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Succession Planning and the Importance of Planning Ahead

1. **Introduction**
   My name is Ryan Brown, and I would like to welcome you to the 15th Annual Ethics Presentation. First, I would like to thank Professor Emeritus John L. Costello for starting this CLE series, for inviting me to get involved several years ago, and for entrusting its continuation to me. I would also like to thank Dana Fallon, Direct of Alumni Services, for her tireless efforts coordinating the event. Finally, I would like to thank my intern, Samantha Bernstein, a third year student here at GMU Law, for her work in transforming my notes into a coherent presentation today.

2. **Brief overview of current succession planning issues** (10 minutes)
   Rules 1.1, 1.3, 1.6(b)(4), 1.17, and Proposed Rule 5.8: **Law Firms and Associations; Procedures for Notification to Clients When a Lawyer Leaves a Law Firm or When a Law Firm Dissolves**
   a. **Rule 1.1: Competence**
      A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

   b. **Rule 1.3: Diligence**
      (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
      (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
      (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

   c. **Rule 1.6(b)(4): Confidentiality of Information**
      (b) To the extent a lawyer reasonably believes necessary, the lawyer may reveal:

(4) Such information reasonably necessary to protect a client's interests in the event of the representing lawyer's death, disability, incapacity or incompetence

d. **Rule 1.17: Sale of Law Practice**
A lawyer or a law firm may sell or purchase a law practice, partially or in its entirety, including good will, if the following conditions are satisfied:
(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in which the practice has been conducted, except the lawyer may practice law while on staff of a public agency or legal services entity which provides legal services to the poor, or as in-house counsel to a business.
(b)The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
(c) Actual written notice is given by the seller to each of the seller's clients (as defined by the terms of the proposed sale) regarding:
(1) the proposed sale and the identity of the purchaser;
(2) any proposed change in the terms of the future representation including the fee arrangement;
(3) the client's right to consent or to refuse to consent to the transfer of the client's matter, and that said right must be exercised within ninety (90) days of receipt of the notice;
(4) the client's right to retain other counsel and/or take possession of the file; and
(5) the fact that the client's refusal to consent to the transfer of the client's matter will be presumed if the client does not take any action or does not otherwise consent within ninety (90) days of receipt of the notice.
(d) If a client involved in a pending matter cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
(e) The fees charged clients shall not be increased by reason of the sale.

e. **Proposed Rule 5.8[1]: Procedures for Notification to Clients When a Lawyer Leaves a Law Firm or When a Law Firm Dissolves**
(a) Absent a specific agreement otherwise:
(1) Neither a lawyer who is leaving a law firm nor other lawyers in the firm shall unilaterally contact clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless the lawyer and an authorized representative of the law firm have in good faith conferred or attempted to confer and have been

[1] Still pending review and adoption by the Supreme Court of Virginia, as of October 13, 2014.

unable to agree on a joint communication to the clients concerning the lawyer leaving the law firm; and

(2) A lawyer in a dissolving law firm shall not unilaterally contact clients of the law firm unless authorized members of the law firm have in good faith conferred or attempted to confer and have been unable to agree on a method to provide notice to clients.

(b) When no procedure for contacting clients has been agreed upon:

(1) Unilateral contact by a lawyer who is leaving a law firm or the law firm shall not contain false or misleading statements, and shall give notice to the clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms; and

(2) Unilateral contact by members of a dissolving law firm shall not contain false or misleading statements, and shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(c) Timely notice to the clients shall be given promptly once the departure or dissolution has been decided, and shall provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled.

(d) In the event that a client of a departing lawyer fails to advise the lawyer and law firm of the client's intention with regard to who is to provide future legal services, the client shall be deemed a client of the law firm until the client advises otherwise or until the law firm terminates the engagement in writing.

(e) In the event that a client of a dissolving law firm fails to advise the lawyers of the client's intention with regard to who is to provide future legal services, the client shall be deemed to remain a client of the lawyer who is primarily responsible for the legal services to the client on behalf of the firm until the client advises otherwise.

3. **Succession Planning** (30 minutes)

   a. **Succession Planning: How to successfully transition cases from partners and outgoing attorneys to successors—from choosing a successor to retirement.**[2]

      Rules 1.1, 1.3, 1.6

      The first step in succession planning is to build a strategy for the future. When a partner in a law firm is within five years of their retirement, succession planning should start in order to put the firm in the best

[2] *See* Maria Pennington Shannon, *A Short Course in Succession Planning*, 37 LAW PRAC. MAG., no. 3, 2011; Stephen Mabey & Karen MacKay, *Financial Aspects of Succession Planning*, 37 LAW PRAC. MAG., no. 3, 2011; Steven T. Taylor, *Thinking Ahead: Moving Young Lawyers into the Leadership Pipeline*, 37 LAW PRAC. MAG., no. 3, 2011; Tom Grella, *Five Questions to Ask About Your Firm's Succession Readiness*, 37 LAW PRAC. MAG., no. 3, 2011.

position for the future. As a general practice, the firm should assess which partners are near retirement and create a plan to follow depending on how many lawyers/partners will be leaving. The firm should think about firm growth, transition plans, management succession, hiring plans, acquiring smaller firms, merging with larger law firms, etc. At the same time, the outgoing partner should try to figure out if there is anyone who would be able to take his or her clients, or in other words a competent successor. In doing so, the outgoing partner must consider if the potential successor needs further development, training, and coaching. Mentorship programs are a great way to transition caseloads and also to help choose a successor.

