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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION PUBLIC MATTER		
Counsel For The State Bar Terese Laubscher Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1239 Bar # 272207	Case Number(s): 14-C-06011 17-J-06873 17-O-07338	For Court use only <div style="text-align: center;"> FILED <i>EE</i> APR 03 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent John L. Romaker 17418 Tam O'Shanter Dr Poway, CA 92064-1327 (858) 413-5058 Bar # 137933	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: GEORGE FREDRICK BRAUN Bar # 141952 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 11, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles following the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See Attachment at page 9-10.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at page 9.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. **See Attachment at page 10.**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline, see page 10.
Pretrial Stipulation, see page 10.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **sixty (60) days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

- (10) The following conditions are attached hereto and incorporated:

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- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) **Other Conditions:**

8. Respondent and the Assistant Commonwealth Attorney negotiated a plea agreement whereby the defendant would enter a plea of guilty to violating Arlington County Code section 17-13 [Failure to ID], a misdemeanor, with an agreed sentence of 30 days in jail with all of that time suspended for a period of one year, conditioned on good behavior and court costs.

9. Later that morning, the defendant's case was called by the judge. Respondent, on the record, entered an Appearance of Counsel on behalf of the defendant. The judge advised the defendant of his rights, and made a finding that the defendant was voluntarily entering into the plea agreement. In exchange for the defendant's plea of guilty to the Failure to ID charge, the court dismissed the Drunk in Public charge. Respondent and the defendant executed a waiver of appeal and provided it to the court.

10. Following the hearing, an Assistant Commonwealth Attorney discovered that respondent was not admitted to practice law in Virginia. The Assistant Commonwealth Attorney reported this to the judge and filed a police report.

11. The criminal defendant respondent represented did not return to court to vacate his plea agreement, and the court took no further action on the matter

CONCLUSIONS OF LAW:

12. The facts and circumstances surrounding the above-described violation(s) involved moral turpitude.

Case No. 17-J-06873 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

13. Respondent has never been licensed to practice law in Virginia.

14. On December 10, 2014, the Fourth District Subcommittee of the Virginia State Bar voted to approve an agreed disposition between the Virginia State Bar, Virginia State Bar counsel, and respondent for a public reprimand with terms effective December 5, 2014 to January 1, 2016. The terms required respondent to refrain from practicing law or appearing pro hac vice in Virginia during the period of the public reprimand.

15. On December 16, 2014, the Virginia State Bar's subcommittee served the Public Reprimand upon respondent with its findings of fact and conclusions of law. Respondent was found to have violated the following Virginia Rules of Professional Conduct: Rule 5.5(d) [Unauthorized Practice of Law by a Foreign Lawyer] and Rule 8.4(b) [Misconduct—acts that reflect adversely on lawyer's honesty, trustworthiness, or fitness to practice law]. The public reprimand thereby became final and non-appealable.

16. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

17. On April 1, 2014, notwithstanding the fact that respondent was not licensed to practice law in Virginia, Respondent appeared on behalf of a criminal defendant in a criminal proceeding pending in Arlington General District Court.

18. Respondent negotiated a plea agreement and entered a Notice of Appearance on behalf of the defendant.

19. As a result of respondent's actions and appearance on April 1, 2014, respondent was charged and convicted of criminal contempt of court.

CONCLUSIONS OF LAW:

20. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Virginia warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

Case No. 17-O-07338 (State Bar Investigation)

FACTS:

21. On December 16, 2014, the Virginia State Bar served respondent with a Public Reprimand with Terms effective December 5, 2014 to January 1, 2016 in Virginia State Bar Docket No. 14-041-099152.

22. Respondent did not report, in writing within thirty days, the imposition of discipline against him by the Virginia State Bar to the State Bar of California.

CONCLUSIONS OF LAW:

23. By not reporting to the State Bar of California, in writing within thirty days, the imposition of discipline against him by the Virginia State Bar, respondent willfully violated Business and Professions Code section 6068(o)(6).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's misconduct demonstrates violations of Rule of Professional Conduct 1-300(B), Business and Professions Code section 6106, and Business and Professions Code section 6068(o)(6). Respondent's multiple acts of misconduct are an aggravating circumstance.

