FOURTH ANNUAL WESTERN DISTRICT OF VIRGINIA BANKRUPTCY CONFERENCE

JUNE 2, 2017

ETHICS UPDATE

AND

BEING PREPARED AND DOING THE RIGHT THING

LEGAL ETHICS OPINION 1886 AND BEYOND

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The Virginia State Bar for providing information related to 2016 Disciplinary Board proceedings.

I. CHANGES TO RECIPROCAL DISCIPLINE

On December 15, 2016, the Supreme Court of Virginia approved changes to Part Six of the Rules of Court addressing attorney discipline. A copy of the Supreme Court's directive is attached hereto as Appendix D. These changes directly affected the imposition of reciprocal discipline.

Reciprocal discipline " is a disciplinary procedure that determines what, if anything, should be done with the Virginia law license of an attorney who has been suspended or revoked by another jurisdiction for professional misconduct." Davis, "A Primer on Reciprocal Discipline,' *Virginia Lawyer*, Vol. 65, August 2016. Under the old rule, if an attorney was suspended or revoked in "another jurisdiction," which the State Bar interpreted to include United States District and Bankruptcy courts, the attorney's license would be summarily suspended in Virginia. The attorney would be required to appear before the State Bar to show cause why his or her license to practice in the Commonwealth should not be similarly suspended or revoked. *Id.* The old rule required the attorney to raise three contentions in defense: (i) the record of the proceeding in the other jurisdiction would clearly show a lack of due process, (ii) the same discipline on the same proof would result in a grave injustice, or (iii) the same conduct would not be grounds for disciplinary action in Virginia. *See* Part Six, §IV, ¶13-24 of the previous Rules of the Supreme Court of Virginia. The respondent had 14 days from service of the Show Cause Order to file such a response to allege one of these defenses. The respondent also had the burden of proof, whereas had the Bar initiated its own charges of misconduct, the Bar would have had the burden of proof by clear and convincing evidence. Failure to file a timely response caused at least one Disciplinary Board panel to revoke an attorney's license due to a revocation in Bankruptcy Court, despite reservations about whether the Bankruptcy Court was "another jurisdiction." *See generally In the Matter of Denny Pat Dobbins*, VSB Docket No. 13-000-093449 (Feb. 7, 2013). Another Disciplinary Board panel found that the United States District Court was not "another jurisdiction" within the scope of the old Rule, which put it at odds with previous rulings by different panels of the Disciplinary Board. Compare *In the Matter of Sandy Yeh Chang*, VSB Docket No. 13-000-094679 (April 16, 2014), with *In the Matter of Bridgette M. Harris*, VSB Docket No. 02-000-1316 (Jan. 18, 2002), and *In the Matter of James D. Kilgore*, VSB Docket No. 02-000-2781 (May 15, 2002).

Under the new Rule, the scope of the disciplining jurisdictions is clarified. The non-Virginia disciplining jurisdiction must be a defined "State Jurisdiction" or a "Jurisdiction" which would include "any federal court or agency authorized to discipline attorneys, including the United States military." *See* Part Six, §IV, ¶13-24 of the Rules of the Supreme Court of Virginia (2017). Thus, the Virginia State Bar would take the position that the United States District Court or Bankruptcy Court is a disciplining jurisdiction. However, under the new rule, there is no summary revocation or suspension of the respondent's license upon receipt of a disciplinary order from the disciplining jurisdiction. Instead, under the new rule, the Board will hear the

reciprocal actions from the disciplining jurisdiction but "will leave those lawyers' law licenses intact until they have had an opportunity to argue their cases before the Disciplinary Board." *See* "A Primer on Reciprocal Discipline," cited above. The new rule also eliminates the default provisions for attorneys who do not timely file written responses, and it allows not only the Disciplinary Board to impose a lesser sanction than the previous jurisdiction should circumstances warrant, but it now allows the Bar to argue for the imposition of a lesser sanction as well. *Id.* The clear and convincing evidence burden of proof in reciprocal discipline cases remains on the respondent.

II. TOP FIVE PITFALLS TO AVOID IN 2017

A. Don't Lie (or Make Invalid Excuses) to Client

VSB Disciplinary Case No. 2016-12340

Attorney accepted general district court case; Attorney told client he had filed suit when he had not; Attorney told client he received an insufficient settlement offer when he never spoke with the adverse party; and Attorney told client he was getting nowhere in district court so he was filing in circuit court – never filed anything there either; Attorney received a 21-month suspension from VSB.

RPC-8.1 and 8.4

B. Don't Threaten Clients (Regardless of How Angry They Make You)

VSB Disciplinary Docket Nos. 15-033-101414, 102415, 101351, 099896, 100656

VSB received five complaints within a four-month period alleging Attorney or his employees had failed to do work for which they had been paid in advance, failed to account for funds received, and failed to issue refunds; Attorney accused one client of negative online rating and threatened to sue her over post with which she had no connection and made similar threats against another client who threatened to sue for recovery of unearned fees; Audit revealed Attorney frequently out-of-trust and trust account below zero when he was holding client funds; Disciplinary Board dismissed violations of Rule 3.4j but found violations of Rule 8.4b in Attorney's making spurious threats of litigation in two of the cases.

RPC-1.3b, 1.4a-c, 1.5, 1.16, 3.4, and 8.4

C. Don't be a Know-it-All, Especially if You Don't Know (Regardless of How Tired You May Be)

VSB Docket No. 14-031-098885

Attorney advised his client that pursuant to Virginia Code Section 55-70.1, she could prevail on an implied warranty claim and that she could receive treble damages, and a treble attorney's fee; The pertinent code section, however, does not provide for treble damages or attorney's fees; Arbitrator denied Client's claim under the Virginia Code because Client's purchase agreement waived all implied warranties; Arbitrator awarded Client $1,500 for cracked walls and $2,187.50 representing excess arbitration fee payments, for a total of $3,687.50, and the

builder issued a check accordingly; Attorney filed suit in U.S. District Court seeking to vacate the arbitration award; Court dismissed the complaint as a "rambling" document; Client never received a copy of the dismissal order; Attorney appealed to the Fourth Circuit, which affirmed; Attorney furnished Client an itemization of his fees at $250 per hour for a total of $94,750, despite agreement for $100 per hour; Attorney told Client not to worry about the inflated fees, explaining that it represented trebled attorney's fees; overall, Client paid Attorney $20,000 in attorney's fees and $13,450 in arbitration costs; Attorney did not remit to Client any part of the $3,687.50 he received from the builder on her behalf; Attorney testified he held it under lock and key as evidence and to avoid a future claim of accord and satisfaction by the builder; Check became stale and Client had to hire a new attorney who secured a replacement check; Client also hired Attorney to sue the manufacturer of a pharmaceutical that she alleged caused her harm; Court dismissed first suit without prejudice for failure to comply with the initial disclosure requirements; Attorney filed an amended complaint that was also dismissed without prejudice "because the pleading, despite being thirty-two pages long, is vague and repetitive and contains numerous incomprehensible paragraphs," and therefore failed to offer a "short and plain statement of the claim showing that the pleader is entitled to relief;" Attorney filed another amended complaint; Client paid Attorney $2,000 to hire an expert but attorney applied the funds to his fees instead; Court dismissed the third case with prejudice on the basis of various failures to state claims, failure to comply with Rule 26, and failure to designate an expert witness to support viable products liability claims; the order describes Attorney as "putting his head in the sand concerning virtually all pretrial requirements;" Attorney did not advise Client about the dismissal; Attorney appealed to the Fourth Circuit but withdrew when Client terminated him; Client repeatedly requested her files from Attorney to no avail until she obtained a warrant in detinue against him; Disciplinary Board noted Attorney asserted that he was overwhelmed at the time and suspended his license for 60 days.

RPC-1.1, 1.4, 1.16, and 3.4

D. Don't Ignore Client Inquiries

VSB Docket No. 14-090-099262 and 15-090-099856

Client paid Attorney a $750 advanced fee for a spousal support matter; For 15 months Client tried to contact his attorney who was unresponsive and never took any action in the matter; Client notified the bar about Attorney who apologized for his inaction and issued a $750 refund drawn on a non-trust account; in a second case, Attorney did not refund a $1,250 unearned fee to a client until a bar complaint, and did so with a check drawn on a non-trust account; Attorney explained to the bar's investigator that he contemplated changes in software and

for this reason he did not deposit the advanced fees in trust; Attorney twice told the bar investigator that he had an attorney trust account during the times in question except for six months in 2014; investigation revealed that Attorney closed his last trust account in November 2012 and did not open one again until October 2014; for two years Attorney did not deposit unearned fees into an attorney trust account or maintain records required for the handling of client funds; Attorney, who already had a disciplinary record including suspensions, agreed to a one-year suspension with terms requiring spot audits of his trust account by the VSB for three years and three years of disciplinary probation.

RPC-1.3, 1.15, 8.1, and 8.4

E. Avoid "Get Rich Schemes" - They Usually End Poorly VSB Disciplinary Docket No. 15-000-102784

Attorney stipulated that he devised and executed a scheme to defraud the law firms where he was employed; Attorney received bankruptcy fees from clients ranging from $500 to $1000 but did not record them on the law firm's books or use them to pay filing fees as intended; Attorney instead pocketed the funds and paid the filing fees with a law firm credit card; Attorney did not file all of the bankruptcy petitions; Attorney pled guilty to a one-count information alleging wire fraud in violation of 18 U.S.C. 1343; Court sentenced Attorney to four months in prison; Attorney consented to the revocation of his law license.

III. THE PROBLEM

Lawyers are far more susceptible to substance abuse than the general population.

2014-15 ABA and Hazelden Betty Ford Study surveyed 12, 825 lawyers. The results published in Jan-Feb 2016 *Journal of Addictive Medicine:*

20.6% reported problems with use of alcohol.

28% reported suffering from depression.

19% say they struggle with anxiety.

Lawyers 30 years and younger working in private law firms suffer higher level of stress than more experienced lawyers.

Lawyers are three times more likely to have a substance abuse or mental health problem than the general population.

Lawyers are getting older, working longer and postponing retirement.

35% of all active VSB members are 55 or older.

> *Approximately 200,000 individuals in the United States under the age 65 have younger-onset Alzheimer's* (http://www.alz.org/facts/overview.asp#quickFacts)

15% of all active VSB members are 65 or older.

> *One in nine people age 65 and older has Alzheimer's disease* (http://www.alz.org/facts/overview.asp#quickFacts)

IV. LEO 1886 (See Appendix A attached hereto)

Addresses the duties of supervising lawyers and partners in a law firm upon discovering a lawyer in the firm may be impaired.

Discusses the duty to take remedial measures if a supervisor or partner reasonably believes that a lawyer under their supervision may be suffering from a significant impairment that poses a risk to clients or the general public.

The anchor for LEO 1886 is Rule 5.1 of the Virginia Rules of Professional Conduct.

Rule 5.1(a): Partners and managers in a law firm have a duty to have in place measures to ensure that lawyers practicing in the firm comply with the RPC.

Rule 5.1(b): Supervising attorney must make reasonable efforts to ensure that a lawyer under his/her supervision complies with the RPC.

Rule 5.1(c): A supervising attorney will be responsible for the subordinate attorney's violation of the RPC, if the supervising attorney directed or ordered the specific conduct; or knew of the specific conduct at a time when its consequences could have been prevented or mitigated, but failed to take remedial action.

While the RPC does not explicitly impose any ethical duty for supervising lawyers or partners in a firm to address impairment issues, Rule 5.1 does require the supervising attorneys and partners to establish appropriate preventative practices and procedures to ensure that all lawyers under their supervision comply with the RPC; and make reasonable efforts to ensure that a lawyer under their supervision is acting in compliance with the RPC.

This means that reasonable steps must be taken to ensure that the impaired lawyer does not breach ethical duties owed to clients of the firm.

A lawyer's impairment does not excuse the impaired lawyer's failure to comply with the RPC nor will it operate as a defense to a charge of misconduct.

Supervisors and partners in a law firm may have some flexibility in regard to remedial measures depending on the nature, severity of the lawyer's impairment and prognosis for recovery.

A lawyer who is a supervisor or partner in law firm who reasonably believes that a lawyer under his supervisory authority may be suffering from a significant impairment owes a duty to confront that lawyer to encourage the lawyer to seek an evaluation, assessment or treatment.

The firm may need a mental health practitioner or other professional to perform an evaluation or assessment or advise the firm on how to address the situation of an impaired lawyer.

Depending upon the evaluation, assessment or treatment, the firm may have to take other steps to protect their clients' interests. Such steps might include reducing the impaired lawyer's workload, direct supervision and review of the impaired lawyer's work, placing the lawyer in a support rather than primary role or other steps limiting or restricting the impaired lawyer's responsibility for client matters.
For client protection, the firm should have in place an enforceable policy that would require that the impaired lawyer seek appropriate counselling, treatment, therapy, or

assistance as a condition of continued employment at the firm or undertaking to work on any client matters.

