Do you approve the proposed LEO 1893: Representing Child with Parent as "Next Friend"?
1	2/25/2023 9:58	e m wright jr	212938	Yes
2	2/25/2023 9:58	Ann Marie Park	714069	Yes
3	2/25/2023 9:58	Kyung Dickerson	371439	Yes
4	2/25/2023 9:58	James W. Hundley	322877	Yes
5	2/25/2023 9:58	Patricia Smith	551990	Yes
6	2/25/2023 9:58	Daniel P. Frankl	176603	Yes
7	2/25/2023 9:58	David Sher	861134	Yes
8	2/25/2023 9:58	Michael York	111233	Yes
9	2/25/2023 9:58	Gary V Davis	496895	Yes
10	2/25/2023 9:58	Susan Pesner	414709	Yes
11	2/25/2023 9:58	Susan Tarley	312285	Yes
12	2/25/2023 9:58	Peter McDermott	806722	Yes
13	2/25/2023 9:58	Courtney Frazier (DC)	879427	Yes
14	2/25/2023 9:58	Nicole Upshur	778172	Yes
15	2/25/2023 9:58	Carole capsalis	717866	Yes
16	2/25/2023 9:58	Robert B Walker	1015697	Yes
17	2/25/2023 9:58	Luis Perez	987392	Yes
18	2/25/2023 9:58	DJ Hansen	301522	Yes
19	2/25/2023 9:58	William Wilson	641442	Yes
20	2/25/2023 9:58	Penn Bain	211938	Yes
21	2/25/2023 9:58	W. Grant Back	440765	Yes
22	2/25/2023 9:58	Anna Bristle	228589	Yes
23	2/25/2023 9:58	Tamika Jones	955325	Yes
24	2/25/2023 9:58	Corrynn Peters	761655	Yes
25	2/25/2023 9:58	Adam Krischer	860581	Yes
26	2/25/2023 9:58	Todd Pilot	222112	Yes
27	2/25/2023 9:58	Joel McClellan	433892	Yes
28	2/25/2023 9:58	Chidi James	372570	Yes
29	2/25/2023 9:58	Mark Dix	621535	Yes
30	2/25/2023 9:58	Susan Pierce	118933	Yes
31	2/25/2023 9:58	Lenard Myers	814450	No
32	2/25/2023 9:58	Tom Shaia	29116	Yes
33	2/25/2023 9:58	Derek Davis	421154	Yes
34	2/25/2023 9:58	Sam Towell	684491	Yes
35	2/25/2023 9:58	George Eliades	910071	Yes
36	2/25/2023 9:58	Brad Fleming	228543	Yes
37	2/25/2023 9:58	Naveed Kalantar	298562	Yes
38	2/25/2023 9:58	Allen Bareford	241823	Yes
39	2/25/2023 9:58	Brian Drummond	245414	Yes
40	2/25/2023 9:58	Susheela Varky	159472	Yes
41	2/25/2023 9:58	David P. Weber	996770	Yes
42	2/25/2023 9:58	EUGENE BUTLER	939393	Yes
43	2/25/2023 9:58	Lonnie Nunley	893841	Yes
44	2/25/2023 9:58	Benjamin Mason	617045	Yes
45	2/25/2023 9:58	Stephanie Grana	24911	Yes
46	2/25/2023 9:58	Craig Ellis YLC	944654	Yes
47	2/25/2023 9:58	Sandra Havrilak	236715	Yes
48	2/25/2023 9:58	Nick Gehrig	802971	Yes
49	2/25/2023 9:58	Sebastian Norton	11606	Yes
50	2/25/2023 9:58	Jennifer Golden	692358	Yes
51	2/25/2023 9:58	Kevin W Holt	205036	Yes
52	2/25/2023 9:58	Bretta Lewis	930775	Yes
53	2/25/2023 9:58	Lisa Wilson	766788	Yes
54	2/25/2023 9:58	Veronica Meade	104849	Yes
55	2/25/2023 9:58	Molly Newton	469441	Yes
56	2/25/2023 9:58	Henry I. Willett III	273049	Yes
57	2/25/2023 9:58	Ryan Ferguson	38867	No
58	2/25/2023 9:58	Susan Butler	883334	Yes
59	2/25/2023 9:58	Bruce Russell	826232	Yes

Response #	Started At (CST)	Screen Name	Public ID	F: Do you approve the Recommendations of the 2023-2024 Disciplinary Board Chair and Vice-Chair?
1	2/25/2023 10:00	e m wright jr	212938	Yes
2	2/25/2023 10:00	Ann Marie Park	714069	Yes
3	2/25/2023 10:00	Richard Howard-Smith	715799	Yes
4	2/25/2023 10:00	Kyung Dickerson	371439	Yes
5	2/25/2023 10:00	James W. Hundley	322877	Yes
6	2/25/2023 10:00	Patricia Smith	551990	Yes
7	2/25/2023 10:00	Daniel P. Frankl	176603	Yes
8	2/25/2023 10:00	David Sher	861134	Yes
9	2/25/2023 10:00	Michael York	111233	Yes
10	2/25/2023 10:00	Gary V Davis	496895	Yes
11	2/25/2023 10:00	Susan Pesner	414709	Yes
12	2/25/2023 10:00	Susan Tarley	312285	Yes
13	2/25/2023 10:00	Peter McDermott	806722	Yes
14	2/25/2023 10:00	Courtney Frazier (DC)	879427	Yes
15	2/25/2023 10:00	Nicole Upshur	778172	Yes
16	2/25/2023 10:00	Carole capsalis	717866	Yes
17	2/25/2023 10:00	Robert B Walker	1015697	Yes
18	2/25/2023 10:00	Luis Perez	987392	Yes
19	2/25/2023 10:00	DJ Hansen	301522	Yes
20	2/25/2023 10:01	William Wilson	641442	Yes
21	2/25/2023 10:00	Penn Bain	211938	Yes
22	2/25/2023 10:00	W. Grant Back	440765	Yes
23	2/25/2023 10:00	Anna Bristle	228589	Yes
24	2/25/2023 10:00	Tamika Jones	955325	Yes
25	2/25/2023 10:00	Corrynn Peters	761655	Yes
26	2/25/2023 10:00	Adam Krischer	860581	Yes
27	2/25/2023 10:01	Todd Pilot	222112	Yes
28	2/25/2023 10:00	Joel McClellan	433892	Yes
29	2/25/2023 10:00	Chidi James	372570	Yes
30	2/25/2023 10:00	Mark Dix	621535	Yes
31	2/25/2023 10:00	Susan Pierce	118933	Yes
32	2/25/2023 10:00	Lenard Myers	814450	Yes
33	2/25/2023 10:00	Tom Shaia	29116	Yes
34	2/25/2023 10:01	Derek Davis	421154	Yes
35	2/25/2023 10:00	Sam Towell	684491	Yes
36	2/25/2023 10:00	George Eliades	910071	Yes
37	2/25/2023 10:00	Brad Fleming	228543	Yes
38	2/25/2023 10:01	Naveed Kalantar	298562	Yes
39	2/25/2023 10:00	Allen Bareford	241823	Yes
40	2/25/2023 10:00	Brian Drummond	245414	Yes
41	2/25/2023 10:00	Susheela Varky	159472	Yes
42	2/25/2023 10:00	David P. Weber	996770	Yes
43	2/25/2023 10:00	EUGENE BUTLER	939393	Yes
44	2/25/2023 10:00	Susie Baker	32859	Yes
45	2/25/2023 10:00	Benjamin Mason	617045	Yes
46	2/25/2023 10:00	Stephanie Grana	24911	Yes
47	2/25/2023 10:00	Craig Ellis YLC	944654	Yes
48	2/25/2023 10:01	Sandra Havrilak	236715	Yes
49	2/25/2023 10:00	Nick Gehrig	802971	Yes
50	2/25/2023 10:00	Sebastian Norton	11606	Yes
51	2/25/2023 10:00	Jennifer Golden	692358	Yes
52	2/25/2023 10:00	Kevin W Holt	205036	Yes
53	2/25/2023 10:00	Bretta Lewis	930775	Yes
54	2/25/2023 10:00	Lisa Wilson	766788	Yes
55	2/25/2023 10:00	Veronica Meade	104849	Yes
56	2/25/2023 10:00	Molly Newton	469441	Yes
57	2/25/2023 10:00	Henry I. Willett III	273049	Yes
58	2/25/2023 10:00	Ryan Ferguson	38867	Yes
59	2/25/2023 10:00	Susan Butler	883334	Yes
60	2/25/2023 10:00	Bruce Russell	225656	Yes

**VIRGINIA STATE BAR
STANDING COMMITTEE ON LEGAL ETHICS
MINUTES
Electronic Meeting via Microsoft Teams Videoconferencing
June 24, 2021**

The Virginia State Bar Standing Committee on Legal Ethics met remotely via Microsoft Teams on Thursday, June 24, 2021, pursuant to public notice.

Preliminary Matters

FOIA notices

Notice was posted on the VSB website <https://www.vsb.org/site/events/item/10605> on June 10, 2021 regarding the June 24, 2021 Standing Committee on Legal Ethics Committee Meeting stating:

- that a public comment form prepared by the Virginia FOIA Advisory Council was available at <https://www.nvcc.edu/foia/VA-FOIA-Public-Comment-Form.pdf>.

Because this meeting was held under the emergency provisions of Section 4-0.01(g) of the Acts of the Assembly, Chapter 1283 (2020), <https://budget.lis.virginia.gov/item/2020/1/HB29/Chapter/4/4-0.01/> during the coronavirus pandemic, the Virginia Freedom of Information Act required that certain information be included in the minutes of the meeting.

This information, which is provided below, was as follows:

- (1) the remote location from which each member participated;
- (2) the reason members participated through electronic communications means;
- (3) the nature of the emergency; and
- (4) the meeting was held through electronic means: MS Teams platform.

Name	Remote location from which member is participating	Why member is unable to participate in person	Type of electronic communication being utilized
Dennis J. Quinn, Chair	Home Arlington	Participation in this meeting through electronic communication is because of the coronavirus pandemic, the Governor of Virginia having declared an emergency and ordered that groups larger than 10 cannot convene.	Microsoft Teams Teleconference
Michael M. York, Vice-Chair	Office, Whitestone	“	Microsoft Teams Teleconference
Vera Kathleen Dougherty, Member	Home, Norfolk	“	Microsoft Teams Teleconference
Denise A. Jackson, Member	Home, Suffolk	“	Microsoft Teams Teleconference
K. Brett Marston, Member	Office, Roanoke	“	Microsoft Teams Teleconference
Nathan J. Douglas Veldhuis	Home, Fredericksburg	“	Microsoft Teams Teleconference
Jeffery K. Mitchell, Member	Home, Blacksburg	“	Microsoft Teams Teleconference
Teresa Goody Guillen, Member	Home, Vienna	“	Microsoft Teams Teleconference
Michael Wayne Robinson	Home, Fairfax	“	Microsoft Teams Teleconference

To reiterate, the Standing Committee on Legal Ethics, which has nine (9) members, was unable to convene in a single location because Governor Ralph Northam declared a state of emergency as a result of the coronavirus pandemic.