Next, the outgoing partner should start to transition the cases to his successor. She should do so by prioritizing everything based on the risks, considering the relationship the firm has with specific clients, the revenue stream, any clients that competitors will try to grab when they learn of a partner leaving, and the retention rate of the client base. The outgoing partner should discuss the following with her successor: her retirement date, the length of the transition period, the particular client information and client needs, what the successor can expect from the firm after the transition, including time frame of the old role to the new role, if any, compensation changes, office space changes, staff support under new arrangement, any changes to benefits, etc. Before the partner leaves, she should make sure to close any competency gaps that exist between her and her successor.

i. **Potential Problems from Ineffective Succession Planning**
There are many potential problems for firms and solo practitioners who do not engage in proper succession planning arrangements. For instance, without such planning, there is a high likelihood of eroding financial prospects and revenues. Additionally, without succession planning, clients will become upset when they either no longer have their regular lawyer or they are told abruptly about their case switching hands from a senior to junior lawyer, for instance. Clients are more likely to become upset by an outgoing attorney on their case when it is not an ingrained process that they are made aware about in the beginning. Without succession planning, there is also a great likelihood for a loss of knowledge. For example, if an outgoing partner does not pick a successor and go through the proper transitioning steps, the successor is essentially taking on a new client and starting from scratch or potentially missing important case details because of the need to quickly catch up.

ii. **Compensation of Outgoing partner or attorney**
While the responsibilities of an outgoing partner or attorney will decrease, given that his cases will move over to his successor, his

compensation should remain the same. Law firms need to remember to carefully calculate payouts to the outgoing partner in advance, so that they make sure there is enough money in order to successfully carry on the law business. If necessary, the firm should try to negotiate the payout of capital to outgoing equity partners early on in the process to keep the firm afloat.

iii. **Example: Woodstock attorney became sick and colleagues had to take over the large caseload.[3]**
A Woodstock, Virginia[4] attorney got sick this year for an "indeterminate period" leaving his clients without any plan for succession or legal representation. The sick attorney had, however, designated another attorney to help regulate his cases and keep his cases on track. As a result of the large caseload, fellow attorneys around the area stepped in to take over the caseload while the attorney recovered. This ensured that his clients continued to receive legal representation. In dividing the caseload among those who had stepped in, the "successor attorney" maintained a goal of placing clients with an attorney who had experience in the areas that the client needed legal representation. While death and other such sudden illnesses have disrupted other law firms, most of the previous cases allowed the attorney to close their practice before they stopped working, unlike this instance.

iv. Proposed *Rule 5.8* governing the procedures a lawyer must undergo before leaving or dissolving a law firm[5]
"To address the often contentious scene where lawyers jump ship from a law firm to set sail on their own, the Virginia State Bar Standing Committee on Legal Ethics has proposed a new addition to the Virginia Rules of Professional Conduct." This rule will help dictate when and how a client should be notified of an attorney departure. Instead of suggesting what lawyers should do in this instance, the rule will obligate lawyers to certain protocol. This proposed rule is modeled off of a Florida ethics rule and does not reflect anything in the American Bar Association.

b. **File management/review, quality control, and safekeeping client records and materials[6]**

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[3] *See* Joe Beck, *Area Attorneys Step in for Colleague During Illness*, N. VA. DAILY (Dec. 9, 2013, 5:40 PM), http://www.nvdaily.com/news/2013/12/area-attorneys-step-in-for-colleague-during-illness.php.

[4] In Shenandoah County, Virginia, just south of the I-81 and I-66 junction.

[5] *See, e.g.*, Peter Vieth, *VSB Proposed New Rule for Departing Lawyers*, VA. LAW. WKLY. (Dec. 4, 2013), *available at* http://valawyersweekly.com/2013/12/04/vsb-proposes-new-rule-for-departing-lawyers/.

[6] Mark Bassingthwaighte, *Hamburgers and Quality Control*, ALPS 411 (July 16, 2014), http://www.alps411.com/blog/managing-your-practice---musings-of-a-risk-manager/hamburgers-and-quality-control.

Lawyers should create a formal file review process to make sure that all work is accepted and completed within a reasonable time. This is especially important in regard to succession planning, because without such a system you would not know what another attorney (who has a sudden illness or death) has within their file drawer and/or on their to do list (for instance, opening a new matter which is buried under a stack of papers). This lack of preparation and a formal file review has led to many legal claims.

i. **File Review: No active file can be put away without having a reminder date in the system**
Ensure that every file is reviewed regularly. To do so make sure to put a date on the calendar or within the system to review the file thirty to forty-five days out for any active file. Any matter, regardless of the size, must be entered into the system, even if the client receives a flat-fee for the legal services. Some case management systems automatically remind you about open and active matters. Alternatively, each attorney can maintain a list of active case matters, but must do so diligently to ensure that new clients are added and matters that are finished (files are closed) are crossed off the list. Each time the attorney works on a matter during a review period, they should make a notation next to that client's name. At the end of the period, the attorney should locate and review the file for any client that does not have such a notation. Some attorneys go further and contact the client about their case, even if there is nothing new.

ii. **Peer review**
Another way to keep up with clients and files is peer review within the law firm. Each attorney, selected to review, will have two or three randomly selected closed files that they must review. The reviewing attorney should look at the communications and decide whether they were professional, compliant with firm guidelines, that the lead attorney ran a proper conflicts check, that the attorney sent an engagement letter and the client signed it, that the attorney sent a disengagement letter upon closing the file, that the attorney was timely with the work, etc. This way any part of the client representation that was not up to par with the firm's guidelines could be reviewed with the firm as a whole during a monthly firm meeting or something similar. Tactics that worked well with clients can also be reviewed and shared during this time.

c. **Closing a Solo Practice and the duties owed to current and former clients.**[7]

[7] Sheila Blackford & Peter Roberts, *Closing a Solo Practice: An Exit To-Do List*, 37 LAW PRAC. MAG., no. 3, 2011.

Rules 1.3, 1.5, Comment 4, 1.15, 1.16, 1.17
After deciding to close a solo practice, a lawyer should go public with the information, especially to get assistance from any staff members. The lawyer should consider whether he knows anyone who would hire his staff to try to place them in the best situation given the circumstances. The attorney should try to finalize as many cases as possible prior to closing the firm. He should consider cases he was working on pro-bono or on a special fee arrangement and try to get these clients an attorney willing to do the work for the same amount.

