GEORGE MASON AMERICAN INN OF COURT

Virginia Legal Ethics Update

October 20, 2020

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George Mason Inn of Court
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1. Virginia Legal Ethics Opinions (LEOs)

a. **October 2, 2019**: Amended | LEO 1750 on Lawyer Advertising.
   i. This LEO was updated to address the impact of several changes to the lawyer advertising rules in RPC 7.1 – 7.5 rules over the last few years.
   ii. *Use of Actors in Lawyer Advertising*: When the advertisement implies that an actor is actually a lawyer or client of the law firm, a disclosure that the actor is not associated with the firm, or that the depiction is a dramatization, is necessary to prevent the advertisement from being misleading.
   iii. *Use of "No Recovery, No Fee"*: An advertisement or other public communication may only use the phrase "no recovery, no fee" when the lawyer or law firm has already made the decision that the client's responsibility for advanced costs and expenses will be contingent on the outcome of the matter as permitted by RPC 1.8(e).
   iv. *Advising That an Attorney Must Be Consulted*: Not permissible under Rule 7.1 to state that someone must consult with an attorney, even if that would be advisable.
   v. *Participation in Lawyer Referral Services*: In order to qualify as a lawyer referral service for purposes of these rules, the service must: be operated in the public interest for the purpose of providing information to assist the clients; be open to all licensed lawyers in the geographical area served who meet the requirements of the service; require members to maintain malpractice insurance or provide proof of financial responsibility; maintain procedures for the admission, suspension, or removal of a lawyer from any panel; and not make any fee-generating referral to any lawyer who has an ownership interest in the service, or to that lawyer's law firm. *See also* LEOs 910, 1014, and 1175.
   vi. *Statements by Third Parties*: Not permissible to use a third party (e.g. not the attorney) to say something in an advertisement for the attorney that would be impermissible for the attorney herself to say.

b. **October 2, 2019**: Adopted | LEO 1872 on Virtual Law Office and Use of Executive Office Suites
   i. A virtual law practice involves a lawyer/firm interacting with clients partly or exclusively via secure Internet portals, emails, or other electronic messaging.
   ii. This may be combined with the lawyer renting a shared office space by the day or hour in a co-working facility.
      1. *Case Study*: Disciplinary case of Robert Lyman Isaac Shearer:
         a. Client obtained Mr. Shearer as council to represent Client in a custody hearing. After an initial custody hearing. Mr. Shearer stopped responding to Client's emails, texts, and phone calls. After Mr. Shearer consistently ignored Client's contact attempts, Client traveled to Mr. Shearer's physical office where Client learned Mr. Shearer had moved offices without leaving a forwarding address. Mr. Shearer also mishandled Client's money by not depositing his funds into a trust account.
         b. VSB concluded Mr. Shearer violated VSB Rules 1.3(a), 1.4(a), 1.15(a)(1), 1.15(b)(4), 1.16(d), and 8.1(c).

c. Mr. Shearer testified that during this period of attorney misconduct, he was suffering from numerous personal issues including dealing with health issues of his brother and mother. He also testified that he turned to alcohol during this stressful period. As of March 2018, Mr. Shearer claims to be sober and receiving treatment from Lawyers Helping Lawyers.

iii. Applicable Rules & Analysis:
1. RPC 1.1. Competence.
a. Lawyers must be competent in the areas of their practice and must be competent in the selection and use of any technology in their law practice.
2. RPC 1.6. Confidentiality.
a. Rule 1.6 requires the lawyer to act with reasonable care to protect information relating to the representation of a client. If the lawyer is using cloud computing, she will have to exercise reasonable care in selecting a vendor who will keep her client's information confidential, or she will need to hire someone who can help with that selection.
b. More precautions may be needed to ensure that the communication is adequate and received and understood by the client.
3. RPC 5.1. Responsibilities of Partners and Supervisory Lawyers.
4. RPC 5.3. Responsibilities Regarding Nonlawyer Assistants.
a. Supervising other attorneys and assistants may be more difficult in a virtual context, and lawyers will have to leverage technology to undertake this supervision.
5. RPC 7.1. Communications Concerning a Lawyer's Service.
a. Lawyers may not mislead clients by listing many temporary office locations where the lawyer may not regularly be found.

iv. For a more detailed analysis of the virtual law practice in the COVID-19 environment, see: April 9, 2020: "Meeting your Ethical Responsibilities During the COVID-19 Global Pandemic," by James M. McCauley, Ethics Counsel, Virginia State Bar, which covers:
1. RPC 1.1. Competence
2. RPC 1.4. Communication
3. RPC 1.6. Confidentiality
4. RPC 1.16(a)(2): Declining or determining representation
5. RPCs 5.1 and 5.3: Supervision
6. Civility and Professionalism
7. Lawyer Wellness

c. **January 9, 2020**: Adopted | LEO 1891 on communication with represented government officials.
i. Question: Whether communications with represented government officials are "authorized by law" for purposes of Rule 4.2?
1. Answer: Yes, as long as the communication is made for the purposes of addressing a policy issue, and the government official being addressed has the ability or authority to take or recommend government action, or otherwise effectuate government policy on the issue.
a. A lawyer engaging in such a communication is not required to give the government official's lawyer notice of the intended communication.
b. This analysis will apply only to a narrow subset of government officials, those within the "control group" or "alter ego" of the government entity that were otherwise subject to the no-contact rule.
c. A lawyer's communication with a low-ranking employee of a represented organization does not violate Rule 4.2 since that

employee is not "represented by counsel." Therefore, it would be unnecessary to apply the government contact exception in that situation.

