

# Virginia Lawyer Register

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<b>Suspension – Failure to Pay Disciplinary Costs</b>		<b>Effective Date</b>	<b>Lifted</b>	
John William Acree	Virginia Beach, VA	October 12, 2001	April 13, 2010	n/a
Steven Scott Biss	Charlottesville, VA	April 21, 2009	April 12, 2010	n/a
James Kevin Clarke	Richmond, VA	March 18, 2010		n/a
Johnnye Belinda Duff	Virginia Beach, VA	March 2, 2010		n/a
Vaughan Christopher Jones	Richmond, VA	February 9, 2010	February 12, 2010	n/a
Daniel Stephen Orci Jr.	Washington, DC	March 24, 2010		n/a
Tonja Michelle Roberts	Danville, VA	March 2, 2010		n/a
<b>Suspension – Failure to Comply with Subpoena</b>				
Phillip Stone Griffin II	Winchester, VA	February 8, 2010	February 17, 2010	n/a
Richard Francis Papcun	Colonial Heights	February 19, 2009	March 26, 2010	n/a
Joseph Louis Tantoh Tibui	Springfield, VA	July 25, 2007	February 22, 2010	n/a

\*Respondent has noted an appeal with the Supreme Court of Virginia.

### Virginia Lawyer Register

The Official Publication of the Virginia State Bar

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The Virginia State Bar publishes the *Virginia Lawyer Register* five times annually. The *Register* is primarily a compilation of disciplinary actions against attorneys licensed to practice law in the commonwealth; administrative suspensions; legal ethics opinions; and proposed amendments to the Rules of the Supreme Court of Virginia. All documents submitted to the state bar for inclusion in the Register are

subject to alteration as to typography and formatting, in order to conform to the requirements of the *Register*, without changing the intent of any document.

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The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Supreme Court of Virginia, Part 6, § II, eff. Jan. 1, 2000) or another of the Supreme Court rules (Rules). References to Rules Part 6, Section IV, Paragraph 13 are assumed to be the reformatted rules (effective May 1, 2009), unless otherwise indicated.

Copies of complete disciplinary orders are available at the Web link provided with each summary or by contacting the Virginia State Bar Clerk's Office at (804) 775-0539 or clerk@vsb.org. VSB docket numbers are provided.

CIRCUIT COURTS

DALE EUGENE DUNCAN

Alexandria, Virginia

07-042-2301, 07-042-070782, 09-042-75845

On December 16, 2009, a three-judge panel in Alexandria Circuit Court suspended Dale Eugene Duncan's license to practice law for two years, effective December 23, 2009. The court found that Mr. Duncan engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on his fitness to practice law. RPC 8.4(a-c)

[http://www.vsb.org/docs/Duncan\\_03-23-10.pdf](http://www.vsb.org/docs/Duncan_03-23-10.pdf)

JOSEPH A. PENNINGTON

Norfolk, Virginia

09-021-078133

On January 13, 2010, a three-judge panel in the Norfolk Circuit Court issued a public reprimand with terms to Joseph A. Pennington for violating the disciplinary rule that governs diligence. Mr. Pennington twice failed to timely file a motion for reduction of a client's spousal support and failed to attend court hearings in the matter. RPC 1.3(a)

[http://www.vsb.org/docs/Pennington\\_\\_03-12-10.pdf](http://www.vsb.org/docs/Pennington__03-12-10.pdf)

For easier access to the documents cited in this magazine, the *Virginia Lawyer Register* is posted with live Internet links at [http://www.vsb.org/docs/valawyer\\_magazine/Register\\_2010-05.pdf](http://www.vsb.org/docs/valawyer_magazine/Register_2010-05.pdf).

DISCIPLINARY BOARD

BRIAN GAY

Virginia Beach, Virginia

08-022-073165

On February 22, 2010, Brian Gay filed an appeal of the following discipline with the Supreme Court of Virginia.