Next, the attorney should tell his clients about the close of his business and brush up on all open matters in order to answer questions about next steps. Before telling his clients, the attorney may want to make sure that the client does not have too much money outstanding because clients may lose motivation to pay off what they owe once they learn of retirement. Review the money that will need to be refunded to clients or transferred to their new lawyers trust account. Consider submitting a motion to withdraw from all pending cases or make sure that another attorney submits a motion for substitution. Pursuant to the Rules of Professional Responsibility 1.16, the attorney should make sure to give clients adequate notice in order to select a new lawyer (the attorney may recommend another, but the client gets to choose their new lawyer). Also, the attorney should make sure to wrap up any current leases or vendor contracts that he has.

A lawyer also has the option of selling their law practice. Keep in mind that a lawyer must sell the entire practice or the entire area of a practice and cannot continue to practice law in those areas of law that are sold off (Rule 1.16(a)-(b)). The seller's clients should still be notified in writing of the change and each has the right to consent or refuse to the transfer of his case. Lastly, the fees charged to the client under the original agreement should not be increased because of the sale (Rule 1.16(e)).

4. **Updates on cyber security/privacy and social media and how it applies to the practice of law** (15 minutes)
    a. **Courtrooms and social media**
        i. Lawyers can look "passively" at juror Facebook profiles[8]

[8] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 466 (2014); Deborah Elkins, *Checking out a Juror's Facebook Page?*, VA. LAW. WKLY. (May 22, 2014), *available at* http://valawyersweekly.com/2014/05/22/checking-out-a-jurors-facebook-page/; Terry Carter, *Lawyers May Look at What Jurors Post Online, but Only if it's Available to the Public*, A.B.A. J. (July 1, 2014), *available at* http://www.abajournal.com/magazine/article/lawyers_may_look_at_what_jurors_post_online_but_only_if_its_available_to_th; Terry Carter, Lawyers Can Look up Jurors on Social Media but Can't Connect with Them, ABA Ethics Opinion Says, ABA J. (Apr. 24, 2014, 9:00AM), *available at* http://www.abajournal.com/news/article/jurors_electronic_social_media_ethics_opinion; *see also* CYBER

Rules 1.1, Comment 6, 3.3, 3.5
Lawyers can look at the information available on jurors from social media, however, they cannot send messages, request access, or friend jurors or potential jurors. The terms of each website can change everything, for instance, LinkedIn notifies users when their profile has been viewed. This can change passive viewing to active viewing (amounting to ex part communication), which is not allowed.

b. **Security breaches**

i. **Misuse of WiFi and security breaches: Data swapped over WiFi connection has a potential for security breach (laptops and cellphones); attackers use hotspots to target certain people using the WiFi connection, rather than simply grabbing all of the information on the public network**[9]
Several recent network attacks have occurred via public Wi-Fi in order to seal information, identity, passwords, money, etc. Any information retrieved while using public Wi-Fi networks have a higher likelihood of being accessed by hackers. As a result, public Wi-Fi users should not access sensitive information.

ii. **Bring Your Own Device (BYOD) programs**[10]
BYOD programs, where companies allow their employees to bring their own laptop or purchase a laptop through the firm of firm specified brands, have several security issues. BYOD also allows attorneys to access the firms network from these devices, their smartphones, tablets, and other such devices. The biggest problem that has come about because of the increased security breach problem, due to BYOD programs, is that law firms do not tell their attorneys about the breaches. Disclosure of the breaches tends to be on a "need to know" basis and as a result, firms refrain from telling their attorneys and in turn notifying their clients. However, this is unlikely an ethical practice.

ADVOCATE, *Allow Social Media in Every Courtroom…NOW!* (Jan. 2, 2014), http://www.thecyberadvocate.com/2014/01/02/social-media-in-every-courtroom/.

[9] Dan Simmons, *Free Wi-fi Hotspots Pose Data Risk, Europol Warns*, BBC NEWS (Mar. 6, 2014), http://www.bbc.com/news/technology-26469598.

[10] Mark Rosch, *70% of Large Firm Lawyers Don't Know If Their Firm has Been Breached*, ABA TECHSHOW (Jan. 14, 2014), *available at* http://www.techshow.com/2014/01/70-of-large-firm-lawyers-dont-know-if-their-firm-has-been-breached/.

iii. **Technology and the Cloud: When a lawyer located in one jurisdiction uploads documents to the Cloud, they are stored anywhere in the world and without knowing the rules and regulations of each place, there may be future repercussions**[11]

1. **Is the information in the Cloud protected?**[12]

It is advised that you keep several different copies of the same documents, photos, materials, etc. for safekeeping. It is possible, as has recently happened, that the government could seize all of the documents a company places on the cloud service, leaving the company without any access to such information. In addition, many electronic storage websites do not actually protect your information as much as you may think. After a survey of providers, there were few that actually implemented strong encryption as the Electronic Frontier Foundation had requested. While there are several downfalls to the cloud and electronic storage systems, small firms and solo practitioners can save money by storing their documents in the cloud rather than investing in other expensive software solutions.

c. **Social Media and Advertising**

i. **Legal advertising with Facebook's paid status updates**[13]
Model Rules 1.6, 7.1, 7.2, 7.4

There is more reach on Facebook than other traditional lawyer advertising methods because of the more then one billion people on Facebook. Several companies have used Facebook to get people signed up for events and recently there have been experiments with gathering Plaintiff classes on Facebook. However, there are ethical considerations when using Facebook as an advertising tool. If Facebook is used more holistically to get more followers or increase views, it seems to be okay. If, on the other hand, a lawyer or law firm is actively trying to advertise their business, then the ethics rules really kick in and the lawyer must be very careful

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[11] Laura Sydell, *You Love the Cloud, but it May not be as Secure as you Think*, NPR (Apr. 25, 2014), http://www.npr.org/blogs/alltechconsidered/2014/04/25/306837205/you-love-the-cloud-but-it-may-not-be-as-secure-as-you-think. *But see* Joe Dysart, *Cloud-Based E-Discovery can mean Big Savings for Smaller Firms*, A.B.A. J. (Apr. 1, 2014, 2:40AM), *available at* http://www.abajournal.com/magazine/article/cloud-based_e-discovery_can_mean_big_savings_for_smaller_firms/.