ii. The primary question is whether such a communication is "authorized by law" under Rule 4.2. If the lawyer or her client has a constitutional right to petition government or a statutory right under the Freedom of Information Act or other law to communicate with a government official about matters which are the subject of the representation, the communication may be "authorized by law" regardless of whether the contacted government official is in the organization's "control group." If the government official with whom the lawyer wishes to communicate is not within the organization's control group, it is unnecessary to consider whether the communication is "authorized by law."

iii. The Committee explains that there are two requirements which must both be met for an *ex parte* communication with a represented government official to be permissible:

1. The sole purpose of the communication must be to address a policy issue.
2. The government official whom lawyer seeks to contact must have the authority to take or recommend action in the matter.

The Committee does not interpret the rule to require advance notice to the government lawyer of otherwise-permissible communications to government officials.

3. Regarding the first condition, a lawyer communicating with a represented government official must be communicating about some policy issue, even if the resolution of that policy issue directly affects or includes the settlement of the lawyer's client's matter.
    a. On the other hand, a lawyer may not communicate with a represented government official solely for the purposes of gathering evidence unless the lawyer has the consent of the government lawyer or the communication is otherwise authorized by law, such as formal discovery procedures that might allow direct contact with a represented person.
    b. The fact that a communication begins with an appropriate and authorized purpose does not authorize further communication that is not permitted by Rule 4.2. A lawyer who engages in a communication about policy issues must terminate or redirect the communication if the communication crosses the line into improper evidence gathering.
4. Regarding the second condition, to satisfy the level of authority requirement, the government official must have the authority to decide the matter or policy question addressed in the communication, or to grant the remedy being sought by the contact.
    a. In other words, the government official must have the authority to take or recommend action on the policy matter at issue, or the ability to effectuate government policy on the matter.
    b. The safest course of action, especially when the communication is not directed at an elected or other high-level official within the government agency, is to conduct the necessary due diligence to confirm the identity of the individual who possesses the requisite level of authority to decide the matter at issue.

iv. While advance notice of the communication is not required, where uncertainty exists as to whether the intended *ex parte* communication falls within the government contacts exception, providing advance notice to opposing counsel may reduce the chances of provoking a court or disciplinary action if the communication is ultimately challenged.

d. **April 7, 2020**: Vacated | LEO 1890 on communications with represented persons.
    i. This was initially adopted in January 2020 and then vacated in April 2020 for reconsideration by the Standing Committee on Legal Ethics.

e. **Proposed**: LEO 1878 regarding a successor lawyer's duties in a contingent fee matter.
    i. Proposed LEO 1878 concerns a successor lawyer's duties to include in a written engagement agreement provisions relating to predecessor counsel's *quantum meruit* legal fee claim in a contingent fee matter.
    ii. Co-Counsel Fee Disputes
        1. Co-Counsel fee disputes typically do not involve decisions made by the client, and are settled between the co-counsel without affecting the total fee paid by the client, and thus present fewer ethical pitfalls.
    iii. Successor & Predecessor Counsel Fee Disputes
        1. The more troubling situation is when a client terminates the representation of an initial counsel in a contingency fee case and then hires a replacement counsel. In this case, the client has often made a decision that has financial consequences that changes the economics of the case.
        2. The successor counsel needs to advise the client that the original counsel has a *quantum meruit* lien that is undetermined at that time as the conclusion of the case is not yet known.
        3. The best way to handle it would be for client, prior counsel and successor counsel would agree on a specific dollar or percentage amount so that there is not a dispute later.
        4. RPC 1.5. Fees:
            a. The overall fee must be reasonable. RPC 1.5(a)
            b. The fee must be adequately explained to the client. RPC 1.5(b)
            c. "With regard to the issue of "reasonableness" of fees to be apportioned between 54 predecessor and successor counsel, American Bar Association (ABA) Formal 55 Opinion 487, issued on June 18, 2019, succinctly states that: "Successor counsel must address with the client whether the client risks paying twice: one contingent fee to the predecessor counsel and another to the successor counsel. A client cannot be exposed to more than one contingent fee when switching attorneys, given that under the Rule 1.5(a) factors, each counsel did not perform all of the services required to achieve the result. **Thus, neither the predecessor nor the successor counsel ordinarily would be entitled to a full contingent fee.** [Emphasis is supplied.] "
        5. *Question #1*: "What must successor counsel address in her written contingent fee agreement when predecessor counsel may be entitled to a fee based upon *quantum meruit*?"
        6. *Answer #1*: "Successor counsel should include the following in her fee agreement:
            a. "The state of the law in Virginia regarding perfection of attorneys' liens and *quantum meruit* awards available to attorneys discharged without cause;
            b. "A statement that the successor counsel's fee may be adjusted in light of the predecessor counsels' lien or *quantum meruit* claim, determined by either agreement or adjudication; and
            c. "Who bears the expense (legal fees and court costs, if any) of determining predecessor counsel's fee entitlement, to include the cost of adjudicating the validity and amount of any claimed lien, through an interpleader action or otherwise."
        7. Accounting of time from predecessor counsel is not the only thing that determines the *quantum meruit* calculation.