On January 22, 2010, the Virginia State Bar Disciplinary Board suspended Brian Gay's license to practice law for sixty days for violating disciplinary rules that govern declining or terminating representation, diligence, fees, conflict of interest: general rule, and misconduct, including committing an act that reflects adversely on a lawyer's fitness to practice law. The discipline was in connection with Mr. Gay's billing and representation contract with a client in a divorce case. RPC 1.16(a)(1); 1.3(a-c); 1.5(a); 1.7(a)(2); 8.4(a),(b)

[http://www.vsb.org/docs/Gay\\_02-21-10.pdf](http://www.vsb.org/docs/Gay_02-21-10.pdf)

EUGENE BRIAN HARRIS

Portsmouth, Virginia

10-000-081113

On February 26, 2010, the Virginia State Bar Disciplinary Board summarily suspended Eugene Brian Harris's license to practice law, based on his February 9, 2010, conviction in the Chesapeake Circuit Court of assault and battery of a law enforcement officer. Rules 13-22

10-000-078799

On March 11, 2010, the Virginia State Bar Disciplinary Board summarily suspended Eugene Brian Harris's license to practice law, based on his October 14, 2009, conviction in the Portsmouth Circuit Court of grand larceny from person, abduction, and conspiracy. The board ordered him to appear on March 26, 2010, to show cause why his license should not be further suspended or revoked. Rules 13-22

In each of these cases, the board ordered Mr. Harris to appear on March 26, 2010, to show cause why his license should not be further suspended or revoked. On March 18, 2010, the board continued the cases with a new hearing date to be determined. Mr. Harris has been ineligible to practice law in Virginia since October 9, 2009, when his license was administratively suspended.

WAYNE RICHARD HARTKE

Reston, Virginia

05-053-3993

On March 11, 2010, the Virginia State Bar Disciplinary Board issued a public reprimand to Wayne Richard Hartke for violating disciplinary rules that govern an organization as a client. The case involved his failure to keep members of a board of directors informed about actions that were taken by a corporation and pertained to the directors' interests. This was an agreed disposition of misconduct charges. RPC 1.13(a),(b)(1-3),(c),(d)

[http://www.vsb.org/docs/Hartke\\_03-23-10.pdf](http://www.vsb.org/docs/Hartke_03-23-10.pdf)

## DISCIPLINARY SUMMARIES

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### ROBERT WINTHROP JOHNSON II

Washington, D.C.

10-000-082004

On February 19, 2010, the Virginia State Bar Disciplinary Board suspended Robert Winthrop Johnson II's license to practice law for thirty days, the same discipline imposed by the District of Columbia Court of Appeals for ethical violations in that jurisdiction. The Virginia suspension became effective January 22, 2010 — the date that his Virginia license was summarily suspended pending a show cause hearing on the reciprocal discipline. Rules Part 6, § IV, ¶ 13-24 A.

[http://www.vsb.org/docs/Johnson\\_03-12-10.pdf](http://www.vsb.org/docs/Johnson_03-12-10.pdf)

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### PETER CAMPBELL SACKETT

Lynchburg, Virginia

09-090-079941

On February 19, 2010, the Virginia State Bar Disciplinary Board revoked Peter Campbell Sackett's license to practice law for violating disciplinary rules that govern diligence, communication, safekeeping property, declining or terminating representation, bar admission and disciplinary matters, and misconduct that involves dishonesty, fraud, deceit, or misrepresentation that reflects adversely on a lawyer's fitness to practice. The violations occurred in Mr. Sackett's representation of out-of-state clients in a land sale. RPC 1.3(a),(b); 1.4(a),(b); 1.15(c)(3),(4); 1.16(d); 8.1(c),(d); 8.4(c)

[http://www.vsb.org/docs/Sackett\\_03-12-10.pdf](http://www.vsb.org/docs/Sackett_03-12-10.pdf)

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### BRIAN KEITH STEVENS

Glen Allen, Virginia

08-032-073327, 10-000-082113

On March 16, 2010, the Virginia State Bar Disciplinary Board issued a public reprimand with terms to Brian Keith Stevens for violating the Consumer Real Estate Settlement Protection Act provisions that govern escrow accounts and for violating disciplinary rules that govern diligence and safekeeping property. The board ordered him to pay a \$500 fine. This was an agreed disposition of misconduct charges. Va. Code § 6.1-2.23, 2.24; 15 VAC 5-80-50.B; RPC 1.15(a); 1.15(c)(3),(4), (e)(1)(i-v), (f)(4)(i),(ii), (5)(i-iii)

[http://www.vsb.org/docs/Stevens\\_03-16-10.pdf](http://www.vsb.org/docs/Stevens_03-16-10.pdf)