[12] Steve Henn, *How Well do Tech Companies Protect Your Data from Snooping*, NPR (June 12, 2014, 3:20AM), http://www.npr.org/blogs/alltechconsidered/2014/06/12/320997037/how-well-do-tech-companies-protect-your-data-from-snooping.

[13] Stephanie Francis Ward, *How Lawyers can get the Most out of Facebook's Paid Status Updates*, A.B.A. J. (Apr. 7, 2014), *available at* http://www.abajournal.com/news/article/podcast_monthly_episode_49/.

about soliciting others on Facebook. However, the Rules of Professional Responsibility have not kept up with the technology and social media of today, which causes the lawyer to have to be extremely cautious.

One law firm was able to use a Facebook sponsored story about welcoming home a war hero but did not try to sell any service. Ultimately, the law firms became visible through the story that many people shared and liked. Additionally, there are two ways to advertise on Facebook: (1) sponsored ads and (2) boost posts. With boost posts you get fewer options in regard to customizing the material and who is targeted to receive the advertisement.

ii. **Advertising going too far – Law firm apologizes for offensive advertisement**[14]

A law firm ad in Maxim magazine pictured a truck driver under the words "serial killer." The ad read: "3,561 people died on America's highways last year. Another 2.36 million were injured. You need a law firm you can Trust. You need Experience. You need Strength. You need Villarreal & Begum. We're proven leaders in prosecuting cases involving death and catastrophic injury." Due to the reactions from the ad, many places pulled the entire magazine from the shelves, forcing both the magazine and the law firm to apologize for the ad. The ad was also pulled from the digital copy of the magazine and trucking industry information replaced the advertisement online.

iii. **Serving a lawsuit on those who infringe your social networking app via email and social networking sites**[15]

The Eastern District of Virginia approved serving a lawsuit for a trademark infringement over Facebook, LinkedIn, and through email on February 20, 2014. The Court ruled that these methods were okay after the Plaintiff attempted to serve the Defendant through the Turkish Ministry of Justice pursuant to Rule 4(f)(1) but was unsuccessful. The Magistrate Judge also stated that the Plaintiff need not attempt service through traditional means before moving to electronic service or service through electronic email, although the Plaintiff earned credit for trying the old fashioned methods before considering alternative methods.

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[14] Debra Cassens Weiss, *Law Firm Apologizes to Truckers for 'Serial Killer' Ad*, A.B.A. J. (June 9, 2014), *available at* http://www.abajournal.com/news/article/law_firm_apologizes_to_truckers_for_its_serial_killer_ad/.

[15] Deborah Elkins, *Court Approves Service by Facebook, LinkedIn*, VA. LAW. WKLY. (Mar. 5, 2014, *available at* http://valawyersweekly.com/2014/03/05/court-approves-service-by-facebook-linkedin/.

5. 2013 – 2014 Virginia Legal Ethics Opinions (30 minutes)
   a. **LEO 1870: Does the Ethical Restriction Against Communicating with Represented Persons Apply in Matters where a Guardian *Ad Litem* has been Appointed for a Minor Child? Are Government Attorneys Prohibited from Communicating or Directing Investigators to Communicate with Represented Persons in Such Matters?**[16]
      i. ***Rule 4.2 and 8.4(a)***

In Virginia a guardian *ad litem* ("GAL") represents a child as an attorney and as such the attorney representing a parent/guardian is restricted from speaking with the child unless the GAL gives consent or the court allows the communication. Additionally, a GAL cannot speak to a parent or guardian who has a lawyer without such lawyers consent or court authorization. The opinion notes that a GAL should follow the Rules of Professional Conduct unless such Rules are inconsistent with the GAL's duties. *See* Virginia Legal Ethics Op. 1729 (1999).

Rule 4.1 applies to non-lawyers communicating with represented persons as well. However, the opinion states that Rule 4.2 does not apply before a parent/guardian obtains counsel and/or before a prosecutor or local government attorney begins representation in the matter. Thus, during that time (before lawyers begin representation in the matter), social workers, police officers, and other government employees may investigate and communicate with the parties (child, adult, etc.).

"Subject to the exceptions discussed in this opinion, once a prosecutor or local government attorney assumes responsibility to represent the Commonwealth or other governmental entity in a matter, he or she may not:
a) communicate regarding the civil matter with a represented person, including a child for whom a GAL has been appointed in that matter; and/or
b) use a social worker, police officer, or other investigator as an intermediary to circumvent Rule 4.2 in order to communicate with a represented person, including a child in regard to the civil matter in which a GAL has been appointed."

Law Enforcement Exception: "However, investigative contacts regarding possible violations of criminal law made at the request of a prosecutor or lawyer representing a social services agency are 'authorized by law,' and

[16] Virginia Bar LEO 1870.

therefore ethically permissible when judicial precedent has approved such contacts prior to the attachment of one's right to counsel." *See* Comment [5] to Rule 4.2. Pursuant to this exception, a government lawyer can instruct and direct an investigator/agent to communicate and can also give *general* guidance regarding what to say to the represented party.

b. **LEO 1873: Continued Use of Former Firm Name in URL After Firm Name has Changed**[17]

i. ***Rules 7.1(a), 7.5(a), and 7.5(d)***

This opinions hypothetical involves Smith and Jones, two lawyers who practiced together at Smith & Jones, P.C. where their firm used the URL smithjones.com. The two lawyers later split up and formed a new law firm with different lawyers. Jones continues to practice with the original firm but changed the name to Jones Law Office, P.C. and now wants to redirect anyone who goes to the original URL website to his new URL joneslawoffice.com. Alternatively, Jones wants to put a notice on the original URL website about the new name, the reason, the date Smith withdrew from the firm, and how to access or contact the new firm.