Harm (Std. 1.5(j)). Respondent's conduct caused significant harm to the client, the public, and the administration of justice. Respondent negotiated a plea agreement on behalf of his client in a jurisdiction in which he was not licensed. There is a strong public policy against the unlicensed practice of law so that the public is protected from being advised and represented by unqualified persons. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 917-918.) The litigation of cases by unlicensed attorneys

threatens the integrity of the judicial process itself. (*Alexander v. Robertson* (9th Cir. 1989) 882 F.2d 421, 423-425.)

MITIGATING CIRCUMSTANCES.

No prior record of discipline. Respondent was admitted to the practice of law in California on December 11, 1989. At the time of the misconduct, respondent had practiced law in California for approximately twenty-four years, which is worth significant weight in mitigation. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's ten years of discipline-free practice warranted significant weight in mitigation].)

Extraordinary Good Character (Std. 1.6(f)). Nine character references attested to respondent's good character. All nine of the character references have knowledge of the full extent of the underlying misconduct. The character references represent a broad range of professional backgrounds, which include attorneys, politicians, three business persons, former clients, a retired Lieutenant General in the U.S. Army, and a retired judge. The references have known respondent for an extended period of time spanning five to forty years. Six of the references have known respondent for over twenty-five years. The character references attested to respondent's good moral character and integrity. Character references from attorneys and judges are entitled to serious consideration since they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Std. 1.1.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See Std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.)

“Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Respondent’s culpability in the conviction proceeding is conclusively established by the record of his conviction. (Bus. & Prof. Code, § 6101(a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Respondent is presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

The facts and circumstances surrounding respondent’s conviction involve moral turpitude. Respondent knowingly and intentionally practiced law in a jurisdiction in which he was not licensed. *In re Cadwell* (1975) 125 Cal. Rptr. 889 (holding oneself out as an attorney while attorney knew or should have known license was suspended amounts to moral turpitude.) Respondent has never been licensed to practice law in Virginia and was aware of this fact. He did not disclose to the Assistant Commonwealth Attorneys, the police officers, or the court that he was not licensed to practice in the state. “A member of the bar should not under any circumstances attempt to deceive another.” *Id* at 894. An attorney’s practice of deceit involves moral turpitude. In *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, a suspended attorney held himself out to a client as entitled to practice law when he discussed her legal problems with the client, accepted a fee and filed a lawsuit on her behalf. The court found that this conduct also involved moral turpitude in that the attorney deceived the client by not advising her that he was not entitled to practice law.

In one matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent’s misconduct in the other jurisdiction demonstrates violations of Rules of Professional Conduct, rule 1-300(B) and Business and Professions Code section 6106.

In this matter, respondent admits to committing multiple acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

Standard 2.11, 2.15(c), and 2.18 are the most severe standards applicable here, and all three call for disbarment or actual suspension as the presumed sanction.

An appropriate level of discipline, based on the facts and circumstances of respondent’s misconduct, is two-year stayed suspension, with two years of probation, including a sixty day actual suspension.

Case law supports this level of discipline. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, the attorney committed the unlicensed practice of law in another jurisdiction, collected unconscionable fees, failed to refund fees, and committed an act of moral turpitude. The factors found

in aggravation were a prior record of discipline consisting of a private reproof, multiple acts of misconduct, harm, and indifference. The court found mitigation for extreme emotional distress, good character, and cooperation. The discipline imposed was a two year stayed suspension, with two years of probation, including a six month actual suspension and until she pays restitution.

Respondent's conduct is similar to the attorney in *Wells* in that he intentionally committed the unlicensed practice of law in another jurisdiction and committed an act of moral turpitude. However, respondent has presented significant mitigation, including twenty-four years of discipline free practice, and committed fewer acts of misconduct. On balance, respondent should receive less discipline. An actual suspension of sixty days is adequate to serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 28, 2018, the discipline costs in this matter are approximately \$7,692. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: GEORGE FREDRICK BRAUN	Case number(s): 14-C-06011 17-J-06873 17-O-07338
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

3/9/18

Date

Respondent's Signature

George Braun

Print Name

Date

Respondent's Counsel Signature

John Romaker

Print Name

Date

Deputy Trial Counsel's Signature

Terese Laubscher

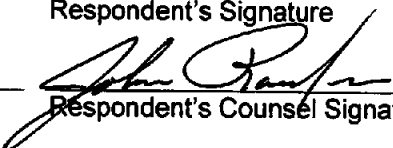
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In the Matter of: GEORGE FREDRICK BRAUN	Case number(s): 14-C-06011 17-J-06873 17-O-07338
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.