The firm policy might also require a monitoring contract and waiver of confidentiality so that the firm can keep abreast of the impaired lawyer's treatment and recovery.

The firm may contact Lawyers Helping Lawyers to seek assistance, initiate an intervention and obtain an initial evaluation of the lawyer's condition and referral to an appropriate mental health provider for therapy and treatment.

V. ADDITIONAL CONSIDERATIONS ON IMPAIRMENT

RULE 1.16(a)(2)

A lawyer whose physical or mental health "materially impairs" his capacity to represent clients has a duty to refrain or withdraw from representation. Rule 1.16(a)(2).

Unfortunately, the impaired lawyer may not be cognizant of the scope and nature of the impairment, and does not recognize the need to withdraw from the representation.

The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients. See ABA Formal Op. 03-429 attached hereto as Appendix B.

RULE 8.3(a)

There is no duty to report a lawyer to the VSB under Rule 8.3(a) solely because a lawyer suffers impairment and there has been no breach of ethical duty to client or other misconduct.

The duty to report under Rule 8.3(a) requires reliable information that another lawyer has violated a RPC that raises a substantial question regarding the lawyer's honesty, integrity or fitness to practice law.

In addition to proactively addressing an impairment before clients are affected, the other lawyers in the firm need to evaluate whether the impaired lawyer has already committed misconduct that raises a substantial question as to her honesty, trustworthiness, or fitness to practice law. If so, Rule 8.3(a) requires them to report that misconduct, even if the firm has already taken steps to address the misconduct and prevent it from recurring in the future and even if the impairment has already been reported to Lawyers Helping Lawyers.

VI. LAWYERS HELPING LAWYERS

Lawyers Helping Lawyers ("LHL") an independent, non-disciplinary and non-profit organization assisting legal professionals and their families since 1985 deal with depression, addiction and cognitive impairment. LHL can assist law firms dealing with an impaired lawyer through a confidential environment by planning and implementing intervention, providing a free clinical evaluation, referral to appropriate medical and mental health care providers, peer support and group counseling, establishing contracts to monitor and report recovery and rehabilitation and assist and identify financial resources for treatment.

LHL is not affiliated with the Virginia State Bar and does not share information with anyone except and unless the participating lawyer expressly consents in writing to share information with third parties.

VII. BE PROACTIVE AND PREPARED

Many other events may case an attorney to be unable to fulfill her obligations to her clients. Death, severe injury, and severe illness may also result in the lawyer not being able to fulfill her ethical duties. This mater is of particular importance to solo practitioners or those in small firms where the practitioner is the only one with knowledge of bankruptcy.

Just as you have a power of attorney so that someone can deal with your personal matters if you are not competent to deal with them and just as you have a will to deal with the disposition of your assets upon your death, you should have a power of attorney in place to deal with your law practice in the even that you are unable to fulfill your duties to your clients. Also, you should have an agreement in place which is incorporated into your will and will provide another attorney with the power to wrap up matters in your law practice. Indeed, Rule 1.3 Comment 5 requires this.

Frank O. Brown, Jr. graciously provided his Law Office POA and his Law Office Agreement. These are attached as Appendix C hereto. An important aspect of today's presentation is to encourage consideration and execution of these types of documents. We strongly recommend that you discuss these types of documents with a trusted advisor - AND THEN HAVE DOCUMENTS EXECUTED, PUTTING ARRANGEMENTS IN PLACE WHICH WE HOPE YOU WILL NEVER NEED.

APPENDIX A

LEO 1886:

DUTY OF PARTNERS AND SUPERVISORY LAWYERS IN A LAW FIRM WHEN ANOTHER LAWYER IN THE FIRM SUFFERS FROM SIGNIFICANT IMPAIRMENT

Introduction

In this advisory opinion, the Committee analyzes the ethical duties of partners and supervisory lawyers in a law firm to take remedial measures when they reasonably believe another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public.fn1 The applicable Rule of Conduct is Rule 5.1 fn2 which requires partners or other lawyers in the firm with managerial authority to make reasonable efforts to ensure that all lawyers in the firm conform to the Virginia Rules of Professional Conduct.fn3 Lawyers in a firm may have an obligation under Rule 8.3 to report an impaired lawyer to the Virginia State Bar if the impaired lawyer has engaged in misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law. However, this opinion addresses the obligations of partners and supervisory attorneys to take precautionary measures before a lawyer's impairment has resulted in serious misconduct or a material risk to clients or the public. This opinion relies upon ABA Committee on Ethics and Professional Responsibility, Formal Opinion 03-429 (2003) [hereinafter ABA Formal Op. 03-429] for its approach to the issues raised by the mental impairment of a lawyer in a firm.

Scope of the Lawyer Impairment Problem

Studies report that lawyers experience depression, alcohol and other substance abuse at a rate much higher than other populations and 2 to 3 times the general population. Fn4 The incidence of alcohol abuse is higher among lawyers aged 30 or less. Fn5 Besides the potential lawyer impairment caused by substance abuse, the aging of the legal profession presents an increased incidence of cognitive impairment among lawyers. As of 2016, Virginia State Bar membership records revealed that of the 23,849 active members located in the Commonwealth, 8,366 or 35% are ages 55 or older. Fifteen percent of these attorneys or 3,584 members are 65 or over. These numbers reflect that Virginia's lawyers, like lawyers nationally, are moving into an older demographic profile, and they continue to practice as they age. Moreover, in the years ahead, the number of lawyers that will continue to practice law beyond the traditional retirement age will increase dramatically. Fn6 The substantial percentage of aging lawyers presents both opportunities and challenges for the state bars, and the scope and nature of the challenges and the best way to manage the challenges have been examined by bars around the country.

Question Presented

What are the ethical obligations of a partner or supervisory lawyer who reasonably believes another lawyer in the firm may be suffering from a significant impairment that poses a risk to clients or the general public?

Hypotheticals

James practices in a mid-sized law firm in a large metropolitan area. One day, a junior associate informs James that Bill, a senior associate, has a serious cocaine and alcohol problem. The information is credible, detailed, and alarming; it also points to the potential for trust fund violations or other misconduct associated with substance use. James has also received calls from

several clients complaining that Bill has missed appointments, appeared in court late, disheveled and smelling like alcohol, and has failed to return phone calls. Another client complains that Bill missed a filing deadline and placed the client in default. James has observed that Bill has problems remembering instructions, has difficulty completing familiar tasks, is challenged in problem solving at meetings, and experiences changes in mood and personality. When James confronts Bill about these issues, Bill denies having any substance abuse problems, attributes his work performance to stress caused by marital discord, and promises to improve.

George is a sixty-year old partner in a small, two lawyer firm. He has been honored many times for his lifelong dedication to family law and his expertise in domestic violence protective order cases. He has suffered a number of medical issues in the past several years and has been advised by his doctor to slow down, but George loves the pressure and excitement of being in the courtroom regularly. Recently, Rachelle, his long-time law partner, has noticed some lapses of memory and confusion that are not at all typical for George. He has started to forget her name, calling her Mary (his ex-wife's name), and mixing up details of the many cases he is currently handling. Rachelle is on very friendly terms with the J&DR court clerk, and has heard that George's behavior in court is increasingly erratic and sometimes just plain odd. Rachelle sees some other signs of what she thinks might be dementia in George, but hesitates to "diagnose" him and ruin his reputation as an extraordinarily dedicated attorney. Maybe he will decide to retire before things get any worse, she hopes.

Analysis

The Rules of Professional Conduct do not explicitly require lawyers to deal with an impaired lawyer in the law firm. However, Rule 5.1(a) requires that a firm have in place measures or

procedures to ensure that all lawyers, not just impaired ones, comply with the Rules of Professional Conduct. The measures required depend on the firm's size, structure and nature of its practice. Cmt. [3], Rule 5.1. It follows, therefore, that Rule 5.1 requires that the partner or supervisory lawyer make reasonable efforts to ensure that an impaired lawyer in the firm or under their supervisory authority does not violate the Rules of Professional Conduct. In addition to the requirement that the firm establish appropriate preventive policies and procedures, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the supervised lawyer conforms to the Rules of Professional Conduct. When a partner or supervising lawyer knows or reasonably believes that a lawyer under their direction and control is impaired, Rule 5.1(b) requires that they take reasonable steps to prevent the impaired lawyer from violating the Rules of Professional Conduct.

Impaired lawyers have the same ethical obligations as any other lawyer. Like all lawyers, an impaired lawyer owes a duty to represent a client competently and with diligence and to communicate with the client. A lawyer's impairment does not excuse the lawyer from compliance with the Rules of Professional Conduct. The lawyer's impairment may very well be the reason for the lawyer's failure to act competently or with diligence, or to communicate with the client. However, the lawyer's impairment is neither a defense to, nor an excuse for, those ethical breaches. Fn7

A lawyer whose physical or mental health "materially impairs" his capacity to represent clients has a duty to refrain or withdraw from representation. Rule 1.16(a)(2). Fn8 Unfortunately, the

impaired lawyer may not be cognizant of the scope and nature of the impairment, and does not recognize the need to withdraw from the representation.

As the ABA's Standing Committee on Ethics and Professionalism observed in ABA Formal Op. 03-429:

The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

The law firm may be able to work around or accommodate some impairment situations. For example, the firm might be able to reduce the impaired lawyer's workload, require supervision or monitoring, or remove the lawyer from time-sensitive projects. The impaired lawyer may not be capable of handling a jury trial but could serve in a supporting role performing research and drafting documents. Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, the firm may have an obligation to supervise the work performed by the impaired lawyer or may have a duty to prevent the lawyer from rendering legal services to clients of the firm, until the lawyer has recovered from the

impairment. The impaired lawyer's role might be restricted solely to giving advice to and drafting legal documents only for other lawyers in the firm who in turn can evaluate whether the impaired lawyer's work product can be used in furtherance of a client's interests.

In order to protect its clients, the firm should have an enforceable policy that would require, and a partner or supervising lawyer should insist, that the impaired lawyer seek appropriate assistance, counseling, therapy, or treatment as a condition of continued employment with the firm. For example, the firm could recommend, encourage or direct that the impaired lawyer contact Lawyers Helping Lawyers fn9 for an evaluation and assessment of his or her condition and referral to appropriate medical or mental health care professionals for treatment and therapy. Alternatively, making a confidential report to Lawyers Helping Lawyers may be an appropriate step for the firm. The firm or its managing lawyers might instead find it necessary or appropriate to consult with a professional medical or health care provider for advice on how to deal with and manage an impaired lawyer, including considering options for an "intervention" or other means of encouraging the lawyer to seek treatment or therapy.

In the first hypothetical, it is clear that James, as a managing partner in a law firm, and any other lawyer that has supervisory authority over the impaired lawyer, are required by Rule 5.1 to promptly make reasonable efforts to ensure that the impaired senior associate does not engage in any further conduct that breaches ethical duties owed to his clients. While the senior associate's past conduct might be considered violations of the Rules of Professional Conduct, only violations that raise a substantial question as to the violator's honesty, trustworthiness, or fitness as a lawyer must be reported. Rule 8.3(a). If James and any other supervising attorney have taken appropriate action to prevent the senior associate from engaging in further conduct that may violate the Rules

of Professional Conduct, and the senior associate is in recovery from his impairment, i.e., the condition that caused the violations has ended, there is nothing to report to the bar. If, for example, the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the Rules of Professional Conduct through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation. On the other hand, if the past conduct of the impaired lawyer involves dishonesty, i.e., embezzlement of client funds, or stealing firm funds or assets, James and any other lawyer in the firm that knows of such misconduct must report it to the bar under Rule 8.3(a). This would be required even if the violating lawyer was participating with Lawyers Helping Lawyers and in recovery. Fn10 The reporting duty under Rule 8.3(a), however, does not diminish the importance of making a confidential report to a lawyer assistance program such as Lawyers Helping Lawyers. Both reports fulfill important objectives. The report to the lawyer disciplinary agency is necessary to address the misconduct and protect the public. The report to the lawyer assistance program is necessary to address the underlying illness that may have caused the misconduct. In the end, both reports protect and serve the public interest.

If, on the other hand, the impaired lawyer's condition raises a substantial question about his ability to comply with the Rules of Professional Conduct, James and any lawyer with supervisory authority must make reasonable efforts to ensure that the clients' interests are protected. This could require removal of the senior associate from their cases, or restricting his role and placing him under close supervision.

Further, if reasonable measures or precautions have been taken by James and any other lawyers in the firm to ensure that the impaired lawyer complies with the Rules of Professional Conduct,

neither the partners or supervisory lawyers in the firm are ethically responsible for the impaired lawyer's professional misconduct, unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action. Rule 5.1 (c).