The opinion states that it does not serve public interest to require that Jones not use the URL, however, using the URL with Smith, the departed lawyers name, is a violation of Rule 7.5(a) in that it contains false or misleading statements about the new firm. The committee stated that the proposed notice would be misleading unless Jones made a statement on the original firms website that Smith still continues to practice law. Without this addition, it will likely be assumed that Smith does not practice law and that his former clients will now be represented by Jones. Additionally, simply redirecting searchers from the old website to the new is similarly misleading in that it does not provide a statement that Smith is still practicing law. Overall, clients have a right to their choice of lawyer, so there must exist an explanation about the change in firm name and provide information that Smith is still practicing law at another firm.

c. **LEO 1874: Limited Scope Representation – Reviewing Pleadings for Pro Se Litigants – Substantial Assistance and "Ghostwriting"**[18]

i. ***Rule 1.1, 1.2, 1.6(a), 3.1, 3.3, 3.4(d), 4.1, 8.4(b), and 8.4(c)***

This opinion states that there is no ethical requirement to notify the court when a lawyer assists a *pro se* litigant when that *pro se* litigant is signing and filing the pleadings (reviewing LEO 1127). However, if a lawyer so chooses to assist a *pro se* litigant, the lawyer must still follow the Virginia Professional Responsibility Rules. For instance, a duty of competence is owed to any client even with a limited scope of representation and a lawyer cannot prepare a frivolous lawsuit. Some case decisions and ethics

[17] Virginia Bar LEO 1873; *see also* Paul Fletcher, *Common.Sense*, VA. LAW. WKLY. (Feb. 13, 2014), *available at* http://valawyersweekly.com/2014/02/13/common-sense/.
[18] Virginia Bar LEO 1874, pending comment.

opinions believe that courts are more lenient to *pro se* litigants and if they are receiving undisclosed legal help from a lawyer, it unfairly disadvantages the opposing side. However, this opinion states that there is no reason to conclude that a *pro se* litigant will receive an unfair advantage by having help from a lawyer, and that such help will be obvious to the court and other parties. This committee did not believe that nondisclosure of legal assistance showed dishonesty, fraud, deceit, or misrepresentation, nor did they believe it was a material fact that had to be disclosed.

d. ***Kuchinsky v. Virginia State Bar ex rel. Third Dist. Comm.***[19]
Rules 1.8(a), 1.8(j), 3.4(d), and 8.4(a)
    i. Person hired Attorney Kuchinsky to represent him in a claim for part of his father's estate and both agreed to a contingency fee arrangement. Kuchinsky filed a partition suit against Person's siblings and then Person executed a quitclaim deed granting a 25% interest to Kuchinsky for the land that was at issue in the partition suit, as well as another 25% of any other real estate that Person had. The Virginia State Bar (VSB) issued a private admonition to Kuchinsky as a result of his violating Rule 1.8(j). Nevertheless, Kuchinsky continued to attempt to acquire the land, urging the Special Commissioner to file the deed quickly. After the deed was recorded, Kuchinsky sued Person and Person subsequently filed a claim with the VSB. The Third District Committee held that Kuchinsky violated Rules 1.8(a), 3.4(d), and 8.4(a). After Kuchnisky appealed the Committee's decision, the Virginia Supreme Court found that Kuchinsky had violated Rules 1.8(a) and 8.4(a), but due to the fact that his private admonition did not include language to the effect that Kuchinsky should "take or refrain from taking any action, he could not 'knowingly disobey' the admonition," and thus, he did not violate Rule 3.4(d).

e. **"Newport News Lawyer, Husband Accused of Running Illegal Gambling Operation"**[20]
Rules 1.3, 1.6, 1.7, 1.15 and 8.4
    i. A Newport News lawyer and her husband each face a felony count for "conducting an illegal gambling enterprise or operation," and each face misdemeanor charges for illegally possessing gambling devices and "aiding in the operation of a gambling enterprise. When the police arrived to a building housing Mrs. Schlain's law office, she proclaimed that she was now legal counsel for everyone

[19] *Kuchinsky v. Virginia State Bar ex rel. Third Dist. Comm.*, 756 S.E.2d 475 (Va. 2014).
[20] Peter Dujardin, *Newport News Lawyer, Husband Accused of Running Illegal Gambling Operation*, DAILY PRESS (July 18, 2014), http://articles.dailypress.com/2014-07-18/news/dp-nws-attorney-gambling-arrest-20140718_1_gambling-operation-robbery-affidavit.

present; thus, opening the investigation up to potentially exposing protected attorney-client communications.

f. **"Longtime Fairfax Lawyer Pleads to Embezzlement"**[21]
Rules 1.1, 1.3, 1.15, and 8.4
   i. Fairfax County Circuit Court accepted an *Alford* plea from a longtime attorney and subsequently found that he was guilty of stealing hundreds of thousands of dollars from an elderly client over a span of three years.

g. **"Newport News Jury Hands Down $1.2 Million Malpractice Verdict Against Hampton Lawyer: Attorney Kevin Shea Vows to Appeal Decision to Virginia Supreme Court"**[22]
Rules 1.1, 1.3, and 1.4
   i. Newport News Circuit Court found a lawyer guilty of legal malpractice and gave a verdict of $1.2 million for missing deadlines in a divorce case. The lawyer did not act as a reasonably, prudent lawyer would have, failing to notify the court that he represented a party, missing deadlines, failing to notify his client of urgent filings and deadlines, etc.

h. ***UBS Financial Services v. Edward Childress***[23]
Rules 1.1 and 1.3
   i. U.S. District Judge fined and reprimanded two attorneys for moving forward with a frivolous claim regarding a disputed IRA belonging to a man who passed away two years ago. The Court found that the attorneys should have known the claim was invalid due to the fact that the IRA was not an employer based ERISA plan.