_____ Date	_____ Respondent's Signature	George Braun Print Name
<u>3/12/2018</u> Date	 Respondent's Counsel Signature	John Romaker Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	Terese Laubscher Print Name

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In the Matter of: GEORGE FREDRICK BRAUN	Case number(s): 14-C-06011 17-J-06873 17-O-07338
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

_____	_____	George Braun
Date	Respondent's Signature	Print Name
_____	_____	John Romaker
Date	Respondent's Counsel Signature	Print Name
3-19-18		Terese Laubscher
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: GEORGE FREDRICK BRAUN	Case Number(s): 14-C-06011 17-J-06873 17-O-07338
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ACTUAL SUSPENSION ORDER

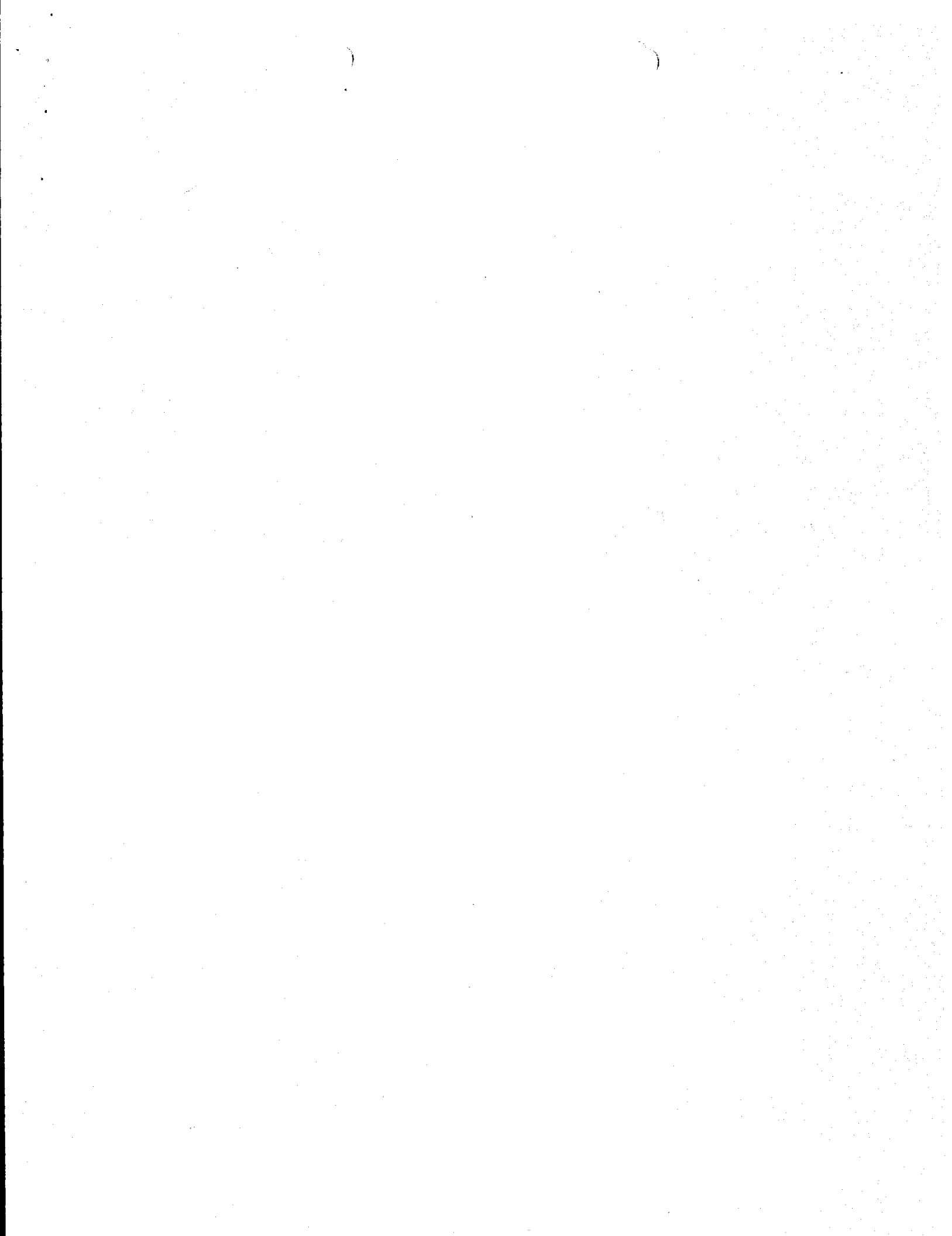
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