8. *Question #2*: May successor counsel represent the client in negotiations and litigation involving the prior counsel' claim of lien?
9. *Answer #2*:
    a. Rule 1.7(a)(2) identifies that a lawyer may be conflicted from helping a client when the lawyer has a personal interest in a case and there is a "significant risk" that the lawyer's representation would be "materially limited."
    b. Successor counsel may not, at a minimum, charge the client for work that only increases successor counsels' share of the contingent fee and does not increase the client's recovery.
    c. Client will need to provide informed consent under Rule 1.7(b) to waive any potential conflict of interest.

f. **Proposed**: Revisions to LEO 1850 regarding the outsourcing of legal services.
    i. And proposed revisions to LEO 1850, which pertains to the outsourcing of legal services, simplify and streamline the scenarios and analysis in the opinion – and clarify what a lawyer must disclose to a client when outsourcing services.
    ii. In this proposed opinion, the committee concludes a lawyer may ethically outsource services to a lawyer or nonlawyer who is not associated with the firm or working under the direct supervision of a lawyer in the firm if the lawyer (1) rigorously monitors and reviews the work to ensure that the outsourced work meets the lawyer's requirements of competency and to avoid aiding a nonlawyer in the unauthorized practice of law, (2) preserves the client's confidences, (3) bills for the services appropriately, and (4) obtains the client's informed advance consent to outsourcing the work. The proposed revisions simplify and streamline the scenarios and analysis in the opinion, and clarify what a lawyer must disclose to a client when outsourcing services.
    iii. Applicable Rules & Analysis:
        1. RPC 1.1. Competence
        2. RPC 1.2(a). Scope of Representation & RPC 1.4. Communication
            a. LEO 1712 requires that a client be advised whenever a lawyer hires a temporary lawyer to work on the clients' matter. The client is permitted to know about the outsourced lawyer or nonlawyer assistant and is permitted under scope of representation, to refuse to allow the lawyer to work with the outsourced lawyer or nonlawyer assistant.
        3. RPC 1.5. Fees
            a. Fees must be reasonable in light of the potential efficiencies gained from outsourcing.
            b. If the lawyer is paying for a third party and passing the cost through to the client (a "disbursement"), then the lawyer can not mark up that disbursement without a showing that the lawyer actually incurred costs to make that disbursement.
            c. If a lawyer hires another lawyer to work temporarily at the law firm, then that other lawyer is "associated" with the firm and the firm may bill its customary charge for lawyers, even if that is more than what the law firm pays the staffing agency providing the temporary lawyer.
        4. RPC 1.6. Confidentiality.
            a. The lawyer must take reasonable steps to safeguard the client's information against unauthorized access by third parties.
        5. RPC 5.3: Responsibilities Regarding Nonlawyer Assistants
            a. Lawyers must exercise diligence in the selection and supervision of nonlawyer assistants. Overseas outsourcing, in particular, should be governed by a written outsourcing agreement to protect the law firm, dealing with confidentiality, information security, conflicts, and unauthorized practice of law.

6. RPC 5.5: Unauthorized practice of Law; Multijurisdictional Practice of Law.

2. Virginia Rules of Professional Conduct (RPC) Changes

a. **October 24, 2019**: Rejected | Amendments to Rule 3.8
   i. The Supreme Court of Virginia rejected an amendment to add proposed Comment 5 to Rule 3.8 of Section II of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court concerning additional responsibilities of a prosecutor.
   ii. "Upon consideration of the said petition and the numerous comments submitted in response thereto, the Court rejects the proposed amendment."

b. **March 15, 2020**: Adopted | amendments to Rule 1.15, Safekeeping Property.
   i. The amendments simplify and clarify the trust account recordkeeping requirements, using terminology that is more easily understood and spelling out in the body of the rule exactly what information must be included in the required records. The proposed changes to paragraph (c) remove the term "cash" and clarify that a check register can be used as the required journal, as long as it includes the necessary information. The proposal also removes the term "subsidiary ledger" to clarify that the rule only requires a separate record or ledger page for each client.
   ii. The same terminology is carried over to paragraph (d)(3), on reconciliations, and paragraphs (d)(3)(ii) and (d)(3)(iii) are revised to include an explanation of exactly what steps must be taken to complete the required reconciliations. The proposed amendments also require all reconciliations to be completed monthly instead of quarterly under the current rule, since that is consistent with the usual bank statement reporting period, and will allow lawyers to identify and correct errors more quickly and easily. The proposed amendments retain the requirement that a lawyer must approve all reconciliations and add a requirement in proposed Comment [5] that any discrepancies discovered in the reconciliation process must be explained, and that explanation must also be approved by the lawyer.
   iii. *New RPC 1.15(c)(1)*: "Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. **A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.**" (emphasis added)
   iv. *New RPC 1.15(d)(3)*: "Reconciliations **must be made monthly** and **approved by a lawyer in the law firm**:" (emphasis added)
      1. Reconciliation of each client ledger.
      2. Reconciliation of the trust account balance to the bank statement.
      3. Reconciliation of the trust account balance and the client ledger balance.
      4. Any discrepancies have to be explained and signed off by a lawyer in the firm (not a non-lawyer assistant).
   v. *Case Study*: Disciplinary case of James Stephen Del Sordo
      1. Melissa Heelan Stanzione, *Lawyer Suspended in Virginia Gets Disbarred in D.C.*, United States Law Week (Apr. 15, 2020 4:20 PM).
      2. James Stephen Del Sordo, was suspended for one year in Virginia for several trust account violations and was disbarred in the District of Columbia after that jurisdiction's highest court refused to impose reciprocal discipline.
      3. District of Columbia Court of Appeals said the misconduct found by the Virginia Bar's disciplinary board "would result in the substantially different sanction of disbarment in this jurisdiction."