In the second hypothetical, it is not clear that George has committed any violation of the Rules of Professional Conduct. Obviously, George's impairment, unaccompanied by any professional misconduct, does not require any report to the bar under Rule 8.3(a). Yet his mental condition, as observed by his partner, Rachelle, would require that Rachelle make reasonable efforts to ensure that George does not violate his ethical obligations to his clients or violate any Rules of Professional Conduct. This would include, as an initial step, Rachelle or someone else having a confidential and candid conversation with George about his condition and persuading him to seek evaluation and treatment.

Approved by the Supreme Court of Virginia
December 15, 2016

1 This opinion seeks to address only the ethical obligations of lawyers in a law firm when faced with an impaired lawyer working in the firm. There may also be legal obligations to address in dealing with an impaired lawyer under the Americans with Disability Act, the Family Emergency Medical Leave Act and the Health Insurance Portability and Accountability Act, for example. These issues are beyond the purview of this committee and outside the scope of this opinion.

2 Rule 5.1 Responsibilities of Partners and Supervisory Lawyers

(a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

2. the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

3. the Committee is mindful that this opinion only addresses the duties of partners and supervisory lawyers pursuant to Rule 5.1 and does not consider a lawyer's ethical duties, if any, when dealing with a solo practitioner who suffers from a significant impairment.

4. Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,*

10 J. Addiction Medicine, Issue 2 (March/April 2016). See also ABA Formal Op. 03-429 (2003) (citing George Edward Bailly, Impairment, the Profession, and Your Law Partner, 11 No.1 Prof. Law. 2 (1999)).

5. *Id*. The Hazelton Betty Ford Foundation survey reported that one in five lawyers (20%) suffers from alcoholism and approximately 30% of the lawyer population suffer from depression.

6. Report, National Organization of Bar Counsel, Association of Professional Responsibility Lawyers Joint Committee on Aging Lawyers (May 2007) at 3.

7. ABA Formal Op. 03-429 (2003) (A lawyer's impairment does not excuse failure to meet a lawyer's duty to a client.). See also *Columbus Bar Ass'n v. Korda*, 760 N.E.2d 824 (Ohio 2002) (impaired lawyer who filed a brief on behalf of her clients but failed to take any further actions in the case suspended for failing to act diligently); *Attorney Grievance Comm'n v. Wallace*, 793 A.2d 535 (Md. 2001) (lawyer who claimed to be undergoing personal and psychological problems was disbarred for being negligent in his representation in six cases); *In re Sheridan*, 813 A.2d 449 (N.H. 2002) (impaired lawyer who failed to successfully file the articles of incorporation for his client and did not notify the client of his failure suspended for failing to communicate with his client); *In re Francis*, 4 P.3d 579 (Kan. 2000) (depressed lawyer failed to respond to client's request for information, misrepresented the status of the client's case to her, and failed to communicate the problems he was experiencing in providing representation); and *State v. Southern*, 15 P.3d 1 (Okla. 2000) (lawyer with B-12 deficiency publicly censured after failing to respond to requests for information from client and bar association).

8. *See, e.g., In re Taylor*, 959 P.2d 901 (Kan. 1998) (alcoholic lawyer failed to withdraw from representation although he had failed to appear in court on behalf of his clients or otherwise provide competent counsel); *see also State v. Southern*, 15 P.3d. at 8.

9. Lawyers Helping Lawyers ("LHL") is an independent, non-disciplinary and non-profit organization that has been assisting legal professionals and their families since 1985 deal with depression, addiction and cognitive impairment. LHL can assist law firms dealing with an impaired lawyer through a confidential environment by planning and implementing intervention, providing a free clinical evaluation, referral to appropriate medical and mental health care providers, peer support and group counseling, stablishing contracts to monitor and report recovery and rehabilitation and assist and identify financial resources for treatment. LHL is not affiliated with the Virginia State Bar and does not share information with anyone except and unless the participating lawyer expressly consents in writing to share information with third parties.

10. N. C. State Bar Ethics Op. 2013-8 (2014), Inquiry No. 3 (If an impaired lawyer has committed misconduct that a lawyer must report under Rule 8.3(a), a lawyer may not fulfill that reporting duty by reporting the impaired lawyer to a lawyers assistance program, but not the Attorney Grievance Committee of the State Bar).

Rule 5.1

Responsibilities Of Partners And Supervisory Lawyers

(a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(d) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. This includes members of a partnership and the shareholders in a law firm organized as a professional corporation; lawyers having managerial authority in the law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. See the "partner" definition in the Terminology section at the beginning of these Rules. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers.

(b)Paragraph (a) requires lawyers with a managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm, informal supervision and periodic review ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently

arise, more elaborate measures may be necessary. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners or those lawyers with managerial authority may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a lawyer having direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners of a private firm have at least indirect responsibility for all work being done by the firm, while a partner in charge of a particular matter ordinarily has responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner would depend on the immediacy of the partner's involvement and the seriousness of the misconduct. The supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

Virginia Code Comparison

There was no direct counterpart to this Rule in the Virginia Code. DR 1-103(A) provided that "[a] lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law in other respects, shall report such information to the appropriate professional authority . . . ."

Committee Commentary

The Committee adopted the language of ABA Model Rule 5.1 because lawyers who practice in firms should have an affirmative obligation to assure adherence to the Rules of Professional Conduct by those with whom they professionally associate.

The amendments effective January 1, 2004, in the rule heading, substituted

"Partners and Supervisory Lawyers" for "A Partner or Supervisory Lawyer"; in paragraph (a), inserted "or a lawyer who individually or together with other lawyers possesses managerial authority"; in paragraph (c)(2), inserted "or has managerial authority"; rewrote Comments [1], [3] – [5]; inserted new Comment [2].

Rule 1.16

Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is illegal or unjust;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (c).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of

such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

Comment

[1]A lawyer should not accept or continue representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal

[2]A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3]When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to proceed pro se.

[6] If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is illegal or unjust, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

Retention of Client Papers or File When Client Fails or Refuses to Pay Fees/Expenses Owed to Lawyer

[10] Paragraph (e) eschews a "prejudice" standard in favor of a more objective and easily-applied rule governing specific kinds of documents in the lawyer's files.

[11] The requirements of paragraph (e) should not be interpreted to require disclosure of materials where the disclosure is prohibited by law.

Virginia Code Comparison

Paragraph (a) is substantially the same as DR 2-108(A).

Paragraph (b) is substantially similar to DR 2-108(B) which provided that a lawyer "may withdraw from representing a client if: (1) Withdrawal can be effected without material prejudice to the client; or (2) The client persists in a course of conduct involving the lawyer's services that the lawyer reasonably believes is illegal or unjust; or (3) The client fails to fulfill an obligation to the lawyer regarding the lawyer's services and such failure continues after reasonable notice to the client; or (4) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client."

Paragraph (c) is identical to DR 2-108(C).

Paragraph (d) is based on DR 2-108(D), but does not address documents in the lawyer's files (which are handled under paragraph (e).

Paragraph (e) is new.

Committee Commentary

The provisions of DR 2-108 of the Virginia Code derived more from ABA Model Rule 1.16 than from its counterpart in the ABA Model Code, DR 2-110. Accordingly, the Committee generally adopted the ABA Model Rule, but substituted the "illegal or unjust" language from DR 2-108(B)(2) for the "criminal or fraudulent" language of the ABA Model Rule. Additionally, the Committee substituted the language of DR 2-108(C) for that of paragraph (c) of the ABA Model Rule to make it clear that a lawyer, in circumstances involving court proceedings, has an affirmative duty to request leave of court to withdraw. The Committee recommended paragraph (e) instead of a "prejudice" standard as being more easily understood and applied by lawyers.

The amendments effective January 1, 2004, in paragraph (e), first sentence, inserted "therefore, upon termination of the representation, those items" between "client and" and "shall," inserted "within a reasonable time" between "returned" and "to the client," and inserted "or the client's new counsel" between "the client" and "upon request; in paragraph (e), third sentence, substituted "Also upon termination," for "Upon request," inserted "upon request" between "the client" and "must also," inserted "within a reasonable time" between "provided" and "copies," inserted "transcripts" before the present word "pleadings," and inserted "or collected" between "prepared" and "for the client; in paragraph (e), added the last sentence; and added Comment [11].

Rule 8.3

Reporting Misconduct

(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.

(b) A lawyer having reliable information that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) If a lawyer serving as a third party neutral receives reliable information during the dispute resolution process that another lawyer has engaged in misconduct which the lawyer would otherwise be required to report but for its confidential nature, the lawyer shall attempt to obtain the parties' written agreement to waive confidentiality and permit disclosure of such information to the appropriate professional authority.

(d) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge who is a member of an approved lawyer's assistance program, or who is a trained intervenor or volunteer for such a program or committee, or who is otherwise cooperating in a particular assistance effort, when such information is obtained for the purposes of fulfilling the recognized objectives of the program.

(e) A lawyer shall inform the Virginia State Bar if:

(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;

(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court ;

(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.

The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can

uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. See Rule 1.6(c)(3).

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[3a] In court-related dispute resolution proceedings, a third party neutral cannot disclose any information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the proceeding. Mediation sessions are covered by another statute, which is less restrictive, covering "any communication made in or in connection with the mediation which relates to the controversy being mediated." Thus a lawyer serving as a mediator or third party neutral may not be able to discharge his or her obligation to report the misconduct of another lawyer if the reporting lawyer's information is based on information protected as confidential under the statutes. However, both statutes permit the parties to agree in writing to waive confidentiality.

[3b] The Rule requires a third party neutral lawyer to attempt to obtain the parties' written consent to waive confidentiality as to professional misconduct, so as to permit the lawyer to reveal information regarding another lawyer's misconduct which the lawyer would otherwise be required to report.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer or judge whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in or cooperation with an approved lawyers or judges assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such program. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The duty to report, therefore, does not apply to a lawyer who is participating in or cooperating with an approved lawyer assistance program such as the Virginia Bar Association's Committee on Substance Abuse and who learns of the confidences and secrets of another lawyer who is the object of a particular assistance effort when such information is obtained for the purpose of fulfilling the recognized objectives of the program. Such confidences and secrets are to be protected to the same extent as the confidences and secrets of a lawyer's

client in order to promote the purposes of the assistance program. On the other hand, a lawyer who receives such information would nevertheless be required to comply with the Rule 8.3 reporting provisions to report misconduct if the impaired lawyer or judge indicates an intent to engage in illegal activity, for example, the conversion of client funds to personal use.

[6] The duty of a lawyer to self-report a criminal conviction or professional discipline under paragraph (e) of this rule is triggered only after the conviction or decision has become final. Whether an offense is a felony shall be governed by the state, U.S. territory, District of Columbia or federal law under which the conviction is obtained. Thus, it is possible that an offense in another jurisdiction may be a misdemeanor crime for which there is no duty to self-report, even though under Virginia law the offense is a felony.

Virginia Code Comparison

Paragraph (a) is substantially similar to DR 1-103(A) when coupled with the reference to Rule 1.6 in paragraph (d). DR 1-103(A) stated: "A lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness to practice law in other respects, shall report such information to the appropriate professional authority, except as provided in DR 4-101."

Paragraph (c) has no counterpart in the Virginia Code.

With respect to paragraph (d), DR 1-103(B) effectively excluded from the disclosure requirements of DR 1-103(A) "any information gained in the performance of . . . duties" by "a lawyer who is a member of The Virginia Bar Association's Committee on Substance Abuse and/or who is a trained intervenor for the Committee."

Committee Commentary

These attorney misconduct reporting requirements do not differ substantially from those of the corresponding Disciplinary Rule, DR 1-103. Although paragraph (b), requiring the reporting of judicial misconduct, and paragraph (c), requiring reporting of lawyer misconduct by a third party neutral, have no counterpart in the Virginia Code, the Committee believed them to be appropriate additions. With respect to both paragraphs (a) and (b) and (c), the Committee believed that the phrase "reliable information" indicated more clearly than the ABA Model Rule's "knowledge" the sort of information which should support a report of attorney misconduct.

The amendments effective September 26, 2002, in the rule heading, deleted "Professional" before "Misconduct," in paragraph (a), substituted "to practice law" for "as a lawyer"; added paragraph (e); and added Comment [6].

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.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's work load should be controlled so that each matter can be handled adequately.

[2] Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategy in pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

[5] A lawyer should plan for client protection in the event of the lawyer's death, disability, impairment, or incapacity. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer's death, impairment, or incapacity.

Virginia Code Comparison

With regard to paragraph (a), DR 6-101(B) required that a lawyer "attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client." EC 6-4 stated that a lawyer should "give appropriate attention to his legal work." Canon 7 stated that "a lawyer should represent a client zealously within the bounds of the law."