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### PAUL LEE WARREN

Norfolk, Virginia

09-021-076259

On February 22, 2010, the Virginia State Bar Disciplinary Board issued a public reprimand to Paul Lee Warren for violating disciplinary rules that govern candor toward the tribunal, fairness to opposing party and counsel, and misconduct that reflects adversely on a lawyer's fitness to practice. The violations occurred in his interactions with a witness in a medical malpractice case — conduct that resulted in a criminal contempt finding against Mr. Warren by the judge in the case. This was an agreed disposition of misconduct charges. RPC 3.3(a)(1); 3.4(g); 8.4(a-c)

[http://www.vsb.org/docs/Warren\\_03-05-10.pdf](http://www.vsb.org/docs/Warren_03-05-10.pdf)

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## DISTRICT COMMITTEES

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### JENNY SUSAN BARONE

Richmond, Virginia

08-032-071996

On April 2, 2010, a Virginia State Bar Third District Subcommittee issued a public admonition to Jenny Susan Barone for violating disciplinary rules that govern safekeeping property and declining or terminating representation. The misconduct occurred when Ms. Barone closed her law practice. This was an agreed disposition of misconduct charges. RPC 1.15(a)(1),(2); 1.16(b)(1-6),(c),(d)

[http://www.vsb.org/docs/Barone\\_04-15-10.pdf](http://www.vsb.org/docs/Barone_04-15-10.pdf)

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### BRUCE PATRICK GANEY

Ashland, Virginia

05-060-2006

On February 24, 2010, a Virginia State Bar Sixth District Subcommittee publicly reprimanded Bruce Patrick Ganey for violating professional rules that govern competence, communication, conflict of interest: prohibited transactions, safekeeping property, declining or terminating representation, and fairness to opposing parties or counsel. The misconduct occurred in his representation in an equitable distribution and spousal support matter, and included failure to pay his client's spousal support on time and to maintain adequate funds in his trust account for the client's support payments. This was an agreed disposition of misconduct charges. RPC 1.1; 1.4(a); 1.8(e); 1.15(c)(4); 1.16(d); 3.4(d)

[http://www.vsb.org/docs/Ganey\\_03-16-10.pdf](http://www.vsb.org/docs/Ganey_03-16-10.pdf)

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## DISCIPLINARY SUMMARIES

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### RICHARD SCOTT GORDON

Newport News, Virginia

08-010-075370

On April 2, 2010, a Virginia State Bar First District Subcommittee issued a public reprimand to Richard Scott Gordon for violating professional rules that govern diligence, communication, and failure to respond to a lawful demand for information from a disciplinary authority. This was an agreed disposition of disciplinary charges. RPC 1.3(a); 1.4(a); 8.1(c)

[http://www.vsb.org/docs/Gordon\\_04-15-10.pdf](http://www.vsb.org/docs/Gordon_04-15-10.pdf)

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### EDGAR RAWLINGS JONES

Williamsburg, Virginia

07-060-070895

On March 4, 2010, a Virginia State Bar Sixth District Subcommittee issued a public admonition to Edgar Rawlings Jones for violating a professional rule that governs declining or terminating representation. The misconduct occurred in a case that involved possible employment discrimination and a workers' compensation claim. This was an agreed disposition of misconduct charges. RPC 1.16(c)

[http://www.vsb.org/docs/Jones\\_03-12-10.pdf](http://www.vsb.org/docs/Jones_03-12-10.pdf)

05-060-1676

On February 19, 2010, the Virginia State Bar Sixth District Subcommittee publicly reprimanded Edgar Rawlings Jones for violating disciplinary rules that govern competence and promptness, representing a client zealously, diligence, and misconduct that involves dishonesty, fraud, deceit, or misrepresentation. The violations occurred in a consultation on an employment matter. This was an agreed disposition of misconduct charges. Disciplinary Rules 6-101(B), 7-101(A)(2); RPC 1.3(a),(b), 8.4(c)

<http://www.vsb.org/docs/JONES-EDGAR-1676.pdf>

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### CARL CHRISTEN LA MONDUE

Norfolk, Virginia

09-022-079574

On March 29, 2010, a Virginia State Bar Second District Subcommittee issued a public reprimand to Carl Christen La Mondue for violating professional rules that govern diligence and declining or terminating representation. The misconduct occurred in a divorce representation. This was an agreed disposition of misconduct charges. RPC 1.3(a); 1.16(3)