4. Del Sordo was punished after it came to light in 2017 that he'd been paying personal expenses including charges related to his sons' college expenses, from his firm's operating and trust accounts, the court said.
5. His firm, Argus Legal LLC, has offices in Manassas, Virginia and in the Washington suburb of McLean.
6. A bookkeeper that looked into matters found a shortfall of $21,074.99 in the trust account, that no trust account reconciliations had been performed, and that some deposits had been made into the wrong account.
7. After an investigation by the Virginia Bar, Del Sordo testified that the payments had been made to himself from the law firm's operating and trust accounts.
8. Stating he had earned the sum and he "simply paid himself as the year went along rather than waiting until the end to do a formal reconciliation."
9. He also admitted **he didn't do the required reconciliations** but did the math "in his head" and therefore knew what he was owed.
10. In addition to trust account violations, the state bar found he acted dishonestly in bankruptcy filings by "grossly understating" his income.
11. Del Sordo has had a disciplinary history for trust account violations including a private reprimand in 2004 and a public admonition in 2012, it said.
12. Del Sordo's conduct in the current matter included intentional and reckless acts "that would require disbarment in our jurisdiction," the capital's appellate court said.
13. Though Del Sordo's partner restored the missing trust account funds from the firm's operating account and Del Sordo said they didn't use the trust account for most of their clients, Del Sordo, was still disbarred by the DC Bar.
14. Violation of RPCs:
    a. RPC 1.1 Competence
    b. RPC 1.3. Diligence
    c. RPC 1.4. Communication
    d. RPC 1.15. Safekeeping Property

c. **Proposed**: Amendments to Rule 1.8 regarding conflict of interest: prohibited transactions.
    i. The proposed amendments to Rule 1.8, which concerns conflicts of interest, would add a new paragraph and comments to establish a bright-line rule prohibiting sexual relations with a current client unless the relationship predated the lawyer-client relationship.
    ii. "Virginia is one of the few states that has not adopted ABA Model Rule 1.8(j) and proposed LEO 1853 on this topic was not reviewed or adopted by the Supreme Court of Virginia.
    iii. The bar prosecutor's office has maintained the position that sexual relations with a client is unethical as a conflict of interest under RPC 1.7, but would welcome an explicit standard under an amended RPC 1.8.
    iv. *Proposed additions:*
        1. "(k) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced."
        2. "Comment [17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant

danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.
"Like a conflict arising under paragraph (i) of this Rule, this conflict is personal to the lawyer and is not imputed to other lawyers in the firm with which the lawyer is associated. "

3. "Comment [18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2)."
4. "Comment [19] When the client is an organization, paragraph (k) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters."

d. **Proposed**: Amendments to Rules 1.8, 1.10, 1.15, and 3.3 of the Rules of Professional Conduct.
   i. The proposed amendment to Rule 1.8(b) amends the rule to mirror the standard for confidentiality set out in Rule 1.6(a), rather than the broader standard of "information relating to representation of a client," and adds proposed new Comment [2] to explain the purpose and application of Rule 1.8(b).
      1. Proposed Comment [2] "Use of information protected by Rule 1.6 for the advantage of the lawyer or a third person or to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client or third party make such a purchase. Paragraph (b) prohibits the use of a client's confidential information for the advantage of the lawyer or a third party or to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b). Paragraph (b) does not limit an attorney's use of information obtained independently outside the attorney-client relationship."
   ii. The proposed amendment to Rule 1.10(d) is a companion to the proposed amendments to Rule 1.8(k) (also currently pending public comment); if the amendment to Rule 1.8 is adopted, it will renumber the paragraphs of Rule 1.8 and Rule 1.10(d) will need to be amended to refer to Rule 1.8(l) instead of Rule 1.8(k). The proposed amendments to Rule 1.10 Comment [1] and to Rule 1.15 Comment [1] replace uses of "should" with "must" where the comments are describing mandatory duties.

iii. Finally, the proposed amendment to Rule 3.3 Comment [11] removes the potentially confusing phrase "except in the defense of a criminal accused," since the comment as written could imply that the rules for remedying a client's perjury differ in a criminal case; the proposed revision clarifies and streamlines the comment to be clear that a lawyer must take reasonable remedial measures when a client commits perjury, regardless of the nature of the representation.