Paragraphs (b) and (c) adopt the language of DR 7-101(A)(2) and DR 7-101(A)(3) of the Virginia Code.

Committee Commentary

The Committee added DR 7-101(A)(2) and DR 7-101(A)(3) from the Virginia Code as paragraphs (b) and (c) of this Rule in order to make it a more complete statement about fulfilling one's obligations to a client. Additionally, the Committee added the second paragraph to the Comment as a reminder to lawyers that there is often an appropriate collaborative component to zealous advocacy.

Appendix B

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 03-429 June 11, 2003

Obligations with Respect to
Mentally Impaired Lawyer in the Firm

If a lawyer's mental impairment is known to partners in a law firm or a lawyer having direct supervisory authority over the impaired lawyer, steps must be taken that are designed to give reasonable assurance that such impairment will not result in breaches of the Model Rules. If the mental impairment of a lawyer has resulted in a violation of the Model Rules, an obligation may exist to report the violation to the appropriate professional authority. If the firm removes the impaired lawyer in a matter, it may have an obligation to discuss with the client the circumstances surrounding the change of responsibility. If the impaired lawyer resigns or is removed from the firm, the firm may have disclosure obligations to clients who are considering whether to continue to use the firm or shift their relationship to the departed lawyer, but must be careful to limit any statements made to ones for which there is a factual foundation. The obligation to report a violation of the Model Rules by an impaired lawyer is not eliminated by departure of the impaired lawyer.

This opinion addresses three sets of obligations arising under the Model Rules of Professional Conduct[1] with respect to mentally impaired lawyers.[2] First, it considers the obligations of partners in a law firm[3] or a lawyer super-

1. This opinion is based on the Model Rules of Professional Conduct as amended by the ABA House of Delegates in February 2002 and, to the extent indicated, the predecessor Model Code of Professional Responsibility of the American Bar Association. The laws, court rules, regulations, rules of professional responsibility, and opinions promulgated in the individual jurisdictions are controlling.

2. This opinion deals only with mental impairment, which may be either temporary or permanent. Physical impairments are beyond the scope of this opinion unless they also result in the impairment of mental facilities. In addition to Alzheimer's Disease and other mental conditions that are age-related and can affect anyone, mental impairment can result from alcoholism and substance abuse, which lawyers have been found to suffer from at a rate at least twice as high as the general population. George Edward Bailly, *Impairment, The Profession and Your Law Partner,* 11 No. 1 PROF. LAW. 2 (1999).

3. The term "partners in the firm" includes every partner of a legal partnership and every shareholder of a law firm organized as a professional corporation, not just members of the firm's executive or management committee. Rule 5.1 cmt. 1.

vising another lawyer to take steps designed to prevent lawyers in the firm who may be impaired from violating the Rules of Professional Conduct. Second, it addresses the duty of a lawyer who knows[4] that another lawyer in the same firm has, due to mental impairment, failed to represent a client in the manner required by the Model Rules to inform the appropriate professional authority or to communicate knowledge of such violation to clients or prospective clients of the impaired lawyer.[5] Third, it considers the obligations of lawyers in the firm when an impaired lawyer leaves the firm.[6]

Impaired lawyers have the same obligations under the Model Rules as other lawyers. Simply stated, mental impairment does not lessen a lawyer's obligation to provide clients with competent representation. Thus, for example, the lawyer who has failed to act with diligence and promptness in representing a client,[7] or has failed to communicate with the client in an appropriate manner,[8] has violated the Model Rules even if that failure is the result of mental impairment.[9] The matter of a lawyer's impairment is most directly addressed under the Model Rules of Professional Conduct under Rule 1.16,

4. "Knows" denotes actual knowledge, which may be inferred from the circumstances. Rule 1.0(f).

5. This opinion does not deal with the issues that could arise for the firm vis-a-vis its responsibilities to accommodate an impaired lawyer under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (2003) (the "ADA"), or a state law equivalent, which protects disabled employees. Such statutes, although generally not applicable to equity partners in law firms, *see, e.g., Simpson v. Ernst & Young,* 100 F.3d 436, 443-44 (6th Cir. 1996), *cert. denied,* 520 U.S. 1248 (1997) (partners not protected as employees under federal antidiscrimination laws), may apply to non-equity partners, associates, in-house counsel, and of counsel. Thus, if a lawyer/employee is able to provide competent representation to a client if the firm provides the lawyer with a reasonable accommodation, the firm may have an obligation to maintain that lawyer's employment. For a discussion of an employer's obligations under the ADA, *see* HENRY H. PERRITT, JR., *Employer Obligations*, *in* AMERICANS WITH DISABILITIES ACT HANDBOOK § 4 (3rd ed. 1997). A number of documents discussing employers' obligations under the ADA are available on the Equal Employment Opportunity Commission website, http://www.eeoc.gov/publications.html.

6. This opinion does not deal with the potential fiduciary obligations or civil liability to clients of a firm with which the impaired lawyer is associated or with the issues that arise under a firm's partnership agreement if a lawyer is impaired. For a discussion of these issues, *see* Bailly, *supra*, note 2.

7. Rule 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

8. Rule 1.4, which requires a lawyer to reasonably consult with the client and keep the client reasonably informed about the status of the matter, contains numerous obligations that the impaired lawyer may have difficulty satisfying.

9. Although mental impairment is most likely to cause Rules 1.1, 1.3, and 1.4 to be violated, it also may result in violations of other Model Rules. This opinion assumes

that, but for his mental impairment, the lawyer would be able to comply with the requirements of all of the Model Rules.

which specifically prohibits a lawyer from undertaking or continuing to represent a client if the lawyer's mental impairment materially impairs the ability to represent the client.[10] Unfortunately, the lawyer who suffers from an impairment may be unaware of, or in denial of, the fact that the impairment has affected his ability to represent clients.[11] When the impaired lawyer is unable or unwilling to deal with the consequences of his impairment, the firm's partners and the impaired lawyer's supervisors have an obligation to take steps to assure the impaired lawyer's compliance with the Model Rules.

An impaired lawyer's mental condition may fluctuate over time. Certain dementias or psychoses may impair a lawyer's performance on "bad days," but not on "good days" during which the lawyer behaves normally. Substance abusers may be able to provide competent and diligent representation during sober or clean interludes, but may be unable to do so during short or extended periods in which the abuse recurs. If such episodes of impairment have an appreciable likelihood of recurring, lawyers who manage or supervise the impaired lawyer may have to conclude that the lawyer's ability to represent clients is materially impaired.

It also is important to understand that some disorders that may appear to be mental impairment (for example, Tourette's Syndrome), while causing overt conduct that appears highly erratic, may not interfere with competent, diligent legal representation such that they "materially impair" a lawyer's ability to represent his clients.

When considering what must be done when confronted with evidence of a lawyer's apparent mental disorder or substance abuse, it may be helpful for partners or supervising lawyers to consult with an experienced psychiatrist, psychologist, or other appropriately trained mental health professional.[12]

I. Obligations to Adopt Measures to Prevent Impaired Lawyers in the Firm from Violating the Model Rules

Although there is no explicit requirement under the Model Rules that a lawyer prevent another lawyer who is impaired from violating the Model Rules, Rule 5.1(a) requires that all partners in the firm and lawyers with comparable managerial authority in professional corporations, legal departments, and other organizations deemed to be a law firm[13] make "reasonable efforts" to establish internal policies and procedures[14] designed to provide "reasonable assurance" that all lawyers in the firm, not just lawyers known to be impaired, fulfill the requirements of the Model Rules. The measures required depend

10. Rule 1.16(a)(2).

11. Bailly, s*upra* note 2 at 12.

12. The extent to which information concerning the impaired lawyer may be communicated without his consent may be limited by the Americans with Disabilities Act, *supra* note 5.

13. Rule 1.0(c)
14. Rule 5.1, cmt. 2.

on the firm's size and structure and the nature of its practice.[15]

In addition to the requirement that the firm establish appropriate preventive policies and procedures, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the supervised lawyer conforms to the Model Rules. When a supervising lawyer knows that a supervised lawyer is impaired, close scrutiny is warranted because of the risk that the impairment will result in violations.

The firm's paramount obligation is to take steps to protect the interests of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer's impairment. Other steps may include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.[16]

Some impairments may be accommodated. A lawyer who, because of his mental impairment is unable to perform tasks under strict deadlines or other pressures, might be able to function in compliance with the Model Rules if he can work in an unpressured environment. In addition, the type of work involved, as opposed to the circumstances under which the work occurs, might need to be examined when considering the effect that an impairment might have on a lawyer's performance. For example, an impairment may make it impossible for a lawyer to handle a jury trial or hostile takeover competently, but not interfere at all with his performing legal research or drafting transaction documents. Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, management of the firm has an obligation to supervise the legal services performed by the lawyer and, in an appropriate case, prevent the lawyer from rendering legal services to clients of the firm.

If reasonable efforts have been made to institute procedures designed to assure compliance with the Model Rules, neither the partners in the firm nor the lawyer with direct supervisory authority are responsible for the impaired lawyer's violation of the rules unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action.[17]

15. The black letter of Rule 5.1(a) does not identify what constitutes a reasonable effort or reasonable assurance, but some examples of appropriate measures appear in Comment [3] of the Rule.

16. Rule 1.16(a)(2).

17. Rule 5.1(c). Failure to intervene to prevent avoidable consequences of a violation also may violate Rule 8.4(a), which provides that it is professional misconduct for a lawyer to knowingly assist another to violate the Model Rules.

II. Obligations When an Impaired Lawyer in the Firm has Violated the Model Rules

The partners in the firm or supervising lawyer may have an obligation under Rule 8.3(a) to report violations of the ethics rules by an impaired lawyer to the appropriate professional authority.[18] Only violations of the Model Rules that raise a substantial question as to the violator's honesty, trustworthiness, or fitness as a lawyer must be reported.[19] If the mental condition that caused the violation has ended, no report is required. Thus, if partners in the firm and the supervising lawyer reasonably believe that the previously impaired lawyer has resolved a short-term psychiatric problem that made the lawyer unable to represent clients competently and diligently, there is nothing to report.[20] Similarly, if the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the Model Rules through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation.[21] If, on the other hand, a lawyer's mental impairment renders the lawyer unable to represent clients competently, diligently, and otherwise as required by the Model Rules and he nevertheless continues to practice, partners in the firm or the supervising lawyer must report that violation.

If the matter in which the impaired lawyer violated his duty to act competently or with reasonable diligence and promptness still is pending, the firm may not simply remove the impaired lawyer and select a new lawyer to handle the matter. Under Rule 1.4(b), there may be a responsibility to discuss with the client the circumstances surrounding the change of responsibility. In

18. Rule 8.3(a) requires a lawyer who knows that another lawyer has committed a violation of the Model Rules that raises a substantial question as to that lawyer's fitness as a lawyer to inform the appropriate professional authority. Although a lawyer may satisfy her obligation under Rule 8.3 by disclosing the violation without identifying the impairment that caused the violation, in most cases, disclosure of the impairment will be appropriate. However, in doing so, the lawyer must be careful to avoid potential violations of the Americans With Disabilities Act.

19. Not every violation must be reported. Only those violations "that a self-regulatory profession must vigorously endeavor to prevent" must be reported, and judgment must be exercised in deciding whether prior violations fall into this category. Rule 8.3, cmt. 3.

20. N.Y.C. Opinion 1995-5 (April 5, 1995), *in* ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT § 1001:6404 (ABA/BNA 1998).

21. If such supervision exceeds that which would be required in the case of a lawyer who is not impaired, it would not be proper for the firm to charge the client for the additional level of supervision. Although it is appropriate to charge a client for normal supervisory activities related to the quality of the client work product, fees for additional steps taken by the supervising lawyer because of the firm's fear that an impaired lawyer's work would not be competent would not be reasonable under Rule 1.5(a) unless the

necessity for supervision and the fact that the client would be charged for it is communicated to, and agreed to by, the client. Rule 1.5(b).

discussions with the client, the lawyer must act with candor and avoid material omissions, but to the extent possible, should be conscious of the privacy rights of the impaired lawyer. Even if the matter in which the impaired lawyer violated the Model Rules no longer is pending, partners and lawyers in the firm with comparable managerial authority and lawyers with direct supervisory authority over the impaired lawyer may have obligations to mitigate any adverse consequences of the violation.[22]

III. Obligations When an Impaired Lawyer No Longer is in the Firm

The responsibility of the firm to the client does not end with the resignation from the firm, or the firm's termination of, the impaired lawyer. If the impaired lawyer resigns or is removed from the firm, clients of the firm may be faced with the decision whether to continue to use the firm or shift their relationship to the departed lawyer. Rule 1.4 requires the firm to advise existing clients of the facts surrounding the withdrawal to the extent disclosure is reasonably necessary for those clients to make an informed decision about the selection of counsel. In doing so, the firm must be careful to limit any statements made to ones for which there is a reasonable factual foundation.[23]

The firm has no obligation under the Model Rules to inform former clients who already have shifted their relationship to the departed lawyer that it believes the departed lawyer is impaired and consequently is unable to personally handle their matters competently.[24] However, the firm should avoid any communication with former clients who have transferred their representation to the departed lawyer that can be interpreted as an endorsement of the ability of the departed lawyer to handle the matter. For example, a joint letter from the firm and the departed lawyer regarding the transition could be seen as an implicit endorsement by the firm of the departed lawyer's competence.