Chair, Dennis J. Quinn called the meeting to order at 9:03 a.m.

The following Standing Committee on Legal Ethics Committee members were present or absent as indicated:

Chair, Dennis J. Quinn
Vice-Chair, Michael M. York

present via MS Teams
present via MS Teams

Member, Vera Kathleen Dougherty	present via MS Teams
Member, Teresa Goody Guillen	partial presence via MS Teams
Member, Denise A. Jackson	partial presence via MS Teams
Member, K. Brett Marston	present via MS Teams
Member, Jeffery K. Mitchell	present via MS Teams
Member, Michael W. Robinson	present via MS Teams
Member, Nathan J. D. Veldhuis	present via MS Teams

VSB Staff:

Emily F. Hedrick, Asst. Ethics Counsel	present via MS Teams
Karen A. Gould, Executive Director	present via MS Teams
Kristi R. Hall, Exec. Asst./Paralegal	present via MS Teams

I. Approval of Minutes

The minutes of the April 22 and May 19, 2021 meetings were approved by roll call vote as follows: Abstaining: 1 (Quinn); For: 7 (Guillen, Robinson, York, Veldhuis, Dougherty, Marston, and Mitchell); Against: 0; Absent: 1 (Jackson).

II. Rule of Professional Conduct

A. Rule 1.2 – Advising clients about cannabis activities legal under state law

At the June 24, 2021 meeting, the Committee voted to submit the amendments to the rule for public comment as follows: Abstaining: 1 (Quinn); For 7 (York, Mitchell, Robinson, Jackson, Veldhuis, Dougherty and Marston); Against: 0; Absent: 1 (Goody-Guillen).

III. Legal Ethics Opinions

A. LEO 1893 – Conflicts in joint representation of minors.

At its June meeting, the Committee voted to submit the LEO for public comment, as amended as follows: Abstaining: 1 (Quinn); For 8 (York, Mitchell, Robinson, Dougherty, Goody-Guillen, Jackson, Veldhuis and Marston); Against: 0.

B. LEO 1894 – Multiple claimants – aggregate settlement

At the June 24, 2021 meeting, the Committee directed staff make revisions to the draft opinion, for discussion at the August meeting.

C. LEO 1895 – Communication with victim/witness represented by counsel

At the June 24, 2021 meeting, the Committee directed staff make revisions to the draft opinion, for discussion at the August meeting.

D. LEO 1896 – Lawyers working from home/remotely in another jurisdiction

At the June 24, 2021 meeting, the Committee voted to submit the LEO for public comment as follows: Abstaining: 1 (Quinn); For 7 (Veldhuis, Marston, York, Mitchell, Robinson, Dougherty and Jackson); Against: 0; Absent: 1 (Goody-Guillen).

E. UPL Opinion 218 – Representation by power of attorney

The LEO was presented to the Supreme Court of Virginia for approval on June 23, 2021.

IV. Adjournment

The Chair adjourned the meeting at 11:45 a.m. The next regular meeting of the Committee will be held in August, 2021.



Virginia State Bar
Seeking Public Comment
 1111 East Main Street, Suite 700
 Richmond, Virginia 23219-0026
 Telephone: (804) 775-0500

 Facsimile: (804) 775-0501 TDD (804) 775-0502

MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: June 29, 2021

**VIRGINIA STATE BAR’S STANDING COMMITTEE ON LEGAL ETHICS
 SEEKING PUBLIC COMMENT ON PROPOSED LEGAL ETHICS
 OPINION 1893**

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar’s Standing Committee on Legal Ethics (“Committee”) is seeking public comment on proposed Legal Ethics Opinion 1893, Representing Child and “Next Friend” as Plaintiffs in Personal Injury Case. This opinion addresses the conflicts of interest that may arise when a parent, guardian, or other “next friend” engages a lawyer to represent a minor child in a personal injury case, when the parent or guardian may also have a claim for medical treatment of the minor child.

The opinion concludes that this situation must be evaluated like any joint representation; the lawyer must apply independent professional judgment to determine if the parent’s interests and the child’s interests are “directly adverse” or if there is a significant risk that the lawyer’s representation of one client would be “materially limited” by the responsibilities the lawyer owes to the other jointly represented client. Rule 1.7(a). If the interests of the parent and the child are aligned and there

appear to be sufficient resources to compensate both, there is no conflict and no need for a guardian *ad litem* to be appointed to confirm that.

Further, if there is a conflict in which the parent's and child's interests are directly adverse, the lawyer cannot reasonably accept consent of the parent on behalf of the child. The lawyer must seek appointment of a guardian *ad litem* for the child since the minor lacks the legal capacity to provide informed consent to conflicts of interest.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than July 30, 2021. Comments may be submitted via email to publiccomment@vsb.org.



Virginia State Bar
Seeking Public Comment
 1111 East Main Street, Suite 700
 Richmond, Virginia 23219-0026
 Telephone: (804) 775-0500

 Facsimile: (804) 775-0501 TDD (804) 775-0502

MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: January 21, 2022

**VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS
 SEEKING PUBLIC COMMENT ON PROPOSED LEGAL ETHICS
 OPINION 1893**

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed Legal Ethics Opinion 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case. This opinion addresses the conflicts of interest that may arise when a parent, guardian, or other "next friend" engages a lawyer to represent a minor child in a personal injury case, when the parent or guardian may also have a claim for medical treatment of the minor child.

The opinion recognizes that there may be circumstances in which the interests of the child and parent/next friend may conflict, for example if the parent's decision-making, in the lawyer's judgment, is not in the best interests of the child; or there are insufficient funds to compensate the child fully and pay the parent's claim or lien for medical expenses. The lawyer may need to seek appointment of a guardian ad litem to waive the conflict on behalf of the child and/or replacement of the parent as next friend. If

there appears to be sufficient resources to compensate the child and pay the parent's claim or lien, there is no conflict and no need for a guardian ad litem to be appointed to confirm that.

Further, if there is a conflict in which the parent's and child's interests are directly adverse, the lawyer cannot reasonably accept consent of the parent on behalf of the child. The lawyer must seek appointment of a guardian *ad litem* for the child since the minor lacks the legal capacity to provide informed consent to conflicts of interest.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than February 28, 2022. Comments may be submitted via email to publiccomment@vsb.org.



Virginia State Bar

Public Comment Request

1111 East Main Street, Suite 700
 Richmond, Virginia 23219-0026
 Telephone: (804) 775-0500

 Facsimile: (804) 775-0501 VOICE/TTY 711 or (800) 828-1120

Release Date: September 15, 2022

The Virginia State Bar Seeks Public Comment on Legal Ethics Opinion 1893

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar is seeking public comment on proposed advisory Legal Ethics Opinion 1893, Representing Child and “Next Friend” as Plaintiffs in Personal Injury Case.

This proposed opinion addresses possible conflicts of interest when a parent, guardian, or other “next friend” engages a lawyer to represent a minor child in a personal injury case against a tortfeasor, when the parent or guardian may also have a lien for past and future expenses for medical treatment of the child.

In the proposed opinion, the Standing Committee on Legal Ethics concluded that generally there is no conflict of interest because the interests of the parent and the child are usually aligned and the parent’s relationship with the child raises a presumption that the parent is acting in the child’s best interests. The opinion also gives guidance on the types of conflicts that could arise – when the “next friend” is directing the lawyer’s representation in an unreasonable way that is detrimental to the best interests of the child, or there are inadequate assets to compensate both the parent and the child. If there is a conflict between the parent’s and

child's interests, the child cannot waive any conflict because of their lack of legal capacity, and the lawyer cannot reasonably accept consent of the parent on behalf of the child. In that case, the lawyer may seek appointment of a guardian ad litem to protect the child's interests, may seek judicial approval of a proposed settlement, or may petition a court to appoint a substitute "next friend."

Inspection and Comment

The proposed opinion may be inspected below or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 am and 4:30 pm, Monday through Friday.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron Rountree, executive director of the Virginia State Bar, not later than November 1, 2022. Comments may be submitted via email to publiccomment@vsb.org.

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Governance

Jay B. Myerson of Reston has been inducted as VSB president for 2021-22

Stephanie E. Grana has become VSB president elect.

Read highlights of the June 18 **VSB Council Meeting** [here](#).



Virginia's seventh Constitution, crafted by 11 Virginia lawyers in 1971, celebrates its **50th Anniversary today**.

The Standing Committee on Legal Ethics is **seeking public comment on two LEOs and one rule change**: Legal Ethics Opinion 1893, LEO 1896, and proposed amendments to Rule 1.2 of the Rules of Professional Conduct.

The **Advisory Committee on Rules of Court** is seeking comments from the Bench and Bar on revisions to Part One, Part Five, and Part Five A Rules of Court, which include amendments to accommodate the changed appellate jurisdiction of the Court of Appeals of Virginia.

The VSB proposes changes to **review of agreed disciplinary dispositions**.

VSB offices to **fully reopen to the public** on September 7. The latest emergency orders from the Supreme Court of Virginia and the Court of Appeals of Virginia, as well as other COVID updates, are here.

The Bar will be closed on July 5 for Independence Day.

Discipline

Recent disciplinary actions:

Daniel Robert Goodwin, license revoked, effective June 22, 2021.

Jason Edward Rheinstein, license revoked, effective June 25, 2021.

OlaDipo Akinwunmi AkinDeko, license suspended, effective June 25, 2021.

Alfred Lincoln Robertson Jr., license suspended, effective on June 25, 2021.

Philip John Geib, public reprimand, effective June 11, 2021.

Private discipline: 2 private reprimands and 2 private admonitions.

Compliance



You should have received your **dues statement** in the mail in June. Be sure to complete the requirements for license renewal by July 31. You may pay your dues and fees, certify your liability insurance coverage, report pro bono, and join VSB sections **online**.

What's new on your dues statement this year? Find out **here**.

Need to change your status? Check the appropriate box under Status Change Request on your **dues statement**. More information on status changes can be found **here**.

Pro Bono / Access to Justice



Virginia Free Legal Answers Summer Associate Challenge! Free Legal Answers helps low-income people with civil legal needs. Virginia lawyers are among the most prolific answerers in the country. Consider helping even more people by asking your summer associates to work with you to answer questions. All law firms that participate and report doing so to Crista Gantz **by July 31, 2021** will be recognized by the ABA and the VSB. Questions? cgantz@vsb.org

Pro Bono Reporting

We want to hear from you! Please report your pro bono hours and financial contributions made over the past 12 months when you renew your membership. The deadline to renew is July 31.