6. **2013 – 2014 Adopted Virginia Rule Changes** (15 minutes)
   a. ***Rule 1.11*: Client-Lawyer Relationship; Special Conflicts of Interest for Former and Current Government Officers and Employees**
   The amendment made a cosmetic change by moving "confidential government information." The amendment added a provision to section

[21] Peter Vieth, *Longtime Fairfax Lawyer Pleads to Embezzlement*, VA. LAW. WKLY, (June 5, 2014), *available at* http://valawyersweekly.com/2014/06/05/longtime-fairfax-lawyer-pleads-to-embezzlement/.
[22] Peter Dujardin, *Newport News Jury Hands Down $1.2 Million Malpractice Verdict Against Hampton Lawyer: Attorney Kevin Shea Vows to Appeal Decision to Virginia Supreme Court*, Daily Press, (June 2, 2014), http://articles.dailypress.com/2014-06-02/news/dp-nws-shea-jury-verdict-20140602_1_jury-trial-attorney-kevin-shea.
[23] *UBS Fin. Servs. v. Edward Childress*, No. 1:12CV00074, 2013 WL 8750186, (W.D. Va. 2013); *see also* Peter Vieth, Lawyers Sanctioned Over IRA Arguments, VA. LAW. WKLY, (Oct. 30, 2013), *available at* http://valawyersweekly.com/2013/10/30/lawyers-sanctioned-over-ira-arguments/.

(d), allowing the conflict for a government service lawyer to be waived with consent from the private client and the appropriate government agency (section (d) is now parallel to section (b)). Lastly, the amendment adopted Comment 3.

(a) A lawyer who holds public office shall not:
(1) use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest;
(2) use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client; or
(3) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
(b) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the private client and the appropriate government agency consent after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.
(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and that the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.
(d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:
(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter or unless the private

client and the appropriate government agency consent after consultation; or
(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, mediator or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).
(e) Paragraph (d) does not disqualify other lawyers in the disqualified lawyer's agency.
(f) As used in this Rule, the term "matter" includes:
(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment 3: Paragraphs (b) and (d) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (b). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

b. ***Rule 1.15*: Client-Lawyer Relationship; Safekeeping Property**
This amendment clarified that money held by a lawyer for a client must be placed in a trust account, but that other property could be put into a safe deposit box or other safe place. The new Rule uses the word “funds” instead of the word “monies.”

(a) Depositing Funds.
(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.
(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia

State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.
(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:
(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or
(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.
(b) Specific Duties. A lawyer shall:
(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;
(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;
(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and
(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.
(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:
(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.
(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.
The ledger should clearly identify:
(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and
(ii) any unexpended balance.
(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the

same or similar capacity; including all source documents sufficient to substantiate the annual summary.
(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.
(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.
(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.
(3) Reconciliations.
(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.
(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.
(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).
(iv) Reconciliations must be approved by a lawyer in the law firm.
(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

c. ***Rule 5.4*: Law Firms and Associations; Professional Independence of a Lawyer**

The amendment made it so that Rule 5.4(d)(2) is now in line with Virginia Code § 54.1-3902(B)(1) to permit non-lawyers to serve as secretary, treasurer, office manager, or business manager of a professional entity that is authorized to practice law.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer;
(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profitsharing arrangement; and
(4) a lawyer may accept discounted payment of his fee from a credit card company on behalf of a client.
(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
(1) a nonlawyer owns any interest therein, except as provided in (a)(3) above, or except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
(2) a nonlawyer is a corporate director or officer thereof, except as permitted by law; or
(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

d. ***Rule 5.5*: Law Firms and Associations; Unauthorized Practice of Law; Multijurisdictional Practice of Law**
Comment 13 clarifies that foreign lawyers admitted in both U.S. or foreign countries can engage in the limited scope of practice.

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.
(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.
(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(d) Foreign Lawyers:
(1) "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.
(2) A Foreign Lawyer shall not, except as authorized by these Rules or other law:
(i) establish an office or other systematic and continuous presence in Virginia for the practice of law, which may occur even if the Foreign Lawyer is not physically present in Virginia; or
(ii) hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia.
(3) A Foreign Lawyer shall inform the client and interested third parties in writing:
(i) that the lawyer is not admitted to practice law in Virginia;
(ii) the jurisdiction(s) in which the lawyer is licensed to practice; and
(iii) the lawyer's office address in the foreign jurisdiction.
(4) A Foreign Lawyer may, after informing the client as required in 3(i)-(iii) above, provide legal services on a temporary and occasional basis in Virginia that:
(i) are undertaken in association with a lawyer who is admitted to practice without limitation in Virginia or admitted under Part I of Rule 1A:5 of this Court and who actively participates in the matter;
(ii) are in or reasonably related to a pending or potential proceeding before a tribunal in Virginia or another jurisdiction, if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
(iii) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Virginia or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
(iv) are not within paragraphs (4)(ii) or (4)(iii) and arise out of or are reasonably related to the representation of a client by the Foreign Lawyer in a jurisdiction in which the Foreign Lawyer is admitted to practice or, subject to the foregoing limitations, are governed primarily by international law.
(5) A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.