In addition to considering what the firm may or must communicate to clients who are considering whether to take their representation to the departed lawyer, the firm must consider whether it has an obligation to report the

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22. Rule 5.1(c)(2).

23. If such a communication also is designed to convince the client to remain with the firm rather than follow the impaired lawyer who continues to practice, it must be drafted in such a manner that it does not violate either the prohibition of false and misleading communications about the firm's services under Rule 7.1 or the prohibition of deceit or misrepresentation under Rule 8.4(c). In addition, the potential for claims of tortious interference with contractual relationships and unfair competition should be considered.

24. See Philadelphia Bar Ass'n Prof. Guidance Committee Op. 00-12, 2000 WL 33173008 (Dec. 2000).

25. The "appropriate professional authority" need not be the state disciplinary authority. If available in the jurisdiction, a peer review agency may be more appropriate under the circumstances. Rule 8.3, cmt. 3.

impaired lawyer's condition to the appropriate disciplinary authority.[25]

No obligation to report exists under Rule 8.3(a) if the impairment has not resulted in a violation of the Model Rules. Thus, if the firm reasonably believes that it has succeeded in preventing the lawyer's impairment from causing a violation of a duty to the client by supplying the necessary support and supervision,[26] there would be no duty to report under Rule 8.3(a).[27]

Subject to the prohibition against disclosure of information protected by Rule 1.6, however, partners in the firm may voluntarily report to the appropriate authority its concern that the withdrawing lawyer will not be able to function without the ongoing supervision and support the firm has been providing.[28]

26. An obligation exists under Rule 5.1 to take reasonable efforts to prevent violations of the Model Rules by the impaired lawyer if firm management or a direct supervisor of the impaired lawyer is aware of the risk of violation posed by the impairment.

27. As noted in Bailly, s*upra*, note 2 at 15: "It would be the ultimate irony if a partner were suspended for not reporting his impaired partner, while the impaired partner was able to use mitigating circumstances in any disciplinary hearing against him."

28. Pennsylvania Bar Ass'n Committee on Legal Eth. Op. 98-124, 1998 WL 988111 (Dec. 7, 1988).

Appendix C

DURABLE SPECIAL POWER OF ATTORNEY
FOR ATTORNEY AT LAW REGARDING LAW PRACTICE
(PREPARED BY JOHN DOE, ATTORNEY AT LAW,
123 ANYWHERE STREET, RICHMOND, VIRGINIA 23228)

KNOW ALL MEN BY THESE PRESENTS: That I, JOHN DOE, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar Number is 00000, whose date of birth is September 5, 1927, of the County of Henrico, Virginia, presently residing at 123 Anywhere Street, Henrico, VA 23228, and whose law practice office address is 345 Barrister Lane, Henrico, Virginia 23228 (and who, for purposes of recordation is the "Grantor"), have made, constituted and appointed and by these presents, do make, constitute and appoint THOMAS R. JONES, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar number is 00001, as my true and lawful attorney-in-fact, referred to herein as "my lawyer attorney-in-fact", for the following limited purposes. I intend by this instrument to create a Durable Special Power of Attorney, to be used by my lawyer attorney-in-fact for purposes of dealing with my law practice, in the event of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf (for purposes of this instrument, my "law practice" is defined as
(HERE DESCRIBE THE NATURE AND EXTENT OF THE ENTITY OR ENTITIES INVOLVED, THE INTERESTS INVOLVED AND THE SPECIFIC ASSETS OR PROPERTY INVOLVED)

The affidavit of my lawyer attorney-in-fact that I have disappeared, am disabled, incapacitated or incompetent, shall be conclusive proof of the facts stated in such affidavit. In determining whether I have disappeared, am disabled, incapacitated, incompetent, or unable to act on my own behalf, my lawyer attorney-in-fact may act upon such evidence as my lawyer attorney-in-fact shall deem reasonably reliable, including, without limitation, communications with members of my family or other reliable sources, or written opinions of one or more medical doctors duly licensed to practice medicine. I hereby relieve my lawyer attorney-in-fact from any liability for actions taken in good faith under this instrument. All actions taken pursuant to this Durable Special Power of Attorney by my lawyer attorney-in-fact shall be taken in compliance with all applicable Virginia laws governing attorneys-at-law and all rules and regulations of the Virginia Supreme Court and the Virginia State Bar, including, without limitation, Rules of Professional Conduct adopted by the Virginia Supreme Court and Legal Ethics Opinions; to the extent that any provision of this Durable Special Power of Attorney should be in conflict with any such laws, rules, regulations, or legal ethics opinions, such laws, rules, regulations, or legal ethics opinions shall govern. This power of attorney and the authority of my said lawyer attorney-in-fact hereunder shall not terminate in the event of my disappearance, disability, incapacity, or incompetence, or because of lapse of time. My true and lawful lawyer attorney-in-fact is appointed to manage all property associated with my law practice, real and personal (when the term "property" is hereinafter used, it shall include, whenever applicable, both real and personal property, tangible, intangible and mixed, and any interest or right therein) and to act in and conduct all matters related to my law practice, and for that purpose and in my name, place and stead, and for my use and benefit, and as

my act and deed, to do and execute, or to concur with persons jointly interested with myself therein in the doing or executing of, all or any acts, deeds and things, that is to say:

(1) Power To Inventory And To Conduct His/Her Own Conflict Of Interest Check. To inventory all client case files and client property under my control, and to conduct his/her own conflict of interest check before delving into client files; in the event that my lawyer attorney-in-fact identifies such a conflict of interest, my lawyer attorney-in-fact shall appoint a Successor or Substitute lawyer attorney-in-fact as provided in paragraph 14 below, to deal with that file.

(2) Power To Notify Clients. To notify all of my clients of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf, and to take whatever action my lawyer attorney-in-fact deems advisable to protect the interests of my law practice and the interests of my clients, until such time as my clients have obtained substitute counsel or have engaged my lawyer attorney-in-fact as substitute counsel.

(3) Power To Safeguard Client's Files and Property. To safeguard client's files and property, and to deliver client's files and property as directed in writing by the clients, obtaining proper receipts therefor.

(4) Power To Deal With Financial Institutions. To open accounts for my law practice with, to add to, withdraw from, or close accounts for my law practice (including operating or general accounts, and attorney escrow or trust accounts) in financial institutions, including, without limitation, banks, trust companies, brokerage firms, mutual fund companies, or other institutions, or to draw upon any such financial institution, corporation, firm, association or individual for any sum or sums of money or other property to which I may be entitled as I might or could do; to execute and deliver any instruments, checks or other negotiable instruments with respect to the accounts with such financial institutions; to contract for any services rendered by such financial institutions; upon receipt of any checks, drafts, dividends, interest, income or moneys, to deposit the same in the appropriate account in my name in any financial institution;

(5) Power To Enter My Law Office. To enter my law office and to use the office equipment and supplies as necessary;

(6) Power Regarding Mail And Courier Deliveries. To receive, to sign for, and to open my law practice mail and courier deliveries and to process and respond to them, as necessary; To deal with the United States Postal Service;

(7) Power To Examine Files And Records. To examine files and records of my law practice and to obtain information as to any pending matters requiring attention;

(8) Power To Obtain Client Consent To Obtain Extensions Of Time. To obtain client consent to obtain extensions of time and to contact opposing counsel and courts/agencies to obtain extensions of time;

(9) Power To Apply For Extensions Of Time. To apply for extensions of time regarding any pending matters;

(10) Power To Prepare And File Accountings and Bills. To prepare and file or submit accountings and bills to my clients and others;

(11) Power To Preserve Client Confidences And Secrets. To preserve confidences and secrets of my clients and to protect the attorney-client privilege;

(12) Power To Screen Files For Conflicts Of Interest. To screen my client files for conflicts of interest on the part of my lawyer attorney-in-fact or any other attorney to whom a client is referred;

(13) Power To Mediate And Arbitrate. To submit to mediation and/or arbitration on my behalf;

(14) Power To Appoint Successor Or Substitute Lawyer Attorney-In-Fact. If my lawyer attorney-in-fact is unable or unwilling to act on my behalf under this instrument, either as to a specific matter, or overall, then my lawyer attorney-in-fact is empowered to appoint in writing another discreet and competent attorney-at-law licensed in the State of Virginia as a Successor or Substitute lawyer attorney-in-fact to act on my behalf, with full powers to act under the terms of this instrument;

(15) Power To Collect Accounts Receivable. To collect accounts receivable belonging to my law practice.

(16) Power To Deal With Creditors. To determine the nature and amounts of all claims of creditors, including clients, of my law practice and to deal appropriately with said creditors.

(17) Power To Sell My Law Practice. To sell my law practice, partially or in its entirety, including good will, in accordance with Rule 1.17 of the Rules of Professional Conduct. My lawyer attorney-in-fact is empowered to purchase my law practice, partially or in its entirety, but only if such purchase is pursuant to a written agreement entered into between my lawyer attorney-in-fact and me prior to my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf.

(18) Power To Request Appointment Of Receiver. If deemed necessary and appropriate in my lawyer attorney-in-fact's discretion, to seek the appointment of my lawyer attorney-in-fact or other discreet and competent attorney-at-law as receiver, in accordance with the provisions of Virginia Code Section 54.1¬3900.01.

(19) Power To Terminate Attorney-Client Relationship And To Appear Before Court Or Other Tribunal To Request Withdrawal Of Appearance. To terminate the attorney-client relationship with a client by proper notice to the client, and to appear before court or other tribunal to request withdrawal in a pending matter;

(20) Power To Sell, Encumber And Dispose Of Real and Personal Property. To sell, pledge or otherwise encumber or dispose of any real or personal property belonging to my law practice;

(21) Power To Purchase Real And Personal Property. To buy, or otherwise acquire, any property, including stocks, bonds, Treasury securities, or other investments, all in a prudent manner;

(22) Power To Invest And Manage. To invest or reinvest, lease or let, or otherwise manage any of the property of my law practice, real and personal, tangible and intangible; to make investments and re-investments on behalf of my law practice, being bound by the Prudent Investor Rule, including, without limitation, taking the following actions: exercising all rights with respect to investments which my law practice now owns or may hereafter acquire, including, without limitation, the right to buy, sell, grant security interests in, or otherwise deal with such investments; opening, establishing, utilizing, or closing investment and brokerage accounts; to sell, assign, endorse and transfer any stocks, bonds, options or other securities of any nature whatsoever standing in the name of my law practice, and to execute any and all documents necessary to effectuate the foregoing, including, without limitation, stock and/or bond powers and certificates, and affidavits of domicile;

(23) Power To Sue And Defend. To commence or carry on, or to defend, at law or in equity, all actions, suits or other proceedings touching my law practice, or touching anything in which my law practice may be in any wise concerned;

(24) Power To Demand And Receive. To demand, settle, collect, sue for, receive, enforce payment of, submit to arbitration or mediation, compromise, receive, give receipts or discharges for, or make such other appropriate disposition regarding such matters related to my law practice as my lawyer attorney-in-fact deems appropriate, of all moneys, rights to payment, property (real and personal, tangible and intangible), securities, debts, chattels, causes of action, or other property whatsoever now belonging or hereafter to belong to my law practice;

(25) Power To Settle, Compromise, Arbitrate Or Mediate. To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, causes of action or disputes between my law practice and any other person or entity, regardless of the identity of the person or entity involved;

(26) Power To Borrow. To make or endorse promissory notes, or to renew the same from time to time, without personal liability on the part of my lawyer attorney-in-fact;

(27) Power To Deal With Taxes And Tax Agencies. To inspect, prepare, execute or file income, information, or other tax returns or forms and to act on behalf of my law practice in dealing with any office of the Internal Revenue Service, any office of the Virginia Department of Taxation, or any office of any other tax department or agency in connection with any income, withholding, employment or other tax matters (including, without limitation: signing a waiver agreeing to a tax adjustment or an offer of waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund; signing a consent to extend the statutory time period for assessment or collection of a tax; signing a closing agreement under section 7121 of the Internal Revenue Code; receiving a refund check and negotiating it on behalf of my law practice; representing me at a conference with the tax agency; filing a written response on my behalf with the tax agency;

signing employment tax returns; receiving confidential tax information); designating in writing any other person or agent to act on my behalf regarding the foregoing tax matters;

(28) Power To Employ And Dismiss. To employ or dismiss agents, accountants, attorneys, or others, and to compensate them;

(29) Power Regarding Insurance. To apply for, take out, renew, maintain, pay premiums on, modify, make claims against, collect benefits from, surrender, or cancel fire, casualty, professional liability, or other liability insurance policies on me, on my lawyer attorney-in-fact, or any property of my law practice; to apply for, take out, renew, maintain, pay premiums on, modify, make claims against, take loans against, collect benefits from, surrender or cancel policies of disability insurance, long term care insurance, office overhead insurance, life insurance, or other insurance; the foregoing powers apply to private and public insurance plans, including, without limitation, Medicare, Medicaid, SSI, and Workers' Compensation;

(30) Power To Execute Instruments. Regarding my law practice, to execute, acknowledge or deliver in my name, or to sign my name to, any deed, contract, instrument, certificate or document, including giving all necessary covenants, warranties and assurances, and to sign, seal, acknowledge and deliver the same; to execute disclosures, disclaimers, affidavits or any other documents on my behalf;

(31) Power Regarding Safe Deposit Boxes. Regarding my law practice, to rent or surrender safe deposit boxes, and to enter any safe deposit boxes which I may now or hereafter have and to remove any of the contents therefrom or to place items therein;

(32) Power To Deal With Any Governmental Agency. Regarding my law practice, to act on my behalf in dealing with any governmental department or agency;

(33) Power To Resign As Fiduciary And To Appoint Successor Fiduciary. When authorized by the governing instrument, to resign any position which I may hold as fiduciary, and to appoint a successor fiduciary in my place and stead, including the appointment of my lawyer attorney-in-fact as such successor fiduciary.