1. Proposed revised Comment [11]: "~~Except in the defense of a criminal accused, t~~The rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperates in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. *See* Rule 1.2(c~~). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.~~"

3. **Supreme Court of Virginia Rule Changes**
   a. **January 1, 2020**: The Supreme Court of Virginia amended Rule 1A:5 concerning Virginia Corporate Counsel & Corporate Counsel Registrants. There are now new registration requirements.
   b. **January 1, 2020**: The Court also amended Rule 2:615 pertaining to exclusion of witnesses.
   c. **January 1, 2020**: The Court added Rule 7B:12 regarding Appeal by One Party; Separate Notices of Appeal by Other Parties.
   d. **January 10, 2020**: Court amended Form 10 of the Appendix of Forms in Part 3A (Criminal Practice and Procedure) regarding the contents of sentencing orders.
   e. **January 10, 2020**: Court amended portions of Rule 3B:2 and Rule 3C:2 regarding uniform fine schedule.
   f. **March 15, 2020**: the Court also amended Part Six of the Rules of Court, Section IV, Paragraph 13 of the Rules for Integration of the Virginia State Bar, including 13-1 (Definitions), 13-16 (District Committee Proceedings), 13-18 (Board Proceedings Upon Certification), and 13-30 (Confidentiality of Disciplinary Records and Proceedings).
   g. **March 15, 2020**: the Court has added Rule 1:27 regarding testimony by audiovisual means in Circuit Court civil cases, and it has amended Rule 4:5 regarding depositions upon oral examination, as well as the appendix of Rule 5A:25.
   h. **May 15, 2020**: the Court amended Part Six of the Rules of Court regarding voluntary *pro bono publico* reporting.
      i. Although the reporting will remain voluntary, the Court has extended the request for reporting of pro bono service to both active and associate members of the Virginia State Bar and authorized the Bar to collect this data as part of each lawyer's annual dues renewal, should the lawyer opt to report.
   i. **June 4, 2020**: Changes to Part Three A (Criminal Practice and Procedure), Appendix of Forms, Form 10.
   j. **June 30, 2020**: Adopted revisions to Paragraphs 3 and 13-23.K. regarding membership statuses.
      i. The Rule changes: (1) impose an email address of record requirement for all members; (2) create separate membership classes for retired and disabled members (with corollary changes to Paragraph 13-23.K.); (3) remove the requirement for active members to be "engaged in the practice of law;" (4) revise some procedures for electing different membership classes; and (5) update the Rule's language to eliminate ambiguous terminology.
   k. **July 1, 2020**: Rule 3B:2 of the Uniform Fine Schedule has been amended

l. **September 18, 2020**: Third Year Student Practice Rule extended to a duration of twenty-four (24) months
m. **September 24, 2020**: Amendments to Rule 5A:5. Original Proceedings and to Part 5A, Appendix of Forms, Form 10, "Petition for a Writ of Actual Innocence Based on Nonbiological Evidence."
n. **November 23, 2020**: Amendments to Rule 1:5A. Signature Defects, and amendments to Rule 1A:4(2): Out-of-State Lawyers – When Allowed by Comity to Participate in a Case *Pro Hac Vice*.
o. **Proposed**: Amendments to Virginia Rule of the Supreme Court, Rule 1A:8, Military Spouse Provisional Admission. Pending review by the Supreme Court of Virginia.
    i. On June 9, 2020, by a vote of 11–2, the VSB Executive Committee voted to recommend revisions to Supreme Court of Virginia Rule 1A:8. The proposed amendments request the removal of Section 4, requiring supervision and direction of local counsel for attorneys barred under this rule. An additional amendment updates the CLE requirement in Section 2. (k). The proposed changes will be presented to the Supreme Court of Virginia for approval.

4. **MCLE Rules**
    a. MCLE Deadline Extended to December 31, 2020

    b. **Proposed**: Amendments to Paragraph 17 MCLE Rule regarding elimination of bias topic. Comments due October 2, 2020.
        i. The Virginia State bar seeks public comment on a proposal to include elimination of bias as a topic for MCLE training in addition to the existing topics of ethics and professionalism.
        ii. The proposal amends Part 6, Section IV, of the Rules of Supreme Court of Virginia, Paragraph 17 (C), which provides that all members of the Virginia State Bar shall annually complete and certify attendance at a minimum of 12 hours of approved CLE courses, at least two hours of which shall be in the area of legal ethics or professionalism.

5. **Legislative Matters**
    a. Virginia Senate Joint Resolution 47 (2020): Court of Appeals of Virginia; Judicial Council of Virginia to study jurisdiction and organization.
        i. The Virginia legislature in the 2020 session has approved a measure to study expanding the jurisdiction of the Court of Appeals of Virginia to permit more appeals of right from Circuit Courts.
        ii. *Summary*: Study; jurisdiction and organization of Court of Appeals of Virginia; report. Requests the Judicial Council of Virginia to study the jurisdiction and organization of the Court of Appeals of Virginia and make recommendations on providing an appeal of right from the circuit courts to the Court of Appeals and organizing the Court of Appeals into four geographic circuits.
        iii. *Conclusion*: **RESOLVED** by the Senate, the House of Delegates concurring, That the Judicial Council of Virginia be requested to study the jurisdiction and organization of the Court of Appeals of Virginia.