Opportunities, Awards, and Events

Edward L. Chambers Jr. was the posthumous recipient of the inaugural memorial award in his name honoring longstanding and exemplary bar service.

The Conference of Local and Specialty Bar Associations (CLSBA) **Awards of Merit** recognized 12 bars and seven projects for service to the profession and the people of the Commonwealth. Thank you to the many lawyers who donated their time.



Jeannie P. Dahnk received the Rakes Leadership in Education Award at the hybrid VSB Annual Meeting in Virginia Beach for her unwavering dedication to



improving the quality of lawyer education in the Commonwealth via teaching, writing, and the promotion of quality CLE.

Need CLE?

VSB Annual Meeting CLEs are now available for on-demand MCLE credit. From celebrating the **100th Anniversary of the 19th Amendment to learning about new marijuana laws**, there is something for everyone in these virtual CLEs. Only \$95.00 for 12.5 hours (5.5 ethics hours) of on-demand learning available through September 15, 2021. **Register here.***

**NOTE: If you registered for the live Annual Meeting, don't register again. Use the link you received for the live program to watch any sessions you missed. If you no longer have that link, please contact annualmeeting@vsb.org.*

FREE CLSBA SOLO & SMALL FIRM EVENTS

Solo & Small-Firm Practitioner Forums are going live again! The first program will take place on October 15, 2021, in Danville. **The Hon. William C. Mims** will lead a town hall meeting. **Register here** for this informative event.

Solo Webinar – On Tuesday, September 14, 2021, 1-2 pm – join us for ***Avoiding Ethical Pitfalls as the Practice of Law Evolves***. ABA and VSB Techshow speakers Sharon Nelson, John Simek, and Davie Ries will present this Ethics/CLE. **Register here.**



The Virginia Lawyer Referral Service **NEEDS LAWYERS** throughout the state and for ALL areas of law practices that are active VSB members in good standing. Join today, and start getting prescreened referrals! Contact Toni Dunson at dunson@vsb.org for more information.

Virginia Lawyer: Only one publication reaches all 50,000 lawyers, judges, and law schools in Virginia and across the country. We would love to have you

as an advertiser and our rates are the best in years. Contact Dee Norman at norman@vsb.org for more information.

If you would like to opt out of the paper edition, please do so in your lawyer portal, where you may also update your contact information.



Stay connected to your Bar:



The VSB continues to provide essential services to Virginia's lawyers and the public.

The VSB office at 1111 E. Main Street is closed to visitors. If you need to reach a staff person, please send an email or call the appropriate contact person. Many of our staff are teleworking and responses may be delayed. Thank you for your understanding.

This email is a service of the Virginia State Bar. Unsubscribers will not receive notices about changes to the rules of professional conduct, legal ethics opinions, compliance reminders, presidents' messages, or notices from sections and conferences of which they are a member. [Read the Bar's digital privacy policy.](#)

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Governance

The Supreme Court of Virginia is seeking lawyers for **Med Mal Review Panels**.

The Supreme Court of Virginia **approved LEO 1896 and amended its Rules**.

The VSB Disciplinary Board will hear **Jeremy Clyde St. James Sharp**'s reinstatement petition on March 25, 2022.

Get on the Ballot for Bar Council Elections

Bar Council, the Virginia State Bar's governing body, will hold its annual elections by electronic ballot in April for terms beginning July 1.

Virginia lawyers who wish to be on the ballot must be active members in good standing of **their circuit** as of March 15, 2022.

Join the Disciplinary System: The Standing Committee on Lawyer Discipline seeks active, in-good-standing lawyers and non-lawyers to apply for disciplinary district committee vacancies.

The Supreme Court of Virginia issued a **Thirty-fourth COVID-19 Order**.

Ethics

The VSB seeks comment on proposed **LEO 1893** concerning conflicts representing minors in personal injury cases.



VSB seeks comment on proposed **LEO 1897** concerning issues of "replying all" to an email with the opposing party copied.

We are seeking an **Assistant Ethics Counsel** for our office in Richmond. See below for two other VSB positions.

Discipline

Disciplinary hearings are public meetings and may be viewed as they occur by following the **disciplinary docket**.

Recent disciplinary system actions:

- Judy Raye Moats**, license revoked, effective January 25, 2022.
- Christopher Matthew Reyes**, license revoked, effective January 27, 2022.
- Edward Allen Malone**, license revoked, effective January 28, 2022.
- Robert Hasbrouck Nutt II**, license suspended, effective January 21, 2022.
- John Carter Morgan Jr.**, license suspended, effective January 25, 2022.
- Gregory Thomas Casker**, public reprimand, effective December 29, 2021.
- Daymen William Xavier Robinson**, public reprimand, effective Jan. 5, 2022.
- Thomas Page Cheeley**, public reprimand, effective January 18, 2022.
- Brian Randolph Moore**, public admonition, effective January 20, 2022.

Private discipline

2 private admonitions, 1 private reprimand



The VSB disciplinary department seeks an **Assistant Bar Counsel** in Richmond. [More information.](#)

The VSB is hiring a **Director of Regulatory Compliance** to oversee the Membership and MCLE components of the Bar's mission to protect the public and regulate the profession. [More information.](#)

Compliance

Attorneys have until 4:45 pm EST March 15, 2022, to report hours for 2021 MCLE compliance and to pay any outstanding MCLE delinquency fees. Use the [2021 MCLE Form 1](#) or Notice of Noncompliance to report remaining hours.



Pay fees online at the [VSB Portal](#) with a Visa or Mastercard. Review MCLE deadline information [here](#). Contact the MCLE Department if you have questions regarding your MCLE compliance.

Pro Bono / Access to Justice



Want to know what it's really like to provide pro bono service on **Virginia Free Legal Answers**? Join us for an interactive Zoom training on February 22 from 1–3 pm. Veteran volunteers will give you a tour of the website and help you work through hypotheticals based on real questions

they've answered for pro bono clients. 2 hours CLE credit pending, including 1 hour of ethics! Email cgantz@vsb.org to register.

Wellness

The Virginia Judge and Lawyer Assistance Program (VJLAP) has established the **George H. Hettrick Memorial Fund** to raise money for programs that help lawyers struggling with depression, substance use, and other mental health concerns.

[Learn how](#) to donate to VJLAP's Hettrick Fund or get involved with them as a volunteer.



Nominations: Recognize a Deserving Lawyer

Recognize an exceptional young lawyer by nominating them for the **R. Edwin Burnette Jr. Young Lawyer of the Year Award**. The deadline to submit a nomination is **March 25**. View past recipients [here](#).

The Military Law Section is seeking nominations for its **Pro Bono Award**, recognizing members of the Bar who assist military members who protect and serve our nation. Entry deadline: March 1, 2022.

The General Practice Section is seeking nominations for the **34th Tradition of Excellence Award**. The award recognizes an outstanding lawyer who embodies the highest tradition of personal and professional excellence in Virginia and who has devoted a significant amount of time, effort, and/or funds to activities that benefit their community. Entry deadline: April 4, 2022.



The **Conference of Local and Specialty Bar Associations** is seeking nominations for its Awards of Merit, Local Bar Leader of the Year Award, Specialty Bar Leader of the Year Award, and Bar Association of the Year Award. Entry deadline: May 4, 2022.

CLE Opportunities

The 52nd Annual Criminal Law Seminar will be held virtually on February 11, and provides 7.0 hours of CLE, including 1.5 ethics. Presented by webcast or telephone seminar. Agenda and registration information [here](#).



The General Practice Section is hosting a *free* webinar on **Child Support and Enforcement for the General Practitioner**. February 17, 2022, 1-2 pm. [Register here](#).

Mid-Atlantic Women Legal Professionals' Retreat

March 3-6 in Asheville, NC
10 or more CLE credit hours (pending your state)

Register for the **2022 Virtual VSB Techshow** CLE:
A favorite session: 60 Tech Tips in 60 Minutes!
Presented virtually on April 25 with the latest learning in cyber security, tech ethics, e-discovery, and many other tech issues for lawyers.



Virginia Lawyer

Thank you to the Young Lawyers Conference and our excellent writers and advertisers who made the February issue possible.

Virginia Lawyer reaches almost 50,000 lawyers, judges, and law schools in Virginia and across the country. **We would love to have you as an advertiser.** Contact [Dee Norman](#) for more information.

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Stay connected to your Bar:



The VSB continues to provide essential services to Virginia's lawyers and the public. However, we continue to keep the health and safety of lawyers, employees, and the public at the forefront of our actions. The office remains closed to visitors who have not made prior arrangements until further notice. **We urge the use of [electronic communication](#) to assist us in providing services.** If you need to reach a staff person, please send an email or call the appropriate [contact person](#). We will provide additional updates on our [website](#).

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Governance

At a **special meeting** on September 7, the Virginia State Bar Council voted on two actions, one regarding the approval of a new executive director for the Bar, and the other regarding meetings and the Virginia Freedom of Information Act.

The Supreme Court of Virginia approved the recommendation of the VSB Council to appoint **Cameron M. Rountree** as the Executive Director and Chief Operating Officer of the Virginia State Bar on September 8.



On September 19, the **Supreme Court of Virginia** approved Legal Ethics Opinions 1897 and 1898, effective immediately. The Court also approved amendments to the Rules of the Court, Part One, Rule 1:5 regarding Counsel and Parties Appearing Without Counsel, effective November 13, 2022.

The VSB seeks public comment on **Legal Ethics Opinion 1893**, a proposed advisory on representing children and “next friends” as plaintiffs in personal injury cases.

The VSB seeks public comment on proposed amendments to the Rules of Supreme Court of Virginia, **Part 6, Section IV, Paragraph 13** (“Paragraph 13”) regarding the clarification of the term “shall,” which appears 482 times in Paragraph 13.

Volunteers are needed to serve on **VSB boards and committees**. All appointments will be for the



terms specified, beginning on July 1, 2023.

The **Hon. Stephen R. McCullough** succeeded Chief Justice S. Bernard Goodwyn as the Justice Co-Chair of the Virginia Access to Justice Commission, effective September 1, 2022, for a term of three years.

Active Lawyers in the 18th Circuit: Please remember to vote for your representative on Bar Council before the October 6 deadline. Questions about your ballot? Please contact **Andrew Aarbitell** at Intelliscan.

Compliance

If you haven't paid your dues: Take action by the October 11 deadline to AVOID SUSPENSION. **Log in now to complete outstanding renewal requirements.**



Please be aware that all active lawyers must complete 12 hours of **MCLE**, including 2 hours in ethics/professionalism and 4 hours from live, interactive programs by October 31.