[http://www.vsb.org/docs/LaMondue\\_04-02-10.pdf](http://www.vsb.org/docs/LaMondue_04-02-10.pdf)

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### RICHARD FRANCIS PAPCUN

Colonial Heights, Virginia

08-031-075283

On March 22, 2010, a Virginia State Bar Third District-Section I Subcommittee issued a public admonition to Richard Francis Papcun for failing to respond to a lawful demand for information from the Virginia State Bar. Mr. Papcun did not respond to letters and a subpoena the bar sent during investigation of a complaint. This was an agreed disposition of misconduct charges. Rule 8.1(c)

[http://www.vsb.org/docs/Papcun\\_04-15-10.pdf](http://www.vsb.org/docs/Papcun_04-15-10.pdf)

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### BERNICE MARIE STAFFORD TURNER

Richmond, Virginia

06-032-2194, 06-032-3244, 06-032-4117, 07-032-0520, 07-032-2543

On March 15, 2010, a Virginia State Bar Third District Subcommittee issued a public reprimand to Bernice Marie Stafford Turner for violating disciplinary rules that govern competence, diligence, communication, safekeeping property, declining or terminating representation, and failing to respond to a disciplinary authority's lawful demand for information. The misconduct occurred in five cases that involved criminal defense, an appeal of a criminal case, bankruptcies, a real estate matter, and a forfeiture. This was an agreed disposition of misconduct charges. RPC 1.1; 1.3(a); 1.4(a); 1.15(a)(1),(2); 1.16(a)(1); 8.1(c)

[http://www.vsb.org/docs/Turner\\_03-23-10.pdf](http://www.vsb.org/docs/Turner_03-23-10.pdf)

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### TIMOTHY JAMES WALL

Fredericksburg, Virginia

06-060-3006

On March 4, 2010, a Virginia State Bar Sixth District Subcommittee issued a public reprimand with terms to Timothy James Wall for violating disciplinary rules that govern diligence, safekeeping property, declining or terminating representation, and responsibilities regarding nonlawyer assistants. The misconduct occurred during Mr. Wall's representation of a client charged with felony hit and run and alcohol-related traffic offenses. This was an agreed disposition of misconduct charges. RPC 1.3(a); 1.15(c)(4); 1.16(d); 5.3(a),(b)

[http://www.vsb.org/docs/Wall\\_04-02-10.pdf](http://www.vsb.org/docs/Wall_04-02-10.pdf)

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The following proposals are published for public comment and will be considered at the Virginia State Bar Council meeting on June 17, 2010. Comments should be submitted in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on the day of deadline

## RULES OF PROFESSIONAL CONDUCT

### *AMENDMENTS TO RPC 7.1-7.5 LAWYER ADVERTISING AND SOLICITATION*

Deadline for comment: June 4, 2010

The Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed amendments to Rules 7.1-7.5 of the Rules of Professional Conduct. Proposed changes to Rules 7.1-7.3 and 7.5 have been revised in response to comments received after the proposal was first published in March 2010. In addition, the committee here presents a new proposal to eliminate Rule 7.4.

Rules 7.1 – 7.5 regulate lawyer advertising and solicitation. Overall, the proposed amendments make the rules more general in their application by moving the specific examples of lawyer advertising statements or claims from the body of the rules to the comment section.

Specifically, the following amendments are proposed:

- Rule 7.1 as amended would delete the terms “fraudulent” and “deceptive.” If a lawyer’s advertising is fraudulent or deceptive it would therefore be “false” or “misleading.” The committee believes that statements in lawyer advertising that are false or misleading violate Rule 7.1 regardless of any intent by the lawyer to deceive the public or defraud a consumer.
- Rule 7.2 as amended would eliminate the requirement of a disclaimer for specific or cumulative case results. Statements regarding cumulative case results are still subject, however, to the “misleading” standard of Rule 7.1. The amendments reiterate the concept expressed in Rule 7.1 that a statement that is facially correct may nevertheless violate the rules “if it omits a fact necessary to make the lawyer’s communication considered as a whole not materially misleading.” Amendments to 7.2(c) would allow lawyers to participate in a qualified legal services plan or a not-for-profit legal referral service that has been approved by the Ethics Committee. In response to the comments received, the committee clarifies in Rule 7.2(c)(5) that nominal gifts not intended to compensate another for recommending the lawyer’s services are not improper.
- Rule 7.3 as amended would broaden the scope of the prohibition against in-person solicitation to cover all types of matters — not only personal injury and wrongful death cases. As the last sentence in proposed Comment [1] explains, “A person in need of legal services for a divorce, bankruptcy, or criminal defense may be just as overwhelmed and vulnerable to suggestion as a person in need of legal services in cases involving personal injury or wrongful death.” In response to the comments regarding this rule, the committee’s revised proposal would prohibit all in-person solicitation involving harassment, coercion, duress, compulsion, intimidation, threats, or unwarranted promises of benefits, taking into consideration the prospective client’s sophistication and other circumstances.
- Rule 7.4 as amended, the committee’s new proposal, would delete the current rule in its entirety based on the committee’s conclusion that any claim or statement of specialization should be measured by the “false” or “misleading” standard used in

Rule 7.1 and that a specific rule for a particular type of statement or claim is unnecessary and redundant. If a lawyer communicates a specialty certification, the lawyer’s communication will be evaluated under Rule 7.1’s requirement that any advertising regarding a lawyer’s specialty certification cannot be misleading and must be truthful. The committee makes this point in Rule 7.1, new Comment [4].

- Rule 7.5 as amended would add a new Comment [3] clarifying that lawyers should practice using the official name under which the lawyer is licensed or seek an appropriate and legal change of name from the Supreme Court of Virginia.

Details: [http://www.vsb.org/pro-guidelines/index.php/rule\\_changes/item/rules-71-75-regulating-lawyer-advertising-and-solicitation/](http://www.vsb.org/pro-guidelines/index.php/rule_changes/item/rules-71-75-regulating-lawyer-advertising-and-solicitation/)

## RULES OF PROFESSIONAL CONDUCT & RULES OF THE SUPREME COURT OF VIRGINIA

### *REVISED AMENDMENTS TO RPC 1.15 & RULES OF COURT PART 6, § IV, § 20*

### *SAFEKEEPING PROPERTY AND MAINTENANCE OF TRUST ACCOUNTS*

Deadline for comment: June 4, 2010

Proposal: The Standing Committee on Legal Ethics proposes an amendment to Rule 1.15, Safekeeping Property, that eliminates redundancy in the rule and clarifies the rule’s record-keeping requirements for Virginia lawyers. In addition, the committee proposes modifications to Paragraph 20 that include elimination of the regulations for the approval of financial institutions that serve as depositories for attorney trust accounts in Virginia.

The Virginia State Bar Council, at its meeting on February 27, 2010, returned the proposed amendments to the Ethics Committee for further revision of Comment [4] to Rule 1.15. The council asked that language be added to more clearly explain that 1.15(b)(4 and 5) imposes no obligation on a lawyer to protect a client’s funds on behalf general creditors who have no valid claim to the specific funds or property in the lawyer’s possession. The council also asked that the comment provide examples of third-party liens or claims against funds or property that the lawyer would be required to protect under Rule 1.15.

With these changes and additional editorial revisions, the proposed restructured Rule 1.15:

1. combines the requirements as they apply to lawyers and fiduciaries;
2. eliminates the terms used to refer to certain records and replaces them with specific descriptions of the type of records that need to be maintained;
3. eliminates the rule’s redundant definitions;
4. eliminates detailed requirements from the rule that were specifically applicable to financial institutions, as that information is included in the Virginia State Bar Approved Financial Institution Agreement;
5. adds a specific requirement to 1.15(b)(4 and 5) that a lawyer cannot disburse funds or use property of a client or third party without the client’s consent or convert or misappropriate funds or property of a client or third party, except as directed by a tribunal;
6. adds language to Comment [6] that gives additional guidance to lawyers using electronic banking transactions;

7. adds specific language in Comment [4] requiring a lawyer to hold funds in escrow when a third party has made a claim against those funds; and

8. adds titles to subparagraphs for simplicity and clarity.