6. **Additional Recent Disciplinary Cases**
    a. **Alfred L. Robertson Jr.**
        i. Peter Vieth, *Supreme Court approves broad employee contacts*, VA Lawyers Weekly (Feb. 10, 2020).
        ii. Alfred L. Robertson Jr., An Alexandria lawyer who admitted backdating an overdue immigration filing was suspended from practice for 60 days.
        iii. Robertson Jr. missed a deadline for filing an asylum petition for his client and then backdated a petition and cover letter to argue that his case was timely.
            1. RPC 1.1. Competence
            2. RPC 1.3. Diligence
            3. RPC 1.4. Communication

b. Marc E. Darnell

i. Peter Vieth, *Clients got excuses; lawyer gets 3-year suspension*, VA Lawyers Weekly (Sep. 20, 2019).

ii. Marc E. Darnell's clients say he offered a string of excuses for failing to work on their cases, blaming health problems, children's activities, family illness, a friend's death and an ailing father. When a bar investigator asked if any personal problems were hindering his practice, Darnell reportedly said he was fine and did not require any assistance from the bar. This reinforces the need for more work on attorney well being and work/life balance, as attorneys that are dealing with stress and anxiety personally often run into trouble professionally.

iii. Months would go by without communication, one client complained. Clients sent certified letters without response. His office appeared to be closed when clients tried to meet with him. A string of text messages showed Darnell "was not honest with his clients.

1. RPC 1.4. Communication

iv. A client was summoned to court for discovery sanctions. When the judge learned how Darnell had dropped the ball on discovery, the judge ordered him to pay $3,000 for his opponent's costs.

1. RPC 1.1. Competence
2. RPC 1.3. Diligence

v. Darnell acknowledged he never formally notified his clients when he closed his office. The judge also ordered Darnell to provide an explanation for his lapses after being sanctioned.

1. RPC 1.4. Communication

vi. Faced with four separate bar complaints, Darnell agreed to a three-year suspension.

c. Brooks Hundley

i. Peter Vieth, *Law Firm settles divorce-secrets lawsuit*, VA Lawyers Weekly (Mar. 2, 2020).

ii. Brooks Hundley committed 16 ethics rule violations in the matter, including diligence, communication with clients, safekeeping property, candor towards the tribunal, truthfulness to others, truthfulness to the bar, wrongful acts and dishonesty.

1. RPC 1.3. Diligence
2. RPC 1.4. Communication
3. RPC 1.15. Safekeeping Property
4. RPC 3.3. Candor Toward The Tribunal
5. RPC 4.1. Truthfulness In Statements To Others
6. RPC 8.3. Judicial Officials

iii. Hundley failed to prosecute his client's case for medical malpractice for a missed cancer diagnosis, and covered it up by fabricating a $2 million default judgment order and then trying to collect on the default judgment order.

iv. The VSB said Hundley, instead of seeking to collect, "beginning in December 2014 and continuing over the course of the following almost four years, engaged in an elaborate ruse to deceive Ms. Curling into continuing to believe he had obtained a valid judgment…."

v. Hundley's deception involved sending his client some 24 payments from his firm's trust account totaling $364,239.50 over several years and telling the client several lies about his collection activities, including that his work head lead to jail sentences for insurance company lawyers, all of which was false.

d. Clifford J. Shoemaker

i. Peter Vieth, *Lawyer Convicted of Raiding Fiduciary Account Surrenders License*, VA Lawyers Weekly (Feb. 10, 2020).

ii. Shoemaker held a power-of-attorney for an 86-year-old woman suffering from long-standing dementia.

iii. Over four days in 2018, Shoemaker transferred $57,000 out of his trust account where he had deposited $142,506.82 in life insurance proceeds after the death of the woman's husband.
iv. Shoemaker created altered statements to conceal his transfers. Later contending he had taken $30,450 in legal fees for the 300 hours he had spent assisting the widow with her personal needs.
v. Shoemaker said he paid the money back and kept no reimbursement for time or expenses.
    1. RPC 1.3. Diligence
    2. RPC 1.4. Communication
    3. RPC 1.14. Client With Impairment
    4. RPC 1.15. Safekeeping Property
    5. RPC 4.1. Truthfulness In Statements To Others
vi. Shoemaker was charged with felony embezzlement and pleaded nolo contendere to misdemeanor embezzlement. He received a 12-month suspended sentence and was disbarred by VSB.