SURVEY: Active lawyers were emailed to weigh in on whether they would prefer to have dues, CLE hours, and insurance status due on the same day (July 31) as it was in the past, or to continue with the current process of having different due dates for compliance. In the new scenario, there would still be a time period between completing CLE hours and reporting them. If you missed the email and you are an active lawyer, **take the survey now.**

Discipline

Disciplinary hearings are public meetings found on the **disciplinary docket.**

Recent disciplinary system actions:

Edward Emad Moawad, license revoked, effective September 19, 2022.

Brian Jeffrey Rosenberg, license suspended, effective September 12, 2022.

Paul Andrew Murphy, license suspended, effective September 16, 2022.

Janet A. Smith, public reprimand, effective September 6, 2022.

S.W. Dawson, public reprimand, effective September 21, 2022.

Timothy Williams Barrow, public reprimand, effective September 28, 2022.

Justin Todd Daniel, public reprimand, effective September 28, 2022.

Private discipline: 2 private reprimands, 5 private admonitions

Pro Bono / Access to Justice

VSB Pro Bono Conference: Economic Justice

- October 19 in Virginia Beach
- Virtual or in-person options and 6.0 hours **FREE** CLE
- Pro Bono Awards Dinner & Celebration emceed by VSB President Stephanie E. Grana
- Keynote address by Justice Stephen R. McCullough



Register and support pro bono in the Commonwealth.



Hunton Andrews Kurth litigator **Lonnie “Chip” D. Nunley III** is the recipient of the 2022 Lewis F. Powell Jr. Pro Bono Award. Nunley was selected based on his annual pro bono work ranging from 600–1,100 hours in the four years since the VSB began collecting pro bono reports. He will receive the award at the Pro Bono Conference.

We are hiring a Deputy Executive Director, an Assistant Bar Counsel, and a Director of Information Technology.

The VSB offers excellent state benefits and the opportunity to serve the people of Virginia while improving the legal profession and the justice system.



NEED CLE?



Check out these **free and low-cost VSB-sponsored CLE** opportunities before the October 31 compliance deadline.

Several local and specialty bars have a **variety of CLE opportunities available** across the Commonwealth before the October 31 CLE deadline. See [the full list here](#).

Election Law Update

Thursday, October 20, 12–1:30 pm

Webinar CLE, sponsored by the Local Government Law Section

1.5 hours live/interactive CLE *pending*

Must be a member of the VSB to [register](#).



Awards and Events

Don't miss the VSB Young Lawyers Conference **Annual Bench-Bar Dinner in Celebration of Women and Minorities in the Legal Profession**.

Thursday, October 13
 University of Mary Washington
 Fredericksburg
[Purchase tickets online.](#)



AWARD NOMINATIONS: Nominate a lawyer for the:

- Harry L. Carrico Professionalism Award (Due Dec 2)
 - William R. Rakes Leadership in Education Award (Due Dec 2)
 - Edward L. Chambers Lifetime Bar Service Award (Due Feb 1)
- Please take a moment to consider nominating a respected peer for these prestigious awards.

SAVE THE DATE: Back in person, plan to attend the 53rd Criminal Law Seminar: February 3 in Charlottesville and February 10 in Williamsburg.

Nota Bene

Virginia lawyers practicing in **Prince George's County, MD:** To avoid delays and complications, please send filings, pleadings, and payments to the Clerk of the Circuit Court, NOT to the Chief and Administrative Judge.

Virginia Lawyer



In the mail! The Pro Bono Issue:

Join us in celebrating the lawyers who give both time and money to helping make Equal Justice Under Law more than an aspiration. Learn the ways you can make an enormous impact in a short amount of time through pro bono.

Virginia Lawyer reaches almost all 50,000 VSB lawyers, judges, and law schools in Virginia and across the country. Contact Dee Norman for more information on advertising your firm, your services, or your law school.

 **Quiz: Is a pumpkin a vegetable?***

**No. A pumpkin is a fruit because it grows from a flower.*

Stay connected to your Bar:



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Governance



We need YOU! Volunteers are needed to serve on **VSB boards and committees**. All appointments will be for the terms specified, beginning on July 1, 2023.

The VSB Clients' Protection Fund **paid \$27,230** on six petitions.

The Supreme Court of Virginia **amended the Rules of Court** and added Rule 3.14A: Intervention by the Commonwealth where constitutionality of law challenged.



Compliance

The 2022 MCLE End of Year Report Form 1 was mailed to active attorneys in November. Report approved courses online in the [VSB Portal](#). If you cannot certify a course online, follow the instructions on Form 1. A blank [Form 1](#) is available on the [MCLE website](#).



ALL CLE hours for the 2022 CLE period need to be reported **no later than 4:45 pm ET December 15, 2022**. This deadline applies to all active attorneys even if the 2022 requirement has been met.



The Supreme Court of Virginia has amended **the Rules concerning IOLTA accounts** affecting lawyers in private practice. Compliance begins on July 1, 2023. Have questions? More information and answers are [on the VSB website](#).

Ethics



Legal Ethics

The VSB seeks public comment on **Unauthorized Practice of Law Opinion 219** – Nonlawyer representation in Virginia Alcoholic Beverage Control Board proceedings.

The VSB continues to seek comments on **Legal Ethics Opinion 1893**, Representing Child and “Next Friend” as Plaintiffs in Personal Injury Case. The deadline for comments is January 3, 2023.

Discipline

Disciplinary hearings are public meetings found on the disciplinary docket.

Recent disciplinary system actions:

Patrick Lynn Edwards, license suspended, effective November 16, 2022.

Denis Charles Englisby, license suspended, effective November 18, 2022.

James McMurray Johnson, license suspended, effective November 20, 2022.

Johnnie Louis Johnson Jr., license suspended, effective November 28, 2022

Benjamin Kent, public reprimand, effective October 28, 2022.

Stephen A. Strickler, public reprimand, effective October 28, 2022.

Elizabeth Farrar Egan, public reprimand, effective November 9, 2022.

Jon Franklin Mains, public reprimand, effective November 18, 2022.

Kimberly Alice Chandler, public reprimand, effective November 14, 2022.

Evan Stuart Elan, administrative suspension, effective November 1, 2022.

Private discipline: 1 reprimand; 1 admonition

Pro Bono / Access to Justice



Thank you to the lawyers who registered to give back (money or time) through the Get To 30! Challenge. Want to help? **Sign up** and you will be included in the December, January, February, and March drawings for a gift card!

Our most recent monthly winners are:

August – **Bruce Robinson** of Law Office of Bruce E. Robinson in South Hill

September – **Sarah Dickson** of BWW Law Group, LLC in Greater Richmond

October – **Chidinma Harley** of Pervaiz & Harley PLLC in Fairfax County

Events, Awards, CLE

Plan to attend the **53rd Criminal Law Seminar in 2023** happening February 3 in Charlottesville and February 10 in Williamsburg.



Women in the Law: Save the date for the Mid-Atlantic Women's Legal Professionals' Retreat March 2-5 in Roanoke. Earn 10 or more CLE hours while networking and promoting personal rejuvenation, self-care, and personal empowerment.

Don't forget to check out the VSB's list of free and low cost webinar CLEs.

AWARD NOMINATIONS:

Consider nominating a colleague or peer for these prestigious awards.

- Betty Ann Thompson Lifetime Achievement Award in Family Law (Due January 24)
- Family Law Service Award (Due January 24)
- Edward L. Chambers Lifetime Bar Service Award (Due Feb. 1)



Nota Bene: VJLAP has moved!

As of December 1, 2022, the **Virginia Judges and Lawyers Assistance Program** is located next door to the Virginia Law Foundation Bobzien-Gaither Education Center in Innsbrook. Throughout the move and the holidays, the VJLAP will have continuous operations and maintain 24/7 availability.



Virginia Lawyer



In the mail 📧! Thank you to the Senior Lawyers Conference for sponsoring the December issue.

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- [VSB Home](#)
- [Rules and Regulations](#)
- [Rules of Professional Conduct](#)
- [Legal Ethics Opinions](#)
- [Unauthorized Practice of Law Opinions](#)
- [Organization & Government of the Virginia State Bar](#)
- [Reciprocity: Admission on Motion](#)
- [Pro Hac Vice](#)
- [Corporate Counsel Limited Admission and Registration](#)
- [Foreign Attorneys — Registered Military Legal Assistance Attorneys](#)
- [Foreign Legal Consultant](#)
- [Military Spouse Provisional Admission](#)
- [Virginia Legal Aid Counsel](#)
- [Bylaws of the Virginia State Bar and Council](#)
- [Unauthorized Practice Rules](#)
- [Mandatory Continuing Legal Education Regulations](#)
- [Clients' Protection Fund Rules](#)
- [Regulations of Attorney Real Estate Settlement Agents](#)
- [Virginia Licensed Legal Aid Society Regulations](#)
- [Principles of Professionalism](#)
- [Provision of Legal Services Following Determination of Major Disaster](#)

- [Actions on Rule Changes and Legal Ethics Opinions](#)

The Virginia State Bar

Professional Guidelines

Search the Professional Guidelines

[Home](#) > [Actions on Rule Changes and Legal Ethics Opinions](#) > LEO 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case.

Proposed | LEO 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case. Pending approval by VSB Council and the Supreme Court of Virginia.

Update 1/30/23: At its meeting on January 19, 2023, the Standing Committee on Legal Ethics voted to submit the proposal to VSB Council for approval at its February 25, 2023, meeting

Update 11/18/22: The comment period has been re-opened.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron Rountree, executive director of the Virginia State Bar, not later than **January 3, 2023**. Comments may be submitted via email to publiccomment@vsb.org.

Update 9/15/22:

The Virginia State Bar Seeks Public Comment on Legal Ethics Opinion 1893

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar is seeking public comment on proposed advisory Legal Ethics Opinion 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case.

This proposed opinion addresses possible conflicts of interest when a parent, guardian, or other "next friend" engages a lawyer to represent a minor child in a personal injury case against a tortfeasor, when the parent or guardian may also have a lien for past and future expenses for medical treatment of the child.

In the proposed opinion, the Standing Committee on Legal Ethics concluded that generally there is no conflict of interest because the interests of the parent and the child are usually aligned and the parent's relationship with the child raises a presumption that the parent is acting in the child's best interests. The opinion also gives guidance on the types of conflicts that could arise – when the "next friend" is directing the lawyer's representation in an unreasonable way that is detrimental to the best interests of the child, or there are inadequate assets to compensate both the parent and the child. If there is a conflict between the parent's and child's interests, the child cannot waive any conflict because of their lack of legal capacity, and the lawyer cannot reasonably accept consent of the parent on behalf of the child. In that case, the lawyer may seek appointment of a guardian ad litem to protect the child's interests, may seek judicial approval of a proposed settlement, or may petition a court to appoint a substitute "next friend."