(34) Power To Petition Court To Permit My Resignation as Fiduciary And For Appointment Of Substituted Or Successor Fiduciary. To petition the Court of appropriate venue and jurisdiction on my behalf to permit my resignation as fiduciary and to request the appointment of a substituted or successor fiduciary in my place and stead, including the appointment of my lawyer attorney-in-fact as such successor or substituted fiduciary;

(35) Power To Maintain, Repair, Or Demolish Property. To contract with and to pay contractors or workmen to maintain, make repairs to, or demolish any property which I may own in connection with my law practice;

(36) Power To Enforce Acceptance Of This Durable Special Power Of Attorney. To initiate any litigation that may be necessary in order to require third parties to recognize the validity of this power of attorney and to seek

damages, including punitive damages, for injury to me and my law practice because of any nonrecognition;

(37) Power To Coordinate And Cooperate With Any Other Fiduciary Acting On My Behalf. To coordinate and cooperate with any other attorney-in-fact or other fiduciary acting on my behalf, in order to carry out the powers conferred on my lawyer attorney-in-fact herein;

(38) Power To Notify Professional Liability Insurance Carriers. To notify any professional liability insurance carriers of my disappearance, disability, incapacity, incompetence, or inability to act on my own behalf, and to cooperate with such insurance carriers regarding matters related to my insurance coverage, including the addition of my lawyer attorney-in-fact as an insured under my policy or policies.

(39) Power To Request And To Receive Physical And Mental Health Information. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my lawyer attorney-in-fact, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of any and all mental or physical illness.

1. The authority given to my lawyer attorney-in-fact hereunder shall be in addition to, and shall not supersede any prior agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information.

2. The authority given to my lawyer attorney-in-fact has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

In addition to the other powers granted by this document, I grant to my lawyer attorney-in-fact the power and authority to serve as one of my personal representatives for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its regulations (HIPAA) during any time that my lawyer attorney-in-fact (hereinafter referred to in subsequent clauses of this paragraph as my "HIPAA personal representative") is exercising power under this document, EXCEPT THAT MY LAWYER ATTORNEY-IN-FACT IS NOT AUTHORIZED UNDER THIS POWER OF ATTORNEY INSTRUMENT TO MAKE ANY DECISIONS OR TO GIVE ANY DIRECTIONS REGARDING MY MENTAL AND/OR PHYSICAL CARE AND TREATMENT. Pursuant to HIPAA, I specifically authorize my lawyer attorney-in-fact, as my HIPAA personal representative for these limited purposes: to request, receive and review any information regarding my physical or mental health, including without limitation all HIPAA-protected health information, medical and hospital records; to execute on my behalf any authorizations, releases, or other documents that may be required in order to obtain this information and to consent to the disclosure of this information.

i. By signing this document, I specifically authorize my physician, hospital or health care provider to release any and all medical records to my lawyer attorney-in-fact, as my HIPAA personal representative for these limited purposes, or to my lawyer attorney-in-fact's written designee.

ii. My purpose in authorizing my lawyer attorney-in-fact to have access to my physical and mental health information and records is to enable my lawyer attorney-in-fact to carry out my lawyer attorney-in-fact's duties under this instrument, and not to authorize my lawyer attorney-in-fact to make any physical and/or mental health care decisions on my behalf.

(40) Power To Cooperate With Any Lawyer's Assistance Programs: To cooperate and consult with any confidential lawyer's assistance programs, such as Virginia Lawyers Helping Lawyers.

Except as otherwise limited in this instrument, I do give and grant unto my said lawyer attorney-in-fact full power and authority to do and perform all and every lawful act, deed, matter and thing whatsoever in and about my law practice and property associated with my law practice as effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the power herein granted regarding my law practice and not in limitation or definition thereof; and I hereby ratify all that my said lawyer attorney-in-fact shall lawfully do or cause to be done by virtue of these presents.

And I hereby declare that any act or thing lawfully done hereunder by my said lawyer attorney-in-fact shall be binding on me, and on my heirs, legal and personal representatives, and assigns, whether the same shall have been done before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by any party who, upon the faith of this instrument, accepts my said lawyer attorney-in-fact as authorized to represent me. I intend that this power of attorney be a substitute for the necessity of any court or agency proceeding to appoint a guardian, conservator, trustee, representative payee, receiver, or other similar fiduciary for my law practice, since I wish to avoid the necessity for such a proceeding; however, should it become necessary for the court or agency to appoint such a guardian, conservator, trustee, representative payee, receiver, or other fiduciary, I nominate my above named attorney-in-fact to be such guardian, conservator, trustee, representative payee, receiver, or other fiduciary. I intend that the agency created by this power of attorney shall not be subsumed, nullified, or in any way impaired by the court or agency appointment of such a guardian, trustee, conservator of my person or estate, representative payee, receiver, or any other similar fiduciary. I intend that any such fiduciary shall not be entitled to revoke, impair, or alter the agency relationship created by this power of attorney. I intend that, in accordance with the law of every state or other jurisdiction (including, in the Commonwealth of Virginia, the statutory provisions of Section 64.2-1606 of the Code of Virginia, 1950, as amended, regarding survival of powers of attorney after appointment of a guardian or conservator) this power of attorney shall continue in force after any such appointment, and shall in every respect be superior to and prevail over any such appointment, regardless of the jurisdiction appointing the guardian,

conservator, trustee, representative payee, receiver, or other fiduciary for the administration of my affairs regarding my law practice during my lifetime.

Any provision of the law to the contrary, no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to require my said lawyer attorney-in-fact to disclose any information relating to the actions taken or not taken by my said lawyer attorney-in-fact hereunder, and no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to inspect or to permit the inspection of the records maintained by my lawyer attorney-in-fact hereunder. Nonetheless, my lawyer attorney-in-fact may consent to the disclosure of such information and/or the inspection of such records if my lawyer attorney in fact is required to do so by court order or the order of the Virginia State Bar.

My lawyer attorney-in-fact shall be entitled to the payment of reasonable compensation from my law practice for the services which my lawyer attorney-in-fact renders under this instrument.

I reserve the right to amend in writing or to revoke this durable special power of attorney. This power of attorney may be revoked only by a document signed by me, expressly revoking this power of attorney, and recorded in the Clerk's Office of the Circuit Court of the County of Henrico, Virginia. The revocation of this power of attorney shall not affect the validity of any action taken by my said lawyer attorney-in-fact prior to the revocation. This power of attorney expressly supersedes and revokes all other durable special powers of attorney heretofore made by me regarding my law practice.

The actions authorized by this power of attorney are intended to create only the authority to act; this power of attorney is not intended to create any obligation to act on the part of my lawyer attorney-in-fact to act. My lawyer attorney-in-fact shall neither be liable for the failure to act nor for the failure to consider taking any of the actions authorized in this power of attorney. My lawyer attorney-in-fact, while acting in good faith, is released from any liability to me or my estate for any acts or failures to act of my lawyer attorney-in-fact, except for willful misconduct or gross negligence. I agree to indemnify and hold my lawyer attorney-in-fact harmless from any liability and expense, including attorney’s fees, that my lawyer attorney-in-fact may incur as a result of serving under this power of attorney, except for liability or expense arising from willful misconduct or gross negligence. This indemnification agreement does not extend to any acts, errors, or omissions of my lawyer attorney-in-fact while rendering or failing to render professional services in my lawyer attorney-in-fact’s capacity as attorney for my former clients, after such clients have become clients of my lawyer attorney-in-fact.

This power of attorney is granted in and shall be governed by the laws of the Commonwealth of Virginia; however, I intend that this power of attorney be universally recognized and that it be universally admissible to recordation.

The captions used in this Durable Special Power of Attorney have been used for ease of reference, and are not to be used for its interpretation.

By signing below, I indicate that I am emotionally and mentally competent to make this document, and that I understand the purpose and effect of this instrument. The signature of my lawyer attorney-in-fact is shown below. NOTHING FOLLOWS ON THIS PAGE.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____ , 2017.

_____ (SEAL)
JOHN DOE

_____ (SEAL)
THOMAS R. JONES, Lawyer Attorney-in-Fact

JOHN DOE signed the foregoing durable special power of attorney in my presence. I am a disinterested witness and I am not the spouse or a blood relative of JOHN DOE.

_____ _____
WITNESS WITNESS

STATE OF VIRGINIA
,to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, in the State of Virginia, do hereby certify that JOHN DOE, whose name is signed to the foregoing power of attorney dated this ___day of _____ , 2017 has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this _____day of January, 2017.

My commission expires: _____ My Notary Registration No.

_____

is: Notary Public

[NOTE TO USER: THIS AGREEMENT SHOULD BE USED IN CONJUNCTION WITH A LAST WILL AND TESTAMENT WHICH CONTAINS APPROPRIATE INCORPORATION BY REFERENCE LANGUAGE.]

AGREEMENT
FOR ATTORNEY AT LAW REGARDING LAW PRACTICE
(PREPARED BY JOHN DOE, ATTORNEY AT LAW, 345 BARRISTER LANE, RICHMOND, VIRGINIA 23228)

This Agreement is entered into this 26th day of January, 2017, by and between JOHN DOE, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar Number is 00000, and whose date of birth is September 5, 1927, of the County of Henrico, Virginia, presently residing at 123 Anywhere Street, Henrico, VA 23228, and whose law practice office address is 345 Barrister Lane, Henrico, Virginia 23228 (and who, for purposes of this Agreement is referred to as the "First Party"), and THOMAS R. JONES, a Virginia licensed attorney-at-law and member of the Virginia State Bar, whose Virginia State Bar number is 00001 (and who, for purposes of this Agreement is referred to as the "Second Party"). THOMAS R. JONES, JR., a Virginia licensed attorney-at-law, whose Virginia State Bar member number is 00999, is the Third Party to this Agreement, and is a party to this Agreement in a "stand-by" capacity. In the event of THOMAS R. JONES' disappearance, disability, incapacity, incompetence, inability to act on THOMAS R. JONES' own behalf, or THOMAS R. JONES' death, then THOMAS R. JONES, JR. shall succeed to all of rights, responsibilities, powers and obligations of Second Party hereunder; in the event that THOMAS R. JONES, JR. is so serving in THOMAS R. JONES' place and stead, then all references herein to Second Party shall be deemed to include THOMAS R. JONES, JR.

RECITATIONS AND AGREEMENT

1. First Party recognizes the importance of protecting the interests of First Party and of First Party's clients, in the event of First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or First Party's death.

2. First Party wishes to plan for the orderly handling of the law practice of the First Party, in the event of First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or First Party's death.

3. First Party has requested Second Party and Third Party to enter into this Agreement, to act in accordance with this Agreement regarding First Party's law practice, in the event of First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or First Party's death.