The proposed amendments to Paragraph 20 would:

1. define a financial institution approved by the Virginia State Bar;
2. clarify the different types of trust accounts that can be opened, as well as create an opt-out provision; and
3. outline the specific requirements that financial institutions must follow as Virginia State Bar-designated “approved financial institutions.”

This new Paragraph 20 will incorporate a new Virginia State Bar Approved Financial Agreement that all financial institutions must execute in order to be approved by the VSB. The agreement will be incorporated by reference as an appendix to Paragraph 20.

Details: [http://www.vsb.org/pro-guidelines/index.php/rule\\_changes/item/rule-115-of-rules-of-professional-conduct-and-paragraph-20-of-part-6-iv/](http://www.vsb.org/pro-guidelines/index.php/rule_changes/item/rule-115-of-rules-of-professional-conduct-and-paragraph-20-of-part-6-iv/)

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## APPROVED RULE CHANGES

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### RULES OF THE SUPREME COURT PART 6, § IV, ¶ 10

#### *PROMULGATION OF LEGAL ETHICS AND UNAUTHORIZED PRACTICE OF LAW OPINIONS*

Effective: March 19, 2010

On March 19, 2010, the Court approved amendments to Paragraph 10 regarding promulgation of legal ethics and unauthorized practice of law (UPL) opinions and rules of court.

The changes:

- Update terminology and eliminate redundancy in procedures for providing notice and soliciting public opinion.
- Require that the VSB seek the Virginia attorney general’s analysis of potential restraint on competition only for proposed UPL opinions that declare activity conducted by a nonlawyer to be UPL. No other UPL or ethics opinions and no other rules must be submitted for this analysis, under the amended Paragraph 10.
- Include “foreign” lawyers (as defined in Rules of Professional Conduct 5.5(d)(1)) among the attorneys that VSB ethics counsel can give informal advice and opinions to.

Details: [http://www.vsb.org/pro-guidelines/index.php/rule\\_changes/item/paragraph-10-governing-legal-ethics-and-unauthorized-practice-of-law/](http://www.vsb.org/pro-guidelines/index.php/rule_changes/item/paragraph-10-governing-legal-ethics-and-unauthorized-practice-of-law/)

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## MANDATORY CONTINUING LEGAL EDUCATION AMENDMENTS TO REGULATIONS

### *NEW REQUIREMENT FOR LIVE INTERACTIVE PROGRAMS*

Effective: November 1, 2010

On October 19, 2009, the Mandatory Continuing Legal Education Board proposed amendments to MCLE regulations. After a public comment period, the amendments were presented to the Virginia State Bar Council as an information item on February 27, 2010. The board gave its final approval to the amended regulations on March 1, 2010.

The rules were changed to reflect current policies that govern course approval standards, course sponsor responsibilities, and compliance reporting procedures. The changes support the Virginia State Bar’s move to provide information and reporting capabilities on VSB.org, the bar’s website.

Regulation 102(e) now requires that at least four hours of MCLE annually be in the form of live interactive programs, which can include traditional classroom courses, live telephone seminars, live webcasts, and video replays with live interactivity with a speaker.

The remaining eight hours of the twelve-hour annual MCLE requirement can be either prerecorded programs with no live component or live interactive programs.

The live programming requirement goes into effect for the 2011 MCLE compliance year, which starts November 1, 2010. Hours earned in the 2010 compliance year and carried over under Rules of the Supreme Court Part 6, § IV, ¶ 17 C(2) will be credited to year 2011 as live programming, for a maximum of twelve hours.

Details: <http://www.vsb.org/site/members/mcle-courses/>

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**RULES OF THE SUPREME COURT**  
**PARTS 5 AND 5A**  
*APPELLATE PROCEDURE*

Effective: July 1, 2010

On April 30, 2010, the Court entered amendments to Rules of the Supreme Court Part 5, The Supreme Court, and Part 5A, The Court of Appeals, regarding appellate procedure.

Background (by Kent Sinclair, Professor of Law, University of Virginia): A thirty-member Appellate Rules Advisory Committee was established by the Chief Justice in the summer of 2005 and was chaired by Justice Donald W. Lemons. He conducted initial phone interviews with each member of the committee to obtain an impression of the revisions that might be necessary and then held an organizational meeting of the full committee on September 28, 2005. At this meeting, the committee — on which served numerous sitting judges, along with more than twenty leaders of the bar and appellate specialists — was divided into five task forces: Procedure for Filing an Appeal; Perfecting the Appeal; Granted Cases; Capital Cases, Habeas Corpus, and Actual Innocence; and Original Jurisdiction/Miscellaneous.