Inspection and Comment

The proposed opinion may be inspected below.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron Rountree, executive director of the Virginia State Bar, not later than **November 1, 2022**. Comments may be submitted via email to publiccomment@vsb.org.

[View proposed LEO 1893](#) (PDF revised 9/14/22)

Update 3/25/22: Further discussion of this opinion will be carried over to the May 26, 2022, meeting of the committee.

Update 1/21/22:

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed Legal Ethics Opinion 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case. This opinion addresses the conflicts of interest that may arise when a parent, guardian, or other "next friend" engages a lawyer to represent a minor child in a personal injury case, when the parent or guardian may also have a claim for medical treatment of the minor child.

The opinion recognizes that there may be circumstances in which the interests of the child and parent/next friend may conflict, for example if the parent's decision-making, in the lawyer's judgment, is not in the best interests of the child; or there are insufficient funds to compensate the child fully and pay the parent's claim or lien for medical expenses. The lawyer may need to seek appointment of a guardian ad litem to waive the conflict on behalf of the child and/or replacement of the parent as next friend. If there appears to be sufficient resources to compensate the child and pay the parent's claim or lien, there is no conflict and no need for a guardian ad litem to be appointed to confirm that.

Further, if there is a conflict in which the parent's and child's interests are directly adverse, the lawyer cannot reasonably accept consent of the parent on behalf of the child. The lawyer must seek appointment of a guardian *ad litem* for the child since the minor lacks the legal capacity to provide informed consent to conflicts of interest.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at (804) 775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **February 28, 2022**. Comments may be submitted via email to publiccomment@vsb.org.

[View proposed LEO 1893](#) (PDF)

The proposed draft Legal Ethics Opinion 1893 has been withdrawn pending further review by the Standing Committee on Legal Ethics.

Posted: June 29, 2021

Updated: July 2, 2021

Updated Jan 21, 2022, to open for public comment

Updated Mar 25, 2022, to indicate the committee will have further discussion at its May, 2022, meeting

Updated Sept 15, 2022, to open for public comment

Updated Nov 4, 2022, to remove comment deadline from subhead

Updated Nov 18, 2022, to open for public comment

Updated: January 30, 2023

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NOTICES TO LAWYERS

Comments Sought on Conflicts Representing Children and Parents in Personal Injury Cases

The Virginia State Bar seeks public comment on Legal Ethics Opinion 1893, a proposed advisory on representing children and “next friends” as plaintiffs in personal injury cases. The proposed opinion may be inspected on the VSB website.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron Rountree, executive director of the Virginia State Bar, not later than November 1, 2022.

Comments may be submitted via email to publiccomment@vsb.org.

https://www.vsb.org/site/news/item/LEO_1893

Supreme Court of Virginia Approves LEOs 1897 and 1898, and amends Rule 1:5

On Monday, September 19, 2022, the Supreme Court of Virginia approved Legal Ethics Opinions 1897 and 1898, effective immediately.

LEO 1897 “...addresses whether a lawyer who receives an email from opposing counsel, with the opposing party copied in the “to” or “cc” field, violates Rule 4.2 when he replies all to the email.”

LEO 1898 “...concludes that a lawyer may accept client property including cryptocurrency offered as an advance payment for the lawyer’s services, provided the lawyer’s fee is reasonable under Rule 1.5, and this business transaction with the client meets the requirements of Rule 1.8(a), namely, that the transaction is fair and reasonable to the client, the transaction and terms are fully disclosed in writing in a manner the client understands, the client is advised of the opportunity to consult with independent counsel, and the client’s consent is confirmed in writing.”

The Court also approved amendments to the Rules of the Court, Part One, Rule 1:5 regarding Counsel and Parties Appearing Without Counsel, effective November 13, 2022.

<https://www.vsb.org/site/news/item/scova-09192022>

Volunteers Sought for VSB Vacancies

Volunteers are needed to serve on Virginia State Bar (VSB) boards and committees. All appointments will be for the terms specified, beginning on July 1, 2023.

- Disciplinary Board: 4 lawyer vacancies and 1 lay member vacancy.
- Medical Malpractice Review Panels (MMRPs): 3 lawyer vacancies available immediately, 20 lawyer vacancies available July 1, 2023.
- Mandatory Continuing Legal Education Board: 3 lawyer vacancies.

For more details see page 34.

MCLE Deadline: Oct. 31, 2021

The Mandatory Continuing Legal Education compliance deadline is October 31, 2022. Go to <https://member.vsb.org/vsbportal/> to review your MCLE record. Now is the time to apply for non-approved courses and complete your MCLE requirement.

Reminder: Of the 12.0 CLE hours required each year, 2.0 must be in ethics or professionalism and 4.0 must be from live, interactive programs. The live requirement has not been waived. A list of approved teleconferences and webcasts is available on the MCLE website at www.vsb.org/site/members/mcle-courses. If you have any questions, please contact the Regulatory Compliance Department at (804) 775-0577 or MCLE@vsb.org.



Pro Bono Conference

Economic Justice
October 19, 2022

This year the Conference is largely focusing on economic stability for low-income clients in need of pro bono service.

The schedule will include:

Four Conference Sessions — 6 CLE Hours
VSB Access to Legal Services Committee Meeting
Awards Celebration and Dinner

Registration Opens Now
<https://bit.ly/ProBonoCon22>

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October 31, 2022

Cameron Rountree, Esq.
Executive Director
Virginia State Bar
111 East Main Street, Suite 700
Richmond, VA 23219

Re: Proposed Legal Ethics Opinion 1893

Dear Cameron,

Please accept this letter as the formal comment of the Virginia Trial Lawyers Association (“VTLA”) on Proposed Legal Ethics Opinion 1893, currently titled “Representing Child and ‘Next Friend’ as Plaintiffs in Personal Injury Cases.” This is a scenario that our members confront frequently, and it is thus very important to us that the LEO accurately describe the situation and provide clear guidance. As you may know, VTLA has already commented on this proposed LEO twice, and has offered to have members of our Association who regularly confront this scenario assist in drafting the LEO. Though we have not yet been taken up on that offer, we remain ready to do so.

We attach a redline with comments that explains the reasoning behind some of the edits. However, we summarize below our conceptual concerns with the LEO as presently drafted.

First, as presently drafted the LEO portrays the attorney as pursuing the parent’s medical expense lien. We believe this is both inaccurate and potentially very dangerous. The attorney is pursuing the child’s claim. The child’s claim is encumbered by one or more liens. One of those lienholders is the parent for medical expenses. There are often other lienholders, such as Medicare, Medicaid, or a private health insurer due to ERISA. The attorney is not pursuing the parent’s lien any more than she is pursuing any other valid lien. Any suggestion to the contrary suggests that the attorney may, or even should, prioritize the parent’s lien over other liens. That puts the attorney in an untenable position, especially as to other lienholders like Medicare that, by statute, have direct claims against the attorney if their liens are not properly addressed.

The issue that creates the need for this LEO is that, with a child’s claim, one of the lienholders often happens to also be the Next Friend who is functionally directing the litigation. VTLA believes it important to highlight and deal with this dual role of Next Friend and lienholder, and to make clear that they are independent. VTLA very much agrees with the



VTLA
Page 2

LEO's fundamental conclusion that these dual roles usually do not present a conflict because the attorney's job is to pursue a maximum recovery on behalf of the child, and maximum recovery is in the interests of all lienholders.

Second, and relatedly, VTLA strongly opposes any suggestion that the attorney is representing the Next Friend, whether the Next Friend is a parent or someone else. Unless explicitly contracted for, the attorney is only representing the child. VTLA agrees that for a child's claim the Next Friend is a fiduciary of the child. Thus, the attorney's relationship with the Next Friend is the same as the relationship with any agent or fiduciary acting on behalf of a principal-client. The attorney owes duties to the fiduciary, such as the duty of candor, because of the attorney's duties to the client. And for the same reason the attorney's communications with the fiduciary are confidential due to the privilege between the attorney and the child-client. But the attorney has no free-standing attorney-client relationship with the fiduciary and thus no free-standing duties to the fiduciary unless specifically contracted for.

Third, VTLA believes that the discussion regarding a settlement of a child's claim that is "inadequate" to cover both liens and the child's other damages needs further refinement. Inadequacy is inherently subjective, and does not only arise in situations of insufficient insurance coverage. The attorney's primary objective is to achieve the highest realistic recovery for the child. That requires consideration of valid liens and how that will affect net recovery to the child, but it is often the case that there will be a tension between achieving the highest realistic recovery on the child's claim and fully satisfying all valid liens and fully compensating the child's other damages. It should be clear that the attorney discharges her obligation when she obtains a reasonable, realistic recovery on the child's claim, notwithstanding the interest of the lienholder parent.

As stated above, this is a very important issue for VTLA. We would prefer to get this LEO right instead of just getting it done. To that end, we again extend our offer to create a working group to work through these issues.

If you have any questions, please contact me and I will make sure we get you any clarifications you may need.

Thank you for your consideration.

VTLA
Page 3

Respectfully submitted,



Valerie M. O'Brien

cc: Kyle McNew, Esq., Co-Chair VTLA Ethics and Professionalism Committee
Brody H. Reid, Esq., Co-Chair VTLA Ethics and Professionalism Committee
Bridget Long, VTLA President

LEGAL ETHICS OPINION 1893—~~REPRESENTING CHILD AND “NEXT FRIEND” AS PLAINTIFFS IN PERSONAL INJURY CASE REPRESENTING CHILD WITH PARENT AS NEXT FRIEND WHEN PARENT ALSO HAS LIEN FOR MEDICAL EXPENSES~~

Draft Released for Comment—1/20/2022

1

1 This legal ethics opinion addresses possible conflicts of interest that
 2 may arise when a parent, guardian, or other person as “next friend”
 3 engages a lawyer to represent a minor child in a personal injury case
 4 against a tortfeasor. In addition, the parent or guardian may also have a
 5 ~~claim lien~~ for ~~past~~ and ~~future expenses~~ for medical treatment of the minor
 child.

6 Questions

7 1. ~~Does the lawyer have a conflict of interest pursuing a parent’s~~
~~8 medical expense lien for treatment of their child’s injuries caused by the~~
~~9 tortfeasor while concurrently representing their child in a claim against that~~
~~10 same tortfeasor?~~ “Does the lawyer representing a child in a claim against a
 tortfeasor for injuries to the child have a conflict if the parent acting as next
 friend for the child asserts a lien against the child’s recovery for medical
 expenses paid by the parent.”

11 2. ~~Assuming the answer to Question 1 is “yes,”~~ if a conflict arises, may
 that conflict of
 12 interest be waived, and if so, how?

13 Short Answer

14 1. Generally, no, there is no conflict of interest because the interests of

Commented [A1]: The attorney does not represent the child and next friend. The attorney represents the child through the next friend as fiduciary for the child. The issue addressed in this LEO is when the next friend is also a lienholder.