4. Second Party and Third Party are willing to enter into this Agreement with First Party.

5. First Party intends that this Agreement survive First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or First Party's death. First Party intends to incorporate the powers conferred upon Second Party herein, by

reference into First Party's Last Will and Testament, in which Last Will and Testament First Party intends to appoint Second Party as an Executor, and Third Party as a contingent Executor. First Party intends that Second Party (or Third Party, as the case may be), as Executor, will continue to exercise Second Party's powers hereunder.

6. First Party reserves the right, during First Party's lifetime, to revoke, amend, alter or modify this Agreement by a written instrument, other than a Last Will and Testament, delivered to Second Party, provided, however, that Second Party's duties hereunder shall not be increased and Second Party's rate of compensation hereunder shall not be decreased without Second Party's written consent.

7. Second Party and Third Party may resign hereunder during First Party's lifetime by a written instrument delivered to First Party.

8. For purposes of this Agreement, First Party's "law practice" is defined as:

(HERE DESCRIBE THE NATURE AND EXTENT OF THE ENTITY OR ENTITIES INVOLVED, THE INTERESTS INVOLVED AND THE SPECIFIC ASSETS OR PROPERTY INVOLVED)

_____

_____

_____

The affidavit of Second Party or Third Party that First Party has disappeared, is disabled, incapacitated or incompetent, is unable to act on First Party's own behalf, or is deceased shall be conclusive proof of the facts stated in such affidavit. The affidavit of Third Party that Second Party has disappeared, is disabled, incapacitated or incompetent, is unable to act on Second Party's own behalf, or is deceased shall be conclusive proof of the facts stated in such affidavit. In determining whether First Party has disappeared, is disabled, incapacitated, incompetent, is unable to act on First Party's own behalf, or is deceased, the Second Party or Third Party may act upon such evidence as Second Party or Third Party shall deem reasonably reliable, including, without limitation, communications with members of First Party's family or other reliable sources, or written opinions of one or more medical doctors duly licensed to practice medicine. First Party hereby relieves Second Party and Third Party from any liability for actions taken in good faith under this instrument. All actions taken pursuant to this Agreement by Second Party or Third Party shall be taken in compliance with all applicable Virginia laws governing attorneys- at-law and all rules and regulations of the Virginia Supreme Court and the Virginia State Bar, including, without limitation. Rules of Professional Conduct adopted by the Virginia Supreme Court and Legal Ethics Opinions; to the extent that any provision of this Agreement should be in conflict with any such laws, rules, regulations, or legal ethics opinions, such laws, rules, regulations, or legal ethics opinions shall govern. This Agreement and the authority of the Second Party or Third Party hereunder shall not terminate in the event of First Party's disappearance, disability, incapacity, or incompetence, inability of First Party to act on First Party's own behalf, or First Party's death. Second Party and Third Party agrees to manage all property associated with First Party's law practice, real and personal (when the term "property" is hereinafter used, it shall include, whenever applicable, both real and personal property, tangible, intangible and mixed, and any interest or right therein) and to act in and conduct all matters related to First Party's law practice, and for that purpose and in First Party's name, place and stead, and for First Party's use and benefit, and as First Party's act and deed, to do and execute, or to concur with persons jointly

interested with First Party therein in the doing or executing of, all or any acts, deeds and things, that is to say:

(a) Power To Inventory And To Conduct His/Her Own Conflict Of Interest Check. To inventory all client case files and client property under First Party's control, and to conduct his/her own conflict of interest check before delving into client files; in the event that Second Party identifies such a conflict of interest, Second Party shall appoint a Successor or Substitute as provided in paragraph 14 below, to deal with that file.

(b) Power To Notify Clients. To notify all of First Party's clients of First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or First Party's death, and to take whatever action Second Party deems advisable to protect the interests of First Party's law practice and the interests of First Party's clients, until such time as First Party's clients have obtained substitute counsel or have engaged Second Party as substitute counsel.

(c) Power To Safeguard Clients' Files and Property. To safeguard client's files and property, and to deliver client's files and property as directed in writing by the clients, obtaining proper receipts therefor.

(d) Power To Deal With Financial Institutions. To open accounts for First Party's law practice with, to add to, withdraw from, or close accounts for First Party's law practice (including operating or general accounts, and attorney escrow or trust accounts) in financial institutions, including, without limitation, banks, trust companies, brokerage firms, mutual fund companies, or other institutions, or to draw upon any such financial institution, corporation, firm, association or individual for any sum or sums of money or other property to which First Party may be entitled as First Party might or could do; to execute and deliver any instruments, checks or other negotiable instruments with respect to the accounts with such financial institutions; to contract for any services rendered by such financial institutions; upon receipt of any checks, drafts, dividends, interest, income or moneys, to deposit the same in the appropriate account in First Party's name in any financial institution;

(e) Power To Enter First Party's Law Office. To enter First Party's law office and to use the office equipment and supplies as necessary;

(f) Power Regarding Mail And Courier Deliveries. To receive, to sign for, and to open First Party's law practice mail and courier deliveries and to process and respond to them, as necessary; To deal with the United Postal Service;

(g) Power To Examine Files And Records. To examine files and records of First Party's law practice and to obtain information as to any pending matters requiring attention;

(h) Power To Obtain Client Consent To Obtain Extensions Of Time. To obtain client consent to obtain extensions of time and to contact opposing counsel and courts/agencies to obtain extensions of time;

(i) Power To Apply For Extensions Of Time. To apply for extensions of time regarding any pending matters;

(j) Power To Prepare And File Accountings and Bills. To prepare and file or submit accountings and bills to First Party's clients and others;

(k) Power To Preserve Client Confidences And Secrets. To preserve confidences and secrets of First Party's clients and to protect the attorney-client privilege;

(l) Power To Screen Files For Conflicts Of Interest. To screen First Party's client files for conflicts of interest on the part of Second Party or any other attorney to whom a client is referred;

(m) Power To Mediate And Arbitrate. To submit to mediation and/or arbitration on First Party's behalf;

(n) Power To Appoint Successor Or Substitute. If Second Party is unable or unwilling to act on First Party's behalf under this instrument, either as to a specific matter, or overall, then Second Party is empowered to appoint in writing another discreet and competent attorney-at-law licensed in the State of Virginia as a Successor or Substitute to act on First Party's behalf, with full powers to act under the terms of this Agreement;

(o) Power To Collect Accounts Receivable. To collect accounts receivable belonging to First Party's law practice;

(p) Power To Deal With Creditors. To determine the nature and amounts of all claims of creditors, including clients, of First Party's law practice and to deal appropriately with said creditors;

(q) Power To Sell First Party's Law Practice. To sell First Party's law practice, partially or in its entirety, including good will, in accordance with Rule 1.17 of the Rules of Professional Conduct. Second Party is empowered to purchase First Party's law practice, partially or in its entirety, but only if the purchase price paid is the fair market value of First Party's law practice, as determined by an independent third party;

(r) Power To Request Appointment Of Receiver. If deemed necessary and appropriate in Second Party's discretion, to seek the appointment of Second Party or other discreet and competent attorney-at-law as receiver, in accordance with the provisions of Virginia Code Section 54.1- 3900.01;

(s) Power To Terminate Attorney-Client Relationship And To Appear Before Court Or Other Tribunal To Request Withdrawal Of Appearance. To terminate the attorney-client relationship with a client by proper notice to the client, and to appear before court or other tribunal to request withdrawal in a pending matter;

(t) Power To Sell, Encumber And Dispose Of Real and Personal Property. To sell, pledge or otherwise encumber or dispose of any real or personal property belonging to First Party's law practice;

(u) Power To Purchase Real And Personal Property. To buy, or otherwise acquire, any property, including stocks, bonds. Treasury-securities, or other investments, all in a prudent manner;

(v) Power To Invest And Manage. To invest or reinvest, lease or let, or otherwise manage any of the property of First Party's law practice, real and personal, tangible and intangible; to make investments and re-investments on behalf of First Party's law practice, being bound by the Prudent Investor Rule, including, without limitation, taking the following actions: exercising all rights with respect to investments which First Party's law practice now owns or may hereafter acquire, including, without limitation, the right to buy, sell, grant security interests in, or otherwise deal with such investments; opening, establishing, utilizing, or closing investment and brokerage accounts; to sell, assign, endorse and transfer any stocks, bonds, options or other securities of any nature whatsoever standing in the name of my First Party's law practice, and to execute any and all documents necessary to effectuate the foregoing, including, without limitation, stock and/or bond powers and certificates, and affidavits of domicile;

(w) Power To Sue And Defend. To commence or carry on, or to defend, at law or in equity, all actions, suits or other proceedings touching First Party's law practice, or touching anything in which First Party's law practice may be in any wise concerned;

(x) Power To Demand And Receive. To demand, settle, collect, sue for, receive, enforce payment of, submit to arbitration or mediation, compromise, receive, give receipts or discharges for, or make such other appropriate disposition regarding such matters related to First Party's law practice as Second Party deems appropriate, of all moneys, rights to payment, property (real and personal, tangible and intangible), securities, debts, chattels, causes of action, or other property whatsoever now belonging or hereafter to belong to First Party's law practice;

(y) Power To Settle, Compromise, Arbitrate Or Mediate. To settle or compromise, or submit to arbitration or mediation, all debts, taxes, accounts, claims, causes of action or disputes between First Party's law practice and any other person or entity, regardless of the identity of the person or entity involved;

(z) Power To Borrow. To make or endorse promissory notes, or to renew the same from time to time, without personal liability on the part of Second Party;

(aa) Power To Deal With Taxes And Tax Agencies. To inspect, prepare, execute or file income, information, or other tax returns or forms and to act on behalf of First Party's law practice in dealing with any office of the Internal Revenue Service, any office of the Virginia Department of Taxation, or any office of any other tax department or agency in connection with any income, withholding, employment or other tax matters (including, without limitation: signing a waiver agreeing to a tax adjustment or an offer of waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund; signing a consent to extend the statutory time period for assessment or collection of a tax; signing a closing agreement under section 7121 of the Internal Revenue Code; receiving a refund check and negotiating it on behalf of First Party's law practice; representing First Party at a conference with the tax agency; filing a written response on First Party's behalf with the tax agency; signing employment tax returns; receiving confidential tax

information); designating in writing any other person or agent to act on First Party's behalf regarding the foregoing tax matters;

(bb) Power To Employ And Dismiss. To employ or dismiss agents, accountants, attorneys, or others, and to compensate them;

(cc) Power Regarding Insurance. To apply for, take out, renew, maintain, pay premiums on, modify, make claims against, collect benefits from, surrender, or cancel fire, casualty, professional liability, or other liability insurance policies on First Party, on Second Party, or any property of First Party's law practice; to apply for, take out, renew, maintain, pay premiums on, modify, make claims against, take loans against, collect benefits from, surrender or cancel policies of disability insurance, long term care insurance, office overhead insurance, life insurance, or other insurance; the foregoing powers apply to private and public insurance plans, including, without limitation, Medicare, Medicaid, SSI, and Workers Compensation;

(dd) Power To Execute Instruments. Regarding First Party's law practice, to execute, acknowledge or deliver in First Party's name, or to sign First Party's name to, any deed, contract, instrument, certificate or document, including giving all necessary covenants, warranties and assurances, and to sign, seal, acknowledge and deliver the same; to execute disclosures, disclaimers, affidavits or any other documents on First Party's behalf;

(ee) Power Regarding Safe Deposit Boxes. Regarding First Party's law practice, to rent or surrender safe deposit boxes, and to enter any safe deposit boxes which First Party may now or hereafter have and to remove any of the contents therefrom or to place items therein;

(ff) Power To Deal With Any Governmental Agency. Regarding First Party's law practice, to act on First Party's behalf in dealing with any governmental department or agency;

(gg) Power To Resign As Fiduciary And To Appoint Successor Fiduciary. When authorized by the governing instrument, to resign any position which First Party may hold as fiduciary, and to appoint a successor fiduciary in First Party's place and stead, including the appointment of Second Party as such successor fiduciary;

(hh) Power To Petition Court To Permit First Party's Resignation as Fiduciary And For Appointment Of Substituted Or Successor Fiduciary. To petition the Court of appropriate venue and jurisdiction on First Party's behalf to permit First Party's resignation as fiduciary and to request the appointment of a substituted or successor fiduciary in First Party's place and stead, including the appointment of Second Party as such successor or substituted fiduciary;

(ii) Power To Maintain, Repair, Or Demolish Property. To contract with and to pay contractors or workmen to maintain, make repairs to, or demolish any property which First Party may own in connection with First Party's law practice;

(jj) Power To Enforce Acceptance Of Agreement. To initiate any litigation that may be necessary in order to require third parties to recognize the validity of this Agreement and to seek damages, including punitive damages, for injury to First Party and First Party's law practice because of any nonrecognition;

(kk) Power To Coordinate And Cooperate With Any Other Fiduciary Acting On First Party's Behalf. To coordinate and cooperate with any other fiduciary acting on First Party's behalf, in order to carry out the powers conferred on Second Party herein;

(ll) Power To Notify Professional Liability Insurance Carriers. To notify any professional liability insurance carriers of First Party's disappearance, disability, incapacity, incompetence, inability to act on First Party's own behalf, or death, and to cooperate with such insurance carriers regarding matters related to First Party's insurance coverage, including the addition of Second Party as an insured under said policy or policies.