The task forces were given specific rules and subject areas to review and were asked to prepare suggested revisions if any were deemed necessary. The committee members, each of whom participated on one or more task force, included: David B. Beach, W. Hamilton Bryson, S. Jane Chittom, Hon. Sam W. Coleman III, Joseph A. Condo, Craig S. Cooley, Bernard J. DiMuro, L. Steven Emmert, Eugene P. Murphy, John T. Frey, Frank K. Friedman, Patricia L. Harrington, Michael N. Herring, Hon. D. Arthur Kelsey, Hon. Elizabeth B. Lacy, Richard E. Ladd, Hon. Donald W. Lemons, R. Lee Livingston, Robert W. Loftin, Gregory E. Lucyk, Cynthia L. McCoy, Hon. William G. Petty, Hon. Jane Marum Roush, Joanne B. Rome, Kent Sinclair, Mary Lynn Tate, Ashley L. Taylor Jr., Hon. Wilford Taylor Jr., and John Charles Thomas.

Despite dealing with different aspects of the appellate process, all of the task forces shared the same set of general principles and goals. These included making the rules more fair, efficient, and user-friendly.

There was a sense that the Court should consider ways to penalize lawyers instead of the clients for making procedural mistakes. Major goals of the committee were to harmonize the rules in the Court of Appeals with the rules in the Supreme Court, and ensure that the rules reflect advances in technology and incorporate more electronic filing.

The task forces met separately in a number of sessions from October 2005 to February 2006, and submitted their reports to

Justice Lemons. These reports were then sent to the full committee, and two meetings of the full committee were held to discuss and vote on the suggested revisions. On March 27, 2006, the committee acted on the reports submitted by the Procedure for Filing an Appeal Task Force and the Perfecting the Appeal Task Force. On May 2, 2006, the Committee acted on the reports submitted by the Granted Cases Task Force, the Capital Cases, Habeas Corpus, and Actual Innocence Task Force, and the Original Jurisdiction/Miscellaneous Task Force.

The work of the committee was then referred to an editing committee. The editing committee was charged with incorporating the suggested revisions and creating new Parts 5 and 5A that were clear, concise, and uniform. The editing committee worked throughout the remainder of 2006 and into 2007 and submitted its revised version of the rules to the full committee in October 2007. On November 7, 2007, the editing committee reconvened to approve the final draft of the Rules. Additional edits were made as a result of this meeting, and the final draft incorporating these edits was completed in December 2007.

Substantive changes were made to many of the rules, and almost all of the rules have had some revision made to their form. This includes changing the titles to more accurately reflect the information contained in the rules, and incorporating the use of headings for each paragraph. As such, the general appearance of the rules has been greatly altered to make them more user-friendly.

The rules change package was then referred by the Chief Justice to the Advisory Committee on Rules of Court, which studied these changes, made minor edits, and approved them at its October 2, 2008, meeting. By direction of the Supreme Court, the entire set of draft rules revisions was published and disseminated to more than fifty bar leadership groups for comment.

A revision amending Rules 5:9 and 5A:6 to accommodate "early" notices of appeal, and defects in giving notice to guardians ad litem involved in litigation, was placed on a fast track at the direction of the Court, and was approved by the Judicial Council at its October 20, 2008, meeting. The Supreme Court adopted an order on October 31, 2008, making this change to the two rules effective January 1, 2009. A minor amendment to Rule 5:7B was also made then.

Details: <http://www.vsb.org/docs/SCV-appellate-rules-05-05-10.pdf> for Professor Sinclair's descriptions of important changes to the appellate rules. An analysis of the changes is scheduled to be published in the June-July 2010 issue of *Virginia Lawyer*.

[http://www.courts.state.va.us/courts/scv/amendments/2010\\_04\\_30\\_part\\_five\\_and\\_part\\_five\\_a.pdf](http://www.courts.state.va.us/courts/scv/amendments/2010_04_30_part_five_and_part_five_a.pdf) for the amended rules