Commented [A2]: We believe it is important to be consistent and precise in language. The parent does not have a claim. They have a lien, just like any other lienholder.

Commented [A3]: VTLA believes that this formulation of the question stands upon an incorrect premise. Unless specifically and explicitly provided for in a representation agreement, the attorney is not pursuing the parent’s medical expense lien any more than she would be pursuing any other lienholder’s lien. She is pursuing the child’s claim, which is encumbered by one or more liens. The potential for a conflict only arises because one of those lienholders is also wearing the hat of next friend.

Commented [A4]: VTLA believes that this “assumption” implies a presumption that is inconsistent with the Short Answer immediately below.

15 the parent and the child are usually mutually aligned, and the parent's
16 fiduciary relationship with the child raises a presumption that the parent is
17 acting in the child's best interests.

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND “NEXT FRIEND” AS
PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

18 2. Should a conflict arise between the interests of the child and parent
when that parent is acting as next friend,
19 the lawyer should petition the court to appoint a Guardian ad Litem or, if
necessary, a different “next friend” to
20 replace the parent, and advise the parent to consult independent counsel.

21 Applicable Rules and Legal Ethics Opinions

22 RULE 1.7 Conflict of Interest: General Rule.

23 (a) Except as provided in paragraph (b), a lawyer shall not
24 represent a client if the representation involves a concurrent
25 conflict of interest. A concurrent conflict of interest exists if:

26 (1) the representation of one client will be directly adverse to
27 another client; or

28 (2) there is significant risk that the representation of one or more
29 clients will be materially limited by the lawyer's responsibilities to
30 another client, a former client or a third person or by a personal
31 interest of the lawyer.

32 (b) Notwithstanding the existence of a concurrent conflict of
33 interest under paragraph(a), a lawyer may represent a client if
34 each affected client consents after consultation, and:

35 (1) the lawyer reasonably believes that the lawyer will be able to
36 provide competent and diligent representation to each affected
37 client;

38 (2) the representation is not prohibited by law;

39 (3) the representation does not involve the assertion of a claim
40 by one client against another client represented by the lawyer in

41 the same litigation or other proceeding before a tribunal; and

42 (4) the consent from the client is memorialized in writing.

43
44 RULE 1.14 Client With Impairment

2

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND “NEXT FRIEND” AS
PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

45 (a) When a client's capacity to make adequately considered
46 decisions in connection with a representation is diminished,
47 whether because of minority, mental impairment or some other
48 reason, the lawyer shall, as far as reasonably possible, maintain
49 a normal client-lawyer relationship with the client.

50 (b) When the lawyer reasonably believes that the client has
51 diminished capacity, is at risk of substantial physical, financial or
52 other harm unless action is taken and cannot adequately act in
53 the client's own interest, the lawyer may take reasonably
54 necessary protective action, including consulting with individuals
55 or entities that have the ability to take action to protect the client
56 and, in appropriate cases, seeking the appointment of a guardian
57 ad litem, conservator or guardian.

58 (c) Information relating to the representation of a client with
59 diminished capacity is protected by Rule 1.6. When taking
60 protective action pursuant to paragraph (b), the lawyer is
61 impliedly authorized under Rule 1.6(a) to reveal information
62 about the client, but only to the extent reasonably necessary to
63 protect the client's interests.

64 Legal Ethics Opinions 786, 957, 1304, 1725 and 1762.

65 Representation of Parent/Next Friend and Child

66 In cases involving personal injury to a minor (infant), typically a parent
67 or “next friend” engages a lawyer to pursue a claim on behalf of the infant
68 to recover damages for pain and suffering, ~~permanent~~-injury, and
69 impairment of earning capacity after attaining majority. At common law, the

70 parent had a cause of action for loss of services during minority and
 71 necessary expenses incurred for the infant's treatment. *Baumann v.*

3

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND “NEXT FRIEND” AS
 PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

72 *Capozio*, 269 Va. 356 (2005). The Code of Virginia ~~recognizes~~ recognized
 the two
 73 separate claims at common law. Virginia Code §§ 8.01-36 and 8.01-243(B).
 74 The General Assembly amended ~~both~~ the ~~statutes~~ in 2013 giving the parent
 a
 75 lien on any recovery on behalf of the child for reimbursement of medical
 76 expenses incurred to treat the child's injuries rather than an independent
claim. ~~Va. Code § 8.01-36(B)~~.

77 Lawsuits filed on behalf of a minor child are brought in the name of
 78 the child by a “next friend,” typically, but not always, the child's parent(s) or
 79 guardian(s). Virginia Code § 8.01-8. The reason for this rule is the child, not
 80 the parent/next friend, is the real party in interest, in such an action.
 81 *Herndon v. St. Mary's Hospital, Inc.*, 266 Va. 472 (2003). When a lawsuit is
 82 filed on behalf of a minor child or a petition seeking court approval of a
 83 settlement of the minor child's claim is filed, a guardian *ad litem* may be
 84 appointed by the court to represent the interests of the minor child pursuant
 85 to Virginia Code § 8.01-9. However, the statute further states that if an
 86 attorney is representing a person under disability, no guardian *ad litem*
 87 need be appointed.

88 The child is the real party in interest but the lawyer looks to the child's
 89 next friend to speak for and act on behalf of the minor child and make
 90 decisions in the child's best interests regarding the child's claim against the

4

LEGAL ETHICS OPINION 1893 — REPRESENTING CHILD AND “NEXT FRIEND” AS PLAINTIFFS IN PERSONAL INJURY CASE

Draft Released for Comment — 1/20/2022

91 tortfeasor. Usually, the same lawyer is pursuing recovery for both the

92 child's claim and the parent's lien. The parent acting as next friend does not hire separate counsel to pursue their lien interest on the child's recovery. The parent may waive the lien for

93 reimbursement of medical expenses or the parent's lien may be paid out of

94 the minor child's recovery against the tortfeasor. The lawyer representing the child should

95 communicate with the parent at the outset of representation to ensure an understanding that the lawyer's

96 client is the child, not the parent, and the lawyer's paramount obligation is

97 to the client-child. If the parent is acting as next friend, then the parent as next friend is a fiduciary of the child and thus part of the child's attorney-client relationship with the attorney. However, the attorney owes no independent attorney-client obligation to the parent unless explicitly contracted for.

If the parent as next friend is also asserting a lien for medical expenses, then that lien stands on equal footing with any other valid liens that may exist against the child's claim. The lawyer is obligated to protect the parent's interest as

98 the lawyer would for any third party holding a lien against a settlement or

99 recovery. See Rule 1.15(b)(4) and Cmt. [4]. However, the attorney owes the lienholder parent no greater or different obligation than the attorney owes to any other valid lienholder.

100 As stated above, the lawyer must consult with and take direction from

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Commented [A5]: Again, the attorney is not pursuing the parent's lien, just as the attorney would not be pursuing Medicaid's lien or a private health insurer's lien. The parent is pursuing the child's claim. We believe this principle is correctly stated further on in the LEO, so we make this edit for consistency.

Commented [A6]: VTLA believes it is crucial to make this point explicitly. The next friend is a fiduciary of the child. The child is the principal, so the next friend is part of the attorney-client relationship the same as any agent/fiduciary is part of the principal's attorney-client relationship. Thus, for example, communications between attorney and next friend would be cloaked with the child-principal's privilege. But the attorney owes no free-standing, independent attorney-client duties to the next friend unless explicitly contracted for. The default should be that the only duties owed to the next friend are derivative of the attorney-client duties owed to the child.

101 the next friend, who in this hypothetical is the parent. ~~Whether the~~
 102 ~~relationship between the lawyer and the parent is an attorney-client~~
 103 ~~relationship or whether the parent is a non-client third party that has~~
 104 ~~retained the lawyer to represent the child is a question of law and fact. In~~
 105 ~~either case, a~~ A potential conflict could arise between the child and
 106 parent/next friend. ~~Regardless of how one characterizes the relationship,~~ if
 107 the parent's interests or goals conflict with the child's. In such a situation,
 108 ~~then~~ courts have the
 109 power either to substitute another person as next friend or to appoint a
 guardian *ad litem*, even when the parent sues as general guardian. See,

5

~~LEGAL ETHICS OPINION 1893 — REPRESENTING CHILD AND “NEXT FRIEND” AS
 PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment — 1/20/2022~~

110 e.g., *Horacek v. Exon*, 357 F. Supp. 71, 74 (D. Neb. 1973) (appointing a
 111 guardian *ad litem* for minor plaintiffs in civil rights action because parents'
 112 interests might conflict with those of children and such appointment did not
 113 displace parents as general representatives of children).

Potential Conflicts Between Parent/Next Friend and Child

114 A conflict may arise, for example, when the parent/next friend directs
 115 and controls the lawyer's representation of the child ~~while also directing the~~
 116 ~~lawyer to pursue aggressively in an effort to prioritize~~ the parent's lien claim
 117 for expenses for medical
 118 treatment of the child or when the parent is acting unreasonably to the

Commented [A7]: VTLA believes the deleted text is unnecessary and potentially confusing. In the previous paragraph, the proposed LEO as written correctly makes the central point that "the client is the child, not the parent." Everything flows from this central premise.

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119 detriment of the child. Generally, however, the parent's and child's interests
 120 are not at odds because the lawyer's goal is to pursue the maximum
 121 recovery for ~~both the child's tort claim and the parent's lien.~~ from which
~~third-party liens, including the parent's, can then be satisfied.~~

122 The committee believes that generally a lawyer may presume that the
 123 child's parent is acting in the best interests of the child even though the
 124 parent may have a lien on the settlement or recovery obtained on the
 125 child's case. This presumption may be relied upon until the lawyer has
 126 reason to believe that the parent is no longer placing the child's interests
 127 first. Maine Professional Ethics Comm'n Op. 154 (November 12, 1996):

6

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND “NEXT FRIEND” AS
 PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

128 This presumption is fundamental to the legal relationship
 129 between parents and children in our society. Failure to
 130 acknowledge this presumption would impose unacceptable costs
 131 on the resolution of disputes including the expense of obtaining
 132 and paying a guardian ad litem to act on behalf of the child
 133 throughout the case, a step that will usually disrupt family
 134 relationships and should not be required unless necessary to
 135 serve the best interests of the child.