e. David B. Wilks

i. Peter Vieth, *Lawyer Suspended 2 Years for Borrowing Client Money*, VA Lawyers Weekly (Apr. 7, 2020).
ii. Manassas lawyer, David B. Wilks was suspended for using his blind client's trust fund as his own personal line of credit.
    1. RPC 1.3. Diligence
    2. RPC 1.4. Communication
    3. RPC 1.14. Client With Impairment
    4. RPC 1.15. Safekeeping Property
iii. He created a revocable trust for a client who is blind and requires a caregiver.
iv. Wilks held a power of attorney and controlled a bank account that received monthly payments from the trust intended to cover the client's expenses.
v. Wilks made 17 transfers totaling $10,995.71 from the client's account to his personal account "for his personal use and benefit," the court concluded.
vi. When a bookkeeper alerted Wilks' law partners, Wilks initially claimed the transfers were mistakes resulting from his confusion in using a mobile app to move money among bank accounts.
    1. Under questioning by a partner, Wilks admitted the transfers were unauthorized loans and not mistakes.
    2. Wilks promptly repaid the remaining amount to fully reimburse the client's account.
    3. Wilks said he made regular repayments and knew the client would not lack funds for her monthly needs.
vii. Prince William County Circuit Court found clear and convincing evidence of three ethics rule violations, including a criminal or deliberately wrongful act.

f. Daniel F. Izzo

i. Peter Vieth, *Lawyer Suspended for Lying to Clients, Partners*, VA Lawyers Weekly (Apr. 14, 2020).
ii. Northern Virginia Lawyer Daniel F. Izzo repeatedly lied to his supervising attorneys and his clients about the status of his cases.
    1. In one case, Izzo failed to do any discovery, and took a nonsuit 10 days before trial.
        a. RPC 1.1 Competence
        b. RPC 1.2 Scope of Representation
        c. RPC 1.3. Diligence
        d. RPC 1.4. Communication
        e. RPC 4.1 Truthfulness In Statements To Others
    2. In another case, Izzo told a firm partner that he had filed a lawsuit but the partner discovered that the lawsuit had not been filed, and the firm terminated Izzo's employment.

3. After Izzo departed, the firm discovered his deception in the Devine case and in two other matters.
    a. RPC 5.1. Responsibilities of Partners and Supervisory Lawyers.

iii. Izzo later paid the firm $65,000 to be used to "rectify the consequences of his misconduct."
iv. Izzo also cooperated with the VSB in its investigation and took responsibility reportedly beginning "intensive treatment" for several health conditions.
v. Izzo's treatment providers represented to the bar that he was compliant, and, with continued treatment, they did not anticipate a recurrence of misconduct.
vi. Izzo was suspended by VSB for practicing for a year and a day.

g. Randall Sousa

i. Peter Vieth, *Lawyer Suspended for Lying to Clients, Partners*, VA Lawyers Weekly (Apr. 14, 2020).
ii. Randall Sousa, a Fairfax lawyer, was sanctioned by a Fairfax County judge for neglecting a divorce client to the point she forfeited at least $57,600 in potential alimony payments. Sousa had ignored settlement proposals nad discovery deadliens, was unprepared at trial, and was untruthful about discovery compliance. Fairfax Circuit Judge David Bernhard imposed $11,000 in fines and sanctions against Sousa personally for what the judge described as "a river of neglect."
iii. The judge's bar complaint triggered a VSB investigation, and the VSB subpoenaed Sousa for a disciplinary hearing. Sousa ignored the subpoena, later saying that he viewed his defiance as a form of "legal activism on behalf of attorneys who fight for the rights of their clients." This lead to an administrative suspension, but still Sousa continued to practice law.
iv. The VSB panel found Sousa displayed an "open hostility toward the disciplinary proceedings" and imposed a three-year license suspension.
    1. RPC 1.1 Competence
    2. RPC 1.3. Diligence
    3. RPC 1.4. Communication
    4. RPC 5.5 Unauthorized Practice Of Law

h. Jorge A. Ortiz

i. Peter Vieth, *Lawyer Wielding Fake Divorce Papers is Convicted*, VA Lawyers Weekly (Oct. 16, 2019).
ii. Jorge A. Ortiz filed phony divorce documents in Henrico County Circuit Court, pleading guilty to forgery of a public document and had his license suspended.
iii. Ortiz was hired by Carlos Lugo to obtain a divorce, but Ortiz didn't follow through. Ortiz then forged a final divorce decree and gave it to Lugo.
    1. RPC 1.1 Competence
    2. RPC 1.3. Diligence
    3. RPC 1.4. Communication
    4. RPC 3.3. Candor Toward The Tribunal
    5. RPC 4.1. Truthfulness In Statements To Others
iv. Lugo sent the forged final divorce decree to his estranged wife, who then remarried. It wasn't until the ex-wife tried to apply for US Citizenship that the fake divorce decree was discovered. The ex-wife then had to convince USCIS that she was not involved in obtaining the false divorce decree, and this held up her citizenship application for months.
v. Lugo had to hire another attorney to resolve the mater, and the new attorney reported Ortiz' forgery of the divorce decree to the Commonwealth's Attorney.
vi. Ortiz plead guilty to six felony charges, including three counts of forging a public document and three counts of uttering, or presenting the document as authentic.

vii. Virginia State Bar rules call for suspension of a lawyer convicted of a felony, coupled with an order to show why the lawyer's license should not be further suspended or revoked.

i. **J. Christopher Chamblin**

i. Peter Vieth, *Leesburg Lawyer Disbarred for Trust Violations*, VA Lawyers Weekly (Oct. 27, 2019).

ii. J. Christopher Chamblin, a Loudoun County attorney, admits he misappropriated more than $850,000 from fiduciary accounts, according to a statement he submitted to the Virginia State Bar Disciplinary Board.