Comment 13: Paragraph (d)(4)(iv) permits a Foreign Lawyer to provide certain legal services on a temporary basis in Virginia that arise out of or

are reasonably related to that lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted but are not within paragraphs (d)(4)(ii) or (d)(4)(iii). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

e. ***Rules of the Supreme Court of Virginia Part 1A, Rule 1A:1*: Reciprocity: Admission on Motion; Admission to Practice in this Commonwealth without Examination**
Only "reciprocal" jurisdiction (those that admit Virginia lawyers to their jurisdiction without examination) lawyers will be admitted on motion to practice in Virginia. The lawyer must have taken the "reciprocal" jurisdictions bar examination and must have practiced in that jurisdiction for three of the last five years. The rule is based on the idea that having passed the bar in one state and gained experience over the years in successful legal practice is accepted instead of taking the Virginia State Bar. The new rule also requires a lawyer to attend twelve hours of Virginia approved instruction in substantive law/procedure, as well as familiarity with the Virginia Rules of Professional Conduct. The new rule also does not require lawyers admitted on motion to practice full-time in Virginia nor are such lawyers subject to have their license revoked for leaving Virginia.

f. ***Rules of the Supreme Court of Virginia Part 1A, Rule 1A:8*: Military Spouse Provisional Admission**
This rule allows military spouse attorneys to receive admission on motion in jurisdictions other than where they are barred. While the attorney spouse is granted motion admission, they have to be associated with a Virginia license attorney.

1. Requirements. A person who meets all requirements of subparagraphs (a) through (m) of paragraph 2 of this Rule 1A:8 may, upon motion, be provisionally admitted to the practice of law in Virginia.

2. Required Evidence. The applicant for provisional admission shall submit evidence satisfactory to the Virginia Board of Bar Examiners (the "Board") that he or she:
(a) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;
(b) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of such applicant's graduation;
(c) has achieved a passing score on the Multistate Professional Responsibility Examination as it is established in Virginia at the time of application;

(d) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the unrestricted practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;
(e) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;
(f) possesses the good character and fitness to practice law in Virginia;
(g) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and that the service member is on military orders stationed in the Commonwealth of Virginia or the National Capitol region, as defined by the Department of Defense;
(h) is physically residing in Virginia;
(i) has submitted all requested character investigation information, in a manner and to the extent established by the Board, including all required supporting documents;
(j) has never failed the Virginia Bar Examination;
(k) has completed twelve (12) hours of instruction approved by the Virginia Continuing Legal Education Board on Virginia substantive and/or procedural law, including four (4) hours of ethics, within the six-month period immediately preceding or following the filing of the applicant's application;
(l) certifies that he or she has read and is familiar with the Virginia Rules of Professional Conduct; and
(m) has paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application.
3. Issuance, Duration and Renewal.
(a) The Board having certified that all prerequisites have been complied with, the applicant for provisional admission shall/ upon payment of applicable dues and completion of the other membership obligations set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia, become an active member of the Virginia State Bar. An attorney provisionally admitted pursuant to this Rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, and all legal services provided in Virginia by a lawyer admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct.
(b) A provisional admission may be renewed by July 31 of each year, upon filing with the Virginia State Bar (i) a written request for renewal, (ii) an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney's continuing employment by or association with Local Counsel and to Local Counsel's adherence to the supervision requirements as provided under this Rule, and (iii) compliance with the

membership obligations of Part 6, Section IV of the Rules of the Supreme Court of Virginia applicable to active members of the Virginia State Bar.
(c) When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Virginia/ the provisional admission may be renewed until that unaccompanied or remote assignment ends/ provided that the attorney complies with the other requirements for renewal.
4. Supervision of Local Counsel. A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.
(a) As used in this Rule/ Local Counsel means an active member in good standing of the Virginia State Bar/ whose office is in Virginia.
(b) Local Counsel must provide to the Virginia State Bar his or her Virginia State Bar number/ physical office address/mailing address/ email address/ telephone number/ and written consent to serve as Local Counsel/ on the form provided by the Board.
(c) Unless specifically excused from attendance by the trial judge/ Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court. (d) Local Counsel will be responsible to the courts/ the Virginia State Bar/ the Supreme Court of Virginia/ and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.
(e) Local Counsel is obligated to notify the Executive Director of the Virginia State Bar when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.
s. Events of Termination. An attorney's provisional admission to practice law pursuant to this Rule shall immediately terminate and the attorney shall immediately cease all activities under this Rule upon the occurrence of any of the following:
(a) The spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in the Commonwealth of Virginia or the National Capitol region as defined by the Department of Defense, except as provided in section 3(c) of this Rule;
(b) Failure to meet the annual licensing requirements of an active member of the Virginia State Bar;
(c) The absence of supervision by Local Counsel;
(d) The attorney no longer physically residing within the Commonwealth of Virginia;
(e) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) on the spouse's official military orders;
(f) The attorney being admitted to practice law in this Commonwealth under an admissions rule other than that of Provisional Admission;

(g) The attorney receiving a failing score on the Virginia Bar Examination;
(h) The attorney being suspended from the practice of law in Virginia; or
(i) Request by the attorney.
6. Notices Required.
(a) An attorney provisionally admitted under this Rule shall provide written notice to the Virginia State Bar of any Event of Termination within thirty (30) days of the occurrence thereof.
(b) Within thirty (30) days of the occurrence of any Event of Termination, the attorney shall:
(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Virginia State Bar within sixty (60) days of such notification; and
(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which shall include the substitution of the Local Counsel, or such other attorney licensed to practice law in Virginia selected by the client, as counsel in the place of the provisionally admitted attorney.
7. Benefits and Responsibilities. An attorney provisionally admitted under this Rule shall be entitled to the benefits and be subject to all responsibilities and obligations of active members of the Virginia State Bar, and shall be subject to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and to the Virginia State Bar with respect to the laws and rules of this Commonwealth governing the conduct and discipline of attorneys to the same extent as an active member of the Virginia State Bar.

g. ***Paragraph 17 of Mandatory Continuing Legal Education Rule* – Approving CLE**

B. Continuing Legal Education Board. - A Continuing Legal Education Board shall be established for the purpose of administering the program.
* * *
(2) Notice of Meetings/Quorum: The board shall meet on reasonable notice by the Chair/ Vice chair or the Executive Director. Five members shall constitute a quorum and the action of a majority of a quorum shall constitute action of the board; however/ new regulations or amendments shall be approved by a majority of the full membership of the board.
(3) Powers: The board shall have those general administrative and supervisory powers necessary to effectuate the purposes of this Rule/ including the power to adopt/ following the advice and comment of Council/ reasonable and necessary regulations consistent with this Rule. The effective date of any regulations or amendments to the regulations adopted by the board shall be as prescribed by the board, but in no event earlier than one hundred twenty (120) days following such adoption. The Council may reject any regulations or amendments to the regulations

adopted by the board on or after July I, 2010, by a 2/3 vote of those members of Council present and voting. Council's rejection of any regulations or amendments to the regulations shall have the effect of suspending the regulation or amendment until the Supreme Court has reviewed and approved, rejected, or modified the proposed regulation or amendment. The Virginia State Bar shall have the responsibility for funding the board and for enforcing Mandatory Continuing Legal Education requirements. The board may delegate to the Virginia State Bar staff as it deems appropriate to carry out its responsibilities under this Rule.