136 While the committee acknowledges the presumption, circumstances
 137 may become known later in which a conflict may arise. The lawyer will have
 138 to examine the facts and circumstances on a case-by-case basis
 139 considering information such as the relationship between the parent and
 140 child; the values of their respective claims; the age and maturity of the
 141 child; the amount of any available insurance proceeds or other financial

142 resources to pay the claims; the type of reimbursement the parent is
 143 seeking; the involvement or responsibility of the parent in causing or
 144 contributing to the child's injuries; liability, and the respective positions and
 145 expectations of the parties. The committee recognizes that these issues
 146 may not be known at the outset making it necessary for the lawyer to
 147 frequently reassess potential conflict throughout the joint representation.
 148 Moreover, if the "next friend" is not a parent or guardian but some other

7

~~LEGAL ETHICS OPINION 1893 — REPRESENTING CHILD AND "NEXT FRIEND" AS
 PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment — 1/20/2022~~

149 third party, the presumption discussed in the Maine ethics opinion does not
 150 apply.

151 But the parent's and child's interests may diverge when there are
 152 inadequate assets to fully compensate both.¹ In those cases, every dollar
 153 the parent gets from their lien is a dollar taken from the child. Because the
 154 defendant or insurer will often pay a fixed amount to settle the entire case,
 155 whether the funds are given to parent or child, the potential for a conflict
 156 exists. There are at least two ways to resolve this conflict: either the parent

Commented [A8]: VTLA understands why this "inadequate assets" concept is discussed, but believes it needs to be given greater specificity. Inadequacy is a very subjective concept. The easy example is the one discussed below in the proposed LEO where there is clear liability and serious injuries but insufficient insurance coverage. But it is also often the case that there is more than enough insurance coverage, but due to a significant liability risk the settlement will be "inadequate" to fully compensate both the lien(s) and the child's other damages.

¹ As used in this Opinion, "inadequate assets to fully compensate both" refers to a situation where the attorney reasonably believes that the proposed recovery (whether by settlement or verdict) is in the best interests of the child - taking into account reasonably available sources of recovery, the strength of defenses to liability, and the nature of the child's damages – but such settlement would not be enough to satisfy valid liens, including a lien held by the parent, and also fairly compensate the child for her other damages

157 waives or reduces their lien in favor of the child; or, as discussed below, a guardian *ad*

158 *litem* is appointed to oversee and approve the settlement and to ensure
159 that the settlement is in the child's best interests. In both instances, the
160 lawyer may need to advise the parent to seek independent counsel.

161 ~~Were the committee to assume that the~~ Although representation of a
child through their parent acting as next friend does not, by itself, make the parent
a client of the attorney for purposes of representing that parent for recovery of
their lien, if the attorney formalizes such representation of the parent for their
independent lien for parent ~~is also a client for~~

~~162—purposes of recouping past medical expenses of the child and an award of~~

~~163—future medical expenses for the child throughout the child's minority, while~~

~~164—handling the child's claim under the direction of that parent,~~ a conflict could

165 arise. Both the parent and the child (by a guardian *ad litem*) may waive the

166 conflict if appropriate and allow the lawyer to continue to represent the child

167 and parent, or continue representing the child but not the parent.

8

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND “NEXT FRIEND” AS
PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

168 Regardless of whether the lawyer is petitioning the court to approve a
169 settlement or moving toward trial because a settlement cannot be reached,
170 appointment of a guardian *ad litem* is necessary to secure the child's
171 waiver of the conflict.

172 It is possible that the conflict cannot be resolved because the parties
173 will not waive the conflict, or the conflict is such that informed consent

174 should not be sought. If so, the lawyer must withdraw from both the child's
 175 and parent's case or seek informed consent to continue the representation
 176 of one of them.

177 Can the Conflict Between Parent/Next Friend and the Child be
 178 Cured?

179 Turning to Question #2, if there is a conflict of interest, the lawyer
 180 must determine whether the conflict can be cured with the informed
 181 consent of the affected client under Rule 1.7(b). The most essential
 182 requirement is that "the lawyer reasonably believes that the lawyer will be
 183 able to provide competent and diligent representation to each affected
 184 client" notwithstanding the conflict. Some conflicts are too great to be cured
 185 with informed consent, as Comment [19] to Rule 1.7 states:

9

~~LEGAL ETHICS OPINION 1893—REPRESENTING CHILD AND "NEXT FRIEND" AS
 PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment—1/20/2022~~

186 A client may consent to representation notwithstanding a conflict.
 187 However, when a disinterested lawyer would conclude that the
 188 client should not agree to the representation under the
 189 circumstances, the lawyer involved cannot properly ask for such
 190 agreement or provide representation on the basis of the client's
 191 consent.

192 Another problem for the lawyer in this hypothetical is the ability to
 193 obtain the client's consent if one of the clients is a minor. This committee
 194 has consistently opined that a minor cannot provide the consent required
 195 by provisions of the Rules of Professional Conduct. Legal Ethics Opinions

196 786, 957, 1304, 1725 and 1762. Thus, this attorney cannot obtain any
197 required consent from the child.

198 In the event a conflict arises in which the parent's and child's interests
199 are directly adverse, the lawyer cannot reasonably accept consent of the
200 parent on behalf of the child. Assume, for example, that ~~the insurance~~
201 ~~coverage or other sources of recovery are insufficient to fully compensate~~
202 ~~the child and discharge the parent's lien; the parent acting as next friend~~
directs the lawyer to settle the child's case for an amount that is less than the
lawyer believes is a reasonable settlement value for the child's case, but is
sufficient to fully satisfy the parent's lien. In that event a conflict has arisen

203 in which the parent's and child's interests are directly adverse. The lawyer
204 cannot reasonably accept consent of the parent on behalf of the child. The
205 lawyer must seek appointment of a guardian *ad litem* to address the
206 competing interests of the child and parent, and must advise the parent to

10

~~LEGAL ETHICS OPINION 1893 — REPRESENTING CHILD AND "NEXT FRIEND" AS
PLAINTIFFS IN PERSONAL INJURY CASE~~

~~Draft Released for Comment — 1/20/2022~~

11

207 seek independent counsel. Alternatively, if the parent/next friend is acting
208 unreasonably, the lawyer may petition a court to appoint a substitute next
209 friend. Because of the lawyer's duty of loyalty to the child-client, the lawyer
210 must not advocate against the interests of the client in the division of the
211 insurance proceeds. North Carolina State Bar RPC 251 (July 18, 1997).
212 *See also* Maine Professional Ethics Comm'n Op. 154 (November 12,
213 1996).

Commented [A9]: This relates to the point made above that inadequacy is inherently subjective. There could be \$500,000 in coverage. One attorney may believe that is adequate to both satisfy liens and compensate the child's other injuries because she believes those injuries not to be severe, whereas another attorney may believe that to be inadequate. We believe our hypothetical to more clearly and objectively highlight the conflict.

From: [Hedrick, Emily](#)
To: [Hall, Kristi](#)
Subject: Fwd: EXTERNAL SENDER Comment for LEO 1893
Date: Thursday, November 17, 2022 7:58:43 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[1893 draft 9-14-22 - VTLA comments.docx](#)

From: Elliott Buckner <ebuckner@viriniatrialfirm.com>

Sent: Wednesday, November 16, 2022 6:08:07 PM

To: Hedrick, Emily <hedrick@vsb.org>

Cc: Valerie OBrien <vobrien@vtla.com>

Subject: EXTERNAL SENDER Comment for LEO 1893

Emily,

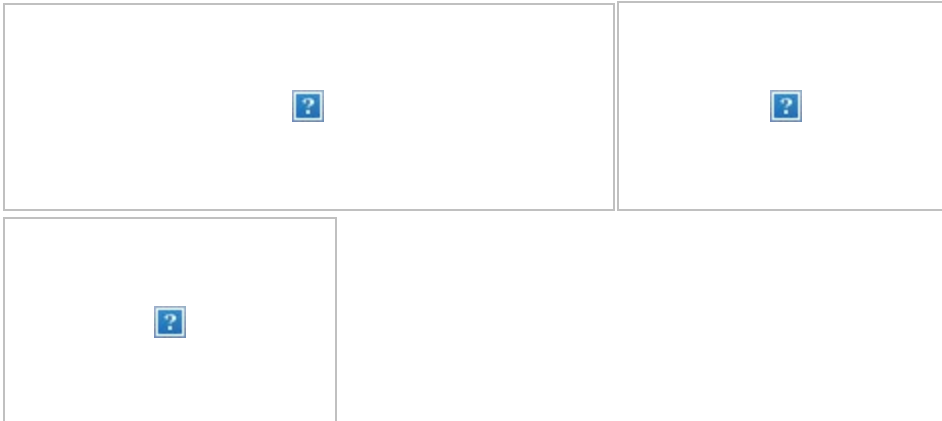
Attached is a redline with some requested changes, along with comments in support of the changes.

Please do not hesitate to contact me if you have any questions.

Thanks,

Elliott

Elliott M. Buckner



7130 Glen Forest Drive, Suite 400 | Richmond, Virginia 23226

(804) 343-4386 (Direct) | ebuckner@viriniatrialfirm.com

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19 the lawyer should petition the court to appoint a different “next friend” to
20 replace the parent and advise the parent to consult independent counsel.

21 Applicable Rules and Legal Ethics Opinions

22 RULE 1.7 Conflict of Interest: General Rule.

23 (a) Except as provided in paragraph (b), a lawyer shall not
24 represent a client if the representation involves a concurrent
25 conflict of interest. A concurrent conflict of interest exists if:

26 (1) the representation of one client will be directly adverse to
27 another client; or

28 (2) there is significant risk that the representation of one or more
29 clients will be materially limited by the lawyer’s responsibilities to
30 another client, a former client or a third person or by a personal
31 interest of the lawyer.

32 (b) Notwithstanding the existence of a concurrent conflict of
33 interest under paragraph(a), a lawyer may represent a client if
34 each affected client consents after consultation, and:

35 (1) the lawyer reasonably believes that the lawyer will be able to
36 provide competent and diligent representation to each affected
37 client;

38 (2) the representation is not prohibited by law;

39 (3) the representation does not involve the assertion of a claim
40 by one client against another client represented by the lawyer in
41 the same litigation or other proceeding before a tribunal; and

42 (4) the consent from the client is memorialized in writing.

43

44 RULE 1.14 Client With Impairment

45 (a) When a client's capacity to make adequately considered
46 decisions in connection with a representation is diminished,

47 whether because of minority, mental impairment or some other
48 reason, the lawyer shall, as far as reasonably possible, maintain
49 a normal client-lawyer relationship with the client.

50 (b) When the lawyer reasonably believes that the client has
51 diminished capacity, is at risk of substantial physical, financial or
52 other harm unless action is taken and cannot adequately act in
53 the client's own interest, the lawyer may take reasonably
54 necessary protective action, including consulting with individuals
55 or entities that have the ability to take action to protect the client
56 and, in appropriate cases, seeking the appointment of a guardian
57 ad litem, conservator or guardian.

58 (c) Information relating to the representation of a client with
59 diminished capacity is protected by Rule 1.6. When taking
60 protective action pursuant to paragraph (b), the lawyer is
61 impliedly authorized under Rule 1.6(a) to reveal information
62 about the client, but only to the extent reasonably necessary to
63 protect the client's interests.