(mm) Power To Request And To Receive Physical And Mental Health Information. First Party authorizes any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to First Party or that has paid for or is seeking payment from First Party for such services, to give, disclose, and release to Second Party, without restriction, all of First Party's individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of any and all mental or physical illness.

(i) The authority given to Second Party hereunder shall be in addition to, and shall not supersede any prior agreement that First Party may have made with First Party's health care providers to restrict access to or disclosure of First Party's individually identifiable health information.

(ii) The authority given to Second Party has no expiration date and shall expire only in the event that First Party revokes the authority in writing and deliver it to First Party's health care provider.

In addition to the other powers granted by this document, First Party grants to Second Party the power and authority to serve as one of First Party's personal representatives for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its regulations (HIPAA) during any time that Second Party (hereinafter referred to in subsequent clauses of this paragraph as First Party's "HIPAA personal representative") is exercising power under this document, EXCEPT THAT THE SECOND PARTY IS NOT AUTHORIZED UNDER THIS AGREEMENT TO MAKE ANY DECISIONS OR TO GIVE ANY DIRECTIONS REGARDING FIRST PARTY'S MENTAL AND/OR PHYSICAL CARE AND TREATMENT.

(1) Pursuant to HIPAA, First Party specifically authorizes Second Party, as First Party's HIPAA personal representative for these limited purposes: to request, receive and review any information regarding First Party's physical or mental health, including without limitation all HIPAA-protected health information, medical and hospital

records; to execute on First Party's behalf any authorizations, releases, or other documents that may be required in order to obtain this information and to consent to the disclosure of this information.

(2) By signing this document, First Party specifically authorizes First Party's physician, hospital or health care provider to release any and all medical records to Second Party, as First Party's HIPAA personal representative for these limited purposes, or to Second Party's written designee.

(3) First Party's purpose in authorizing Second Party to have access to First Party's physical and mental health information and records is to enable Second Party to carry out Second Party's duties under this Agreement, and not to authorize Second Party to make any physical and/or mental health care decisions on First Party's behalf.

(40) Power To Cooperate With Any Lawyer's Assistance Programs: To cooperate and consult with any confidential lawyer's assistance programs, such as Virginia Lawyers Helping Lawyers.

Except as otherwise limited in this instrument, First Party does give and grant unto Second Party full power and authority to do and perform all and every lawful act, deed, matter and thing whatsoever in and about First Party's law practice and property associated with First Party's law practice as effectually to all intents and purposes as First Party might or could do in First Party's own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the powers herein granted regarding First Party's law practice and not in limitation or definition thereof; and First Party hereby ratifies all that Second Party shall lawfully do or cause to be done by virtue of these presents. And First Party hereby declares that any act or thing lawfully done hereunder by Second Party shall be binding on First Party, and on First Party's heirs, legal and personal representatives, and assigns, whether the same shall have been done before or after First Party's death, or other revocation of this Agreement, unless and until reliable intelligence or notice thereof shall have been received by any party who, upon the faith of this instrument, accepts Second Party as authorized to represent First Party. First Party intends that this Agreement be a substitute for the necessity of any court or agency proceeding to appoint a guardian, conservator, trustee, representative payee, receiver, or other similar fiduciary for First Party's law practice, since First Party wishes to avoid the necessity for such a proceeding; however, should it become necessary for the court or agency to appoint such a guardian, conservator, trustee, representative payee, receiver, or other fiduciary, First Party nominates Second Party to be such guardian, conservator, trustee, representative payee, receiver, or other fiduciary. First Party intends that the powers conferred under this Agreement shall not be subsumed, nullified, or in any way impaired by the court or agency appointment of such a guardian, trustee, conservator of First Party's person or estate, representative payee, receiver, or any other similar fiduciary. First Party intends that any such fiduciary shall not be entitled to revoke, impair, or alter this Agreement.

Any provision of the law to the contrary, no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to require Second Party to disclose any information relating to the actions taken or not taken by Second Party

hereunder, and no person or entity (other than a court of competent jurisdiction and the Virginia State Bar) shall have the authority to inspect or to permit the inspection of the records maintained by Second Party hereunder. Nonetheless, Second Party may consent to the disclosure of such information and/or the inspection of such records if Second Party in fact is required to do so by court order or the order of the Virginia State Bar.

Second Party shall be entitled to the payment of reasonable compensation from First Party's law practice for the services which Second Party renders under this Agreement.

The actions authorized by this Agreement are intended to create only the authority to act; this Agreement is not intended to create any obligation to act on the part of Second Party. Second Party shall neither be liable for the failure to act nor for the failure to consider taking any of the actions authorized in this Agreement. Second Party, while acting in good faith, is released from any liability to First Party or First Party's estate for any acts or failures to act of Second Party, except for willful misconduct or gross negligence. First Party agrees to indemnify and hold Second Party harmless from any liability and expense, including attorney's fees, that Second Party may incur as a result of serving under this Agreement, except for liability or expense arising from willful misconduct or gross negligence. This indemnification agreement does not extend to any acts, errors, or omissions of Second Party while rendering or failing to render professional services in Second Party's capacity as attorney for First Party's former clients, after such clients have become clients of Second Party.

This Agreement is entered into and shall be governed by the laws of the Commonwealth of Virginia; however, First Party intends that this Agreement be universally recognized and that it be universally admissible to recordation.

The captions used in this Agreement have been used for ease of reference, and are not to be used for its interpretation. NOTHING FOLLOWS ON THIS PAGE.

IN WITNESS WHEREOF, First Party and Second Party have hereunto set their hands and seals this the _____ day of_____, 2017.

_____ (SEAL)
JOHN DOE, FIRST PARTY

_____ (SEAL)
THOMAS R. JONES, SECOND PARTY

_____ (SEAL)
THOMAS R. JONES, JR., THIRD PARTY

STATE OF VIRGINIA

,to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, in the State of Virginia, do hereby certify that JOHN DOE, whose name is signed to the foregoing Agreement dated the ____ day of _____ , 2017 has acknowledged the same before me in my jurisdiction aforesaid. Given under my hand this day of _____ , 2017.

My commission expires:

My Notary Registration Number is: .

_____
Notary Public

[NOTE TO USER: THIS WILL PROVISION SHOULD BE USED IN CONJUNCTION WITH AGREEMENT FOR ATTORNEY AT LAW REGARDING LAW PRACTICE.]

[EXTRACT]

ARTICLE TWELVE
APPOINTMENT OF EXECUTOR

I nominate and appoint my spouse, MARY DOE, of Henrico County, Virginia, and my attorney, THOMAS R. JONES, of Richmond, Virginia, as Executors of this my Last Will and Testament. I waive security on the bond of my Executors. My Executors shall be entitled to reasonable compensation for their services at the time that their services are rendered.

I confer upon my Executors those powers contained in Virginia Code Section 64.2-105 as in effect on the date of execution of this Last Will and Testament, which code section is incorporated herein in its entirety by this reference. Because of the fact that orderly planning for dealing with my law practice is of great importance to me and to my clients, I have entered into an Agreement, dated January 26, 2017, regarding my law practice, in which Agreement I am referred to as First Party, and in which Agreement THOMAS R. JONES is referred to as Second Party. I hereby incorporate said Agreement in its entirety into this Last Will and Testament, and I confer upon THOMAS R. JONES as Executor those powers conferred upon Second Party in said Agreement, it being my intention that in my so doing, the terms and conditions of said Agreement will survive my death. In the event that THOMAS R. JONES should predecease me, be unable or unwilling to serve as Executor, or should begin serving and not complete the

service, I nominate and appoint THOMAS R. JONES, JR., attorney at law, in his place and stead, and I confer the foregoing powers upon him, including the powers under the referenced Agreement.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 15th day of December 2016.

On October 24, 2016 came the Virginia State Bar, by Michael W. Robinson, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Section IV, Paragraph 13-24 of the Rules of Integration of the Virginia State Bar, Part Six of the Rules of Court, be amended.

Amend Part Six, Section IV, Paragraph 13-24 to read as follows:

13. Procedure for Disciplining, Suspending, and Disbarring Attorneys.

* * *

13-24. BOARD PROCEEDINGS UPON DISBARMENT, REVOCATION OR SUSPENSION IN ANOTHER JURISDICTION.

A. Definitions Specific to Paragraph 13-24. The following terms shall have the meaning set forth below unless the content clearly requires otherwise:

1. "State Jurisdiction" means any state, United States Territory, or District of Columbia law licensing or attorney disciplinary authority, including the highest court of any such Jurisdiction, authorized to impose attorney discipline effective throughout the Jurisdiction.
2. "Jurisdiction" shall refer to either a "State Jurisdiction" or any federal court or agency authorized to discipline attorneys, including the United States military.

B. Initiation of Proceedings. Upon receipt of a notice from the Clerk of the Disciplinary System that another Jurisdiction has, as a disciplinary measure, suspended or revoked the law license of an Attorney ("Respondent") or has suspended or revoked Respondent's privilege to practice law in that Jurisdiction, and that such action has

become final (the "Suspension or Revocation Notice"), any Board member shall enter on behalf of the Board an order requiring Respondent to show cause why discipline that is the same or equivalent to the discipline imposed in the other Jurisdiction should not be imposed by the Board. If the Suspension or Revocation Notice is from a State Jurisdiction and the suspension or revocation has not been suspended or stayed, then the Board's order shall suspend Respondent's License pending final disposition of the Proceeding hereunder. The Board shall serve upon Respondent by certified mail the following: a copy of the Suspension or Revocation Notice; a copy of the Board's order; and a notice fixing the date, time and place of the hearing before the Board to determine what action should be taken in response to the Suspension or Revocation Notice and stating that the purpose of the hearing is to provide Respondent an opportunity to show cause why the same or equivalent discipline that was imposed in the other Jurisdiction should not be imposed by the Board. Notwithstanding the above, notice of a suspension or revocation for merely administrative reasons, such as the failure to pay dues or the failure to complete required continuing legal education, shall not be considered a Suspension or Revocation Notice.

C. Opportunity for Response. Within 14 days of the date of mailing of the Board order, via certified mail, to Respondent's last address of record with the Bar, Respondent shall file with the Clerk of the Disciplinary System a written response, which shall be confined to argument and exhibits supporting one or more of the following grounds for dismissal or imposition of lesser discipline:

1. The record of the proceeding in the other Jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
2. The imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice;
3. The same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; or
4. The misconduct found in the other Jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

D. Scheduling and Continuance of Hearing. Unless continued by the Board for good cause, the hearing shall be set not less than 21 nor more than 30 days after the date of the Board's order.

E. Provision of Copies. The Clerk of the Disciplinary System shall furnish to the Board members designated for the hearing and make available to Respondent copies of the Suspension or Revocation Notice, the Board's order against the Respondent, the notice of hearing, any notice of continuance of the hearing, and any written response or materials filed by Respondent or by Bar Counsel.

F. Hearing Procedures. Insofar as applicable, the procedures for Proceedings on allegations of Misconduct shall govern. Bar Counsel has discretion to put forth evidence and argument that one or more of the grounds specified in Paragraph 13-24.0 exists. If Respondent does not file a timely written response, but appears at the hearing and expresses intent to present evidence or argument supporting the existence of one or more of the grounds specified in Paragraph 13-24.C, Respondent shall make a proffer to the Board. The Board may refuse to consider such evidence or argument as untimely. If the Board in its discretion is willing to consider such evidence or argument, then Bar Counsel, upon motion, may be entitled to a continuance.

G. Burden of Proof. The burden of proof to establish the existence of one or more of the grounds specified in Paragraph 13-24.0 is clear and convincing evidence. Unless one or more of the grounds specified in Paragraph 13-24.0 has been established by clear and convincing evidence, the Board shall conclude that Respondent was afforded due process by the other Jurisdiction and the findings of the other Jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.

H. Action by the Board. If the Board determines that none of the grounds specified in Paragraph 13-24.0 exist by clear and convincing evidence, it shall impose the same or equivalent discipline as imposed in the other Jurisdiction. If the Board finds by clear and convincing evidence the existence of one or more of the grounds specified in Paragraph 13-24.C, the Board shall enter an order it deems appropriate. A copy of any order imposing discipline shall be served upon Respondent via certified mail, return receipt requested. Any such order shall be final and binding, subject only to appeal as set forth in the Rules of Court.

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective March 1, 2017.

A Copy,

Teste:

Clerk