1. RPC 1.1 Competence
2. RPC 1.3. Diligence
3. RPC 1.4. Communication
4. RPC 1.15. Safekeeping Property

iii. He acknowledged he faces contempt proceedings in Loudoun County Circuit Court because he has not fully repaid money missing from the accounts he administered.

iv. Chamblin said in the affidavit he took more than a half million dollars from one account.

1. He said he's been prohibited by court order from accessing his personal, operating, trust and fiduciary accounts.
2. "While serving as administrator of this estate, I misappropriated and have not explained what happened to $524,191.43 in funds I withdrew from the estate bank accounts. I have not repaid any of these monies."

v. Chamblin was removed as administrator and only had authority to transfer assets to the successor administrator.

1. However, and in violation of the Order, he removed $75,000 from the estate from Aug. 26 to Sept. 17, 2019."
2. Chamblin contended he suffers from depression and anxiety.

vi. Chamblin, in his affidavit, said: "For a time, I was able to persevere and function without treatment, but eventually my depression overwhelmed me. **I believe my depression was a contributing factor to my misconduct**." (*emphasis added*)

vii. Chamblin agreed to revocation of his law license.

j. **Charles John "C.J." Covati**

i. Peter Vieth, *Roanoke Lawyer Convicted of Assaulting Dancer*, VA Lawyers Weekly (Sep. 22, 2019).

ii. Charles John "C.J." Covati, a Roanoke attorney has been convicted of the misdemeanor assault and battery of a dancer at the strip club he was managing.

iii. The dancer testified Covati assaulted her as she sought to demonstrate her ability to handle abusive customers on her first shift at Roanoke's lone strip club, "Gold & Silver."

iv. Matthew Dunne, Covati's attorney, got the accuser to concede she made no immediate report of the incident. The woman was fired when she later made a report to management. She then reported the incident to police, according the paper's account of the testimony.

v. The accuser also said she refused a settlement offer from Covati. Covati did not testify.

vi. Covati, who has served as a substitute judge, was found guilty by a general district judge Sept. 20.

1. He was sentenced to 30 days in jail and fined $1,000. He promptly noted an appeal to circuit court, online records showed.

vii. Covati, was removed from the district court's court-appointed list after he was charged in the alleged Feb. 18 assault, the paper reported.

viii. RPC 8.4: Misconduct.

"It is professional misconduct for a lawyer to:

...
"(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law
"(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law"

k. Bob Machen

i. Justin Jouvenal, *She needed a will. A lawyer named himself the main heir to her $1.7 million estate.*, Wa. Post (May 3, 2020).

ii. Friends remembered Wilma Williams as fiercely independent, but a stroke left her in a wheelchair and reliant on hearing aids as large as headphones the day her attorney arrived with a plan to divvy up her $1.7 million estate.

iii. The 93-year-old military widow with no children had nieces and nephews, but Bob Machen personally drafted a will that made himself her primary beneficiary and his son a possible heir.

iv. Machen said the will represented the wishes of a woman who was like a sister to him and who he helped for years.

1. RPC 1.8(c) Conflict of Interest: Prohibited Transactions
"A lawyer shall not solicit, for himself or a person related to the lawyer, any substantial gift from a client including a testamentary gift. A lawyer shall not accept any such gift if solicited at his request by a third party. **A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer any substantial gift from a client, including a testamentary gift, unless the lawyer or other recipient of the gift is related to the client**. For purposes of this paragraph, a person related to a lawyer includes a spouse, child, grandchild, parent, or other relative **or individual with whom the lawyer or the client maintains a close, familial relationship**." (*emphasis added*)

v. He claims he watched as she affixed a scribbled signature to the document in a Fairfax County rehabilitation center on July 31, 2018.

vi. Williams died 10 days later, and her relatives said they were stunned to eventually learn that Machen was poised to reap a $1.5 million windfall while they would receive modest bequests.

vii. The case is a particularly brazen example of the financial exploitation of the elderly, a problem that is rapidly increasing as the senior population grows. The number of people aged 65 and older is projected to double between 2018 and 2060, according to government figures. Various estimates put their losses from fraud between $2.9 billion and a staggering $36.5 billion each year.

viii. "Finding out Wilma's will was written by her attorney leaving himself the majority of her estate was a gut punch," said David Williams, Wilma's nephew. "That really made me very determined to see justice done for my aunt."

ix. Machen's law license was suspended but then quickly reinstated after he served a prison sentence. Machen managed to hold on to it in the intervening decades, despite subsequent reprimands by the Virginia State Bar, including one for engaging in "conduct for personal advantage, involving deceit." Machen denies wrongdoing in those cases.

x. Machen testified that he told his son the same day that he had named him as a possible heir and executor of the will and gave him power of attorney over Williams, in case Machen passed away, but the son was appalled and immediately resigned as agent under the power of attorney.

xi. The jury sided with Williams's family and nullified the will. Machen is appealing the ruling to Virginia's Supreme Court.

xii. A court may ultimately decide how to split up Williams's estate.

xiii. Machen is still licensed to practice law.