64 Legal Ethics Opinions 786, 957, 1304, 1725 and 1762.

65 Representation of Child

66 In cases involving personal injury to a minor (infant), typically a
67 parent, as "next friend," engages a lawyer to pursue a claim on behalf of
68 the infant to recover damages for medical expenses, pain and suffering,
69 permanent injury, loss of earnings and impairment of earning capacity.

70 Previously, at common law, the parent had a cause of action for loss of
71 services during minority and necessary expenses incurred for the infant's
72 treatment. *Baumann v. Capozio*, 269 Va. 356 (2005). The Code of Virginia

73 recognized the two separate claims at common law. Virginia Code §§ 8.01-
74 36 and 8.01-243(B). The General Assembly amended the statutes in 2013,
75 giving the parent a lien on any recovery on behalf of the child for
76 reimbursement of medical expenses incurred to treat the child's injuries.

77 Lawsuits filed on behalf of a minor child are brought in the name of
78 the child by a "next friend," typically, but not always, the child's parent(s) or
79 guardian(s). Virginia Code § 8.01-8. The reason for this rule is the child, not
80 the parent/"next friend," is the real party in interest, in such an action.

81 *Herndon v. St. Mary's Hospital, Inc.*, 266 Va. 472 (2003). When a lawsuit is
82 filed on behalf of a minor child or a petition seeking court approval of a
83 settlement of the minor child's claim is filed, a guardian ad litem may be
84 appointed by the court to represent the interests of the minor child pursuant
85 to Virginia Code § 8.01-9. However, the statute further states that if an
86 attorney is representing a person under disability, no guardian ad litem
87 need be appointed.

88 The child is the real party in interest, but the lawyer looks to the
89 child's "next friend" to speak for and act on behalf of the minor child, and
90 make decisions in the child's best interests regarding the child's claim
91 against the tortfeasor. The parent may waive the lien for reimbursement of

92 medical expenses or the parent's lien may be paid out of the minor child's
93 recovery against the tortfeasor. The lawyer should communicate with the
94 parent to ensure an understanding that the lawyer's client is the child, not
95 the parent, and the lawyer's paramount obligation is to the client-child. The
96 lawyer is obligated to protect the parent's interest once there is a
97 successful recovery for the child, as the lawyer would for any third party
98 holding a lien against a settlement or recovery. See Rule 1.15(b)(4) and
99 Cmt. [4].

100 As stated above, the lawyer must consult with and take direction from
101 the "next friend," who in this hypothetical is the parent. Whether the
102 relationship between the lawyer and the parent is an attorney-client
103 relationship or whether the parent is a non-client third party that has
104 retained the lawyer to represent the child is a question of law and fact. In
105 either case, a potential conflict could arise between the child and
106 parent/"next friend." Regardless of how one characterizes the relationship,
107 if the parent's interests or goals conflict with the child's best interests, then
108 courts have the power either to substitute another person as "next friend" or
109 to appoint guardian ad litem, even when the parent sues as general
110 guardian. See, e.g., *Horacek v. Exxon*, 357 F. Supp. 71, 74 (D. Neb. 1973)

111 (appointing a guardian ad litem for minor plaintiffs in civil rights action
112 because parents' interests might conflict with those of children and such
113 appointment did not displace parents as general representatives of
114 children).

115 Potential Conflicts Between Parent/"Next Friend" and Child

116 A conflict may arise when the parent, acting as "next friend," directs
117 and controls the lawyer's representation in an unreasonable way that is
118 detrimental to the best interests of the child. An example of this is if a
119 parent, acting as "next friend," demands that the lawyer settle the child's
120 case for substantially less than its full value, but for an amount that will fully
121 satisfy the parent's lien for medical expenses. Generally, however, the
122 parent's and child's interests are not at odds because the lawyer's goal is
123 to pursue the maximum recovery for the child's tort claim, which also then
124 provides the best opportunity for satisfying the parent's lien for medical
125 expenses paid by the parent.

126 The committee believes that generally a lawyer may presume that the
127 child's parent is acting in the best interests of the child even though the
128 parent may have a lien on the settlement or recovery obtained on the
129 child's case. This presumption may be relied upon until the lawyer has

130 reason to believe that the parent is no longer placing the child's interests
131 first. Maine Professional Ethics Comm'n Op. 154 (November 12, 1996):

132 This presumption is fundamental to the legal relationship
133 between parents and children in our society. Failure to
134 acknowledge this presumption would impose unacceptable costs
135 on the resolution of disputes including the expense of obtaining
136 and paying a guardian ad litem to act on behalf of the child
137 throughout the case, a step that will usually disrupt family
138 relationships and should not be required unless necessary to
139 serve the best interests of the child.

140 While the committee acknowledges the presumption, circumstances
141 may become known later in which a conflict may arise. The parent's lien
142 may not be the only source of a potential conflict. Another potential source
143 of conflict may be that the parent/"next friend" is acting unreasonably and
144 not in the child's best interests or is making decisions that conflict with the
145 lawyer's professional judgment. The lawyer will have to examine the facts
146 and circumstances on a case-by-case basis considering information such
147 as the relationship between the parent and child; the value of the child's
148 claim compared to the parent's lien; the age and maturity of the child; the
149 amount of any available insurance proceeds or other financial resources to
150 pay the claim and liens; the type/amount of reimbursement the parent is
151 seeking; the involvement or responsibility of the parent in causing or

152 contributing to the child's injuries; liability, and the respective positions and
153 expectations of the parties. The committee recognizes that these issues
154 may not be known at the outset making it necessary for the lawyer to
155 frequently reassess potential conflict throughout the representation.
156 Moreover, if the "next friend" is not a parent or guardian but some other
157 third party, the presumption discussed in the Maine ethics opinion does not
158 apply.

159 But the parent's and child's interests may diverge when there are
160 inadequate assets to fully compensate both. Like any lienholder, every
161 dollar paid to the parent for their lien is a dollar less received by the child.
162 Because the defendant or insurer will often pay a fixed amount to settle the
163 entire case, whether the funds are given to parent or child, the potential for
164 a conflict exists. There are at least three ways to resolve this conflict: (1)
165 the parent waives or reduces their lien in favor of the child; (2) the lawyer
166 may seek judicial approval of the infant settlement; or (3) as discussed
167 below, a guardian ad litem is appointed to oversee and approve the
168 settlement and to ensure that the settlement is in the child's best interests.
169 In these instances, the lawyer may need to advise the parent to seek
170 independent counsel.

171 Can a Conflict Between Parent/“Next Friend” and the Child be
172 Cured?

173 Turning to Question #2, which assumes there is a conflict caused by
174 the “next friend” directing the lawyer for their benefit rather than the best
175 interests of the child which the lawyer cannot otherwise resolve, the lawyer
176 must determine whether the conflict can be cured with the informed
177 consent of the affected client under Rule 1.7(b). The most essential
178 requirement is that “the lawyer reasonably believes that the lawyer will be
179 able to provide competent and diligent representation to [the] affected
180 client” notwithstanding the conflict. Some conflicts are too great to be cured
181 with informed consent, as Comment [19] to Rule 1.7 states:

182 A client may consent to representation notwithstanding a conflict.
183 However, when a disinterested lawyer would conclude that the
184 client should not agree to the representation under the
185 circumstances, the lawyer involved cannot properly ask for such
186 agreement or provide representation on the basis of the client's
187 consent.

188 Another problem for the lawyer in this hypothetical is the ability to
189 obtain the client’s consent when his client is a minor. This committee has
190 consistently opined that a minor cannot provide the consent required by
191 provisions of the Rules of Professional Conduct. Legal Ethics Opinions

192 786, 957, 1304, 1725 and 1762. Thus, this attorney cannot obtain any
193 required consent from the child.

194 If a conflict arises in which the parent's and child's interests conflict,
195 the lawyer cannot reasonably accept consent of the parent on behalf of the
196 child. Assume, for example, that the insurance coverage or other sources
197 of recovery are only sufficient to fully discharge the parent's lien, and the
198 parent refuses to waive or reduce their lien. In that event a conflict has
199 arisen in which the parent's and child's interests are directly adverse. The
200 lawyer cannot reasonably accept consent of the parent on behalf of the
201 child. The lawyer may seek appointment of a guardian ad litem to address
202 the competing interests of the child and parent, or may seek judicial
203 approval of the infant settlement, and must advise the parent to seek
204 independent counsel. Alternatively, if the parent/"next friend" is acting
205 unreasonably, the lawyer may petition a court to appoint a substitute "next
206 friend." Because of the lawyer's duty of loyalty to the child-client, the lawyer
207 must not advocate against the interests of the client in the division of the
208 insurance proceeds. North Carolina State Bar RPC 251 (July 18, 1997).
209 See *also* Maine Professional Ethics Comm'n Op. 154 (November 12,
210 1996).

DAVID P. CORRIGAN
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November 1, 2022

VIA EMAIL at publiccomment@vsb.org

Cameron Rountree, Executive Director
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

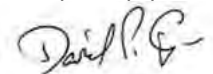
Re: Proposed Legal Ethics Opinion 1893

Dear Mr. Rountree:

Thank you for seeking public comment on proposed advisory Legal Ethics Opinion 1893, regarding a proposed advisory on representing children and "next friends" as plaintiffs in personal injury cases.

After reviewing the proposed opinion, the Ethics Committee of the Local Government Attorneys of Virginia, Inc. ("LGA") has determined that the proposed LEO does not have any impact unique to the practice of local government law. Therefore, the Committee has no comment on this proposed LEO. However, we do appreciate the continuing opportunity to provide comments on proposed Legal Ethics Opinions and Rule changes.

Very truly yours,



David P. Corrigan
Chair, LGA Ethics Committee

cc: Mark C. Popovich, Esq., LGA President (via email)

Andy Herrick, Albemarle County Deputy County Attorney (via email)

From: attyabeg@aol.com
To: [publiccomment](#)
Cc: attyabeg@aol.com
Subject: EXTERNAL SENDER Comments on VSB Legal Ethics Opinion 1893
Date: Friday, November 11, 2022 10:23:18 AM

You don't often get email from attyabeg@aol.com. [Learn why this is important](#)

Lawyers are called upon to advise members of the public on an array of daily concerns, and are called upon to exercise both legal skills and common sense. The idea that one lawyer or law firm, should be able to represent both children and parents in a PI case opens the door to potential abuses. Leaving the interests of the child in jeopardy, and further undermining the confidence of the public in the legal profession.

All parents are not the same, and the needs of all children are not the same. Abuses and the pursuit of "green" often take precedent over the child's best needs. In short, children should always have their own counsel in these types of situations. Common sense demands it. Thank you.

August Bequai, Esq.
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