

LEGAL ETHICS

James O. Broccoletti, chair

Ethics Opinions

The Standing Committee on Legal Ethics received six new opinion requests in fiscal 2007. Since July 1, 2006, the committee issued eight opinions in response to requests prior to and during fiscal 2007.

Those requests addressed a wide range of topics, including:

- *De minimus* gifts of money to a client's commissary account at the jail
- Guardian ad litem compensation from a third party for representation of a minor in settlement of the minor's personal injury claim
- Lawyers engaged in the practice of law serving on public bodies
- Conflicts analysis of a law firm where only a secretary received confidential information from a potential client
- Disbursement of uncollected funds from a trust account if all funds in the trust account are held for only one client
- Conflicts analysis when a local government attorney represents multiple constituents who are part of the same governmental organization
- In-house counsel providing services to a sister corporation and collecting reimbursement
- A lawyer representing a settlement company facilitating that company's practice of re-deeding property through a relocation intermediary without proper recordation.

Rule Revisions

An amendment to the Rules of Professional Conduct Rule 4.2 was adopted by the Supreme Court of Virginia that included the language of Comment [3] of the American Bar Association rule regarding the prohibition against communicating with a represented party even when the represented person or the lawyer initiates the contact.

The committee approved new comments to Rule 8.4 that represent an important change in the committee's position on the ethical propriety of a lawyer or the lawyer's agent using an undisclosed recording device to capture a communication or event in which the lawyer or agent is a participant. Under the new comments, the undisclosed recording of a communication or event is not unethical per se if the recording a) is lawful; b) is consented to by one of the parties to the transaction; c) is in furtherance of an investigation on behalf of a client; and d) is not effectuated by means of any misrepresentations; and if e) the means by which the communication or event was recorded and the use of the recording do not violate the legal rights of another.

The committee and Virginia State Bar Council have adopted these amendments. They are pending with the Supreme Court of Virginia.

Ethics Telephone Calls

In addition to the written requests for ethics opinions outlined above, the average number of ethics telephone calls to VSB staff attorneys from July to June was 378 per month.