The board shall specifically have the following powers and duties:

(a) To approve CLE programs and sponsors;

(b) To establish procedures for the approval of Continuing Legal Education courses, whether those courses are offered within the Commonwealth or elsewhere. These procedures should include the method by which CLE sponsors could make application to the board for approval, and if necessary, make amendments to their application; (c) To authorize sponsors of Continuing Legal Education programs to advertise that participation in their program fulfills the CLE requirements of this Rule;

(d) To formulate and distribute to all members of the Virginia State Bar appropriate information regarding the requirements of this Rule l including the distribution of a certification form to be filed annually by each active member.

* * *

H. Standards. In evaluating specific programs for approval, consideration shall be given to the following factors:

(1) Whether the course tends to increase the participant's professional competence as a lawyer.

(2) The number of hours of actual presentation, lecture, or participation, so that the appropriate number of credit hours can be identified and published.

(3) The usage of written educational materials which reflect a thorough preparation by the provider of the course, and which assist course participants in improving their legal competence.

(4) To qualify for mandatory legal education credit, a course is not required to have a component on legal ethics or professionalism, although such components are encouraged. When topics on legal ethics or professionalism are offered, either as an entire course or component thereof, they must be clearly identified as such.

7. **2013 – 2014 Proposed Virginia Rule Changes** (5 minutes)
   a. **Rules 1.1 and 1.6: Proposed Amendments to Rules of Professional Conduct based upon Ethics 20/20 Amendments to ABA Model Rules**[24]

RULE 1.1 Competence
Comment
Maintaining Competence
[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education, including but not limited to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.
[7] Competency requires that the lawyer acquire or possess the skills reasonably necessary to effectively represent a client. For example, a lawyer must keep current and abreast of changes and developments in the area(s) of law in which the lawyer practices, which may include for some lawyers the development of research skills and the ability to interview potential clients and witnesses, carry out discovery in civil litigation matters, negotiate effectively, and, if necessary, pursue a case through trial.
[8] Competency also requires that lawyers employ reasonable steps to protect the confidentiality of client files and communications, including employment of relevant law office technologies. This rule does not necessarily require that a lawyer personally acquire training, skill and expertise in technology reasonably necessary to practice law if the lawyer employs others who are competent and familiar with the relevant technology and who can implement the use of that technology to protect the confidentiality of client files and communications.

RULE 1.6 CONFIDENTIALITY
(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comment
Acting Competently to Preserve Confidentiality
[19] Paragraph (d) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.

[24] Comment period extended to November 3, 2014.

See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (d) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A lawyer shall either (1) comply with a client's request to implement special security measures to protect the confidentiality of information or forego the representation; or (2) obtain the client's informed consent to forego security measures that would otherwise be appropriate under this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules.

b. **Paragraph 13.4 regarding malpractice insurance requirements in Va. Code Section 54.1-3935(D)[25]**

On May 7, 2014, the Committee on Lawyer Discipline (COLD) voted unanimously to approve the proposed Paragraph 13.4 to be included in Part Six, Section IV of the Rules of the Supreme Court of Virginia. This Paragraph is in response to changes to Virginia Code Section 54.1-3935(D) which charge the bar with setting standards for minimum malpractice coverage when disciplinary charges heard by a three-judge panel result in a finding of criminal conduct involving loss of client property.

PART SIX, SECTION IV, RULES OF THE SUPREME COURT OF VIRGINIA

13.4 Insurance coverage requirement for respondents under Va. Code § 54.1-3935(D)

Pursuant to Va. Code § 54.1-3935(D), when an attorney who has been found guilty of engaging in criminal activity that violates the Rules of Professional Conduct and results in the loss of property of one or more of the attorney's clients and has been required by a three-judge court to maintain professional malpractice insurance during the time he or she is licensed to practice law in the Commonwealth of Virginia, that attorney

[25] Pending review by Virginia State Bar Council

shall carry such coverage in the minimum amount of $500,000 per claim and $1 million in the aggregate with a maximum $10,000 deductible, with a Virginia licensed insurer, eligible surplus line insurer or registered risk retention group. The coverage provider must have an A.M. Best minimum rating of A-.

The attorney shall require the insurer to include language in the policy specifying that the VSB be given notice of cancellation or nonrenewal. The attorney shall certify such coverage and the notice requirement to the VSB on a yearly basis with a certificate of insurance provided to the VSB by an agent or broker licensed in Virginia. This certificate must be received initially within 10 days after inception or reinstatement of the policy.

c. ***Rule 1.10*: Client-Lawyer Relationship; Amendment Regarding Conflict of Interest**

The proposed change to this rule would help a lawyer avoid a situation where a conflict of interest was imputed to the firm. In the proposal, a lawyer is able to avoid Rule 1.10(a) conflicts of interest by willfully failing to obtain the information, which would create the conflict of interest. A conflict would occur if a lawyer "knows or reasonably should know" that someone in the firm is prohibited from doing so by means of a conflict of interest. The proposal adds a Comment 2a, which explains that failing to maintain or use a conflict of interest system could be a violation of Rule 1.10 if such a system would have revealed such a conflict.

8. **Questions & Answers** (15 minutes)