April 2, 2018
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court



VIRGINIA:

**BEFORE THE FOURTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
George Fredrick Braun**

VSB Docket No. 14-041-099152

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On December 10, 2014 a meeting was held in this matter before a duly convened Fourth District Subcommittee consisting of Robert C. McCarthy, lay member, Adam M. Krischer, member, and Jonathan S. Gelber, chair presiding. During the meeting, the Subcommittee voted to approve an agreed disposition for a PUBLIC Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Renu Mago Brennan, Assistant Bar Counsel, and George Fredrick Braun, Respondent, *pro se*.

WHEREFORE, the Fourth District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following PUBLIC Reprimand with Terms:

I. FINDINGS OF FACT

1. Respondent George Fredrick Braun (Respondent) has never been licensed to practice law in Virginia.
2. On or about December 11, 1989, Respondent was admitted to the State Bar of California. He was not eligible to practice law in California as follows: July 1 to July 15, 2008; September 1, 2010 to May 22, 2011; July 1, 2011 to July 24, 2011; and July 3, 2012 to July 15, 2012. On September 1, 2008; September 1, 2010; July 1, 2011; and July 3, 2012, Respondent was suspended for failing to pay his Bar membership fees. On September 1, 2010, Respondent was administratively suspended for MCLE noncompliance. Respondent is currently in good standing in California.

RULE 8.5 Disciplinary Authority; Choice Of Law

(a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

3. On April 1, 2014, notwithstanding the fact that Respondent was not licensed to practice law in Virginia, Respondent appeared on behalf of a criminal defendant in a criminal proceeding pending in Arlington General District Court.
4. Respondent did not apply to appear as counsel *pro hac vice* in the criminal proceeding in Arlington General District Court.
5. Respondent negotiated a plea agreement and entered a Notice of Appearance on behalf of the defendant.
6. Respondent asserts that the defendant was aware that Respondent was not licensed to practice law in Virginia.
7. Respondent did not advise the Court or the Assistant Commonwealth Attorneys prosecuting the matter that Respondent was not licensed to practice law in Virginia or that he was only licensed in California.
8. As a result of Respondent's actions and appearance in Court on April 1, 2014, Respondent was charged and convicted of criminal contempt of court.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(d) Foreign Lawyers:

(1) "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the

Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

(2) A Foreign Lawyer shall not, except as authorized by these Rules or other law:

(ii) hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia.

(3) A Foreign Lawyer shall inform the client and interested third parties in writing:

(i) that the lawyer is not admitted to practice law in Virginia;

(ii) the jurisdiction(s) in which the lawyer is licensed to practice; and

(iii) the lawyer's office address in the foreign jurisdiction.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a PUBLIC Reprimand with Terms. The terms shall be met by January 1, 2016, and are as follows:

1. From December 5, 2014 to January 1, 2016, Respondent agrees not to practice law, exercise any privilege to practice law, or provide legal services or legal advice of any kind in Virginia, including but not limited to, applying to appear as counsel *pro hac vice* before any tribunal of any kind in Virginia and seeking to provide legal services in Virginia pursuant to Rule of Professional Conduct 5.5(d)(4).

In accordance with the parties' agreed disposition, this Public Reprimand with Terms is non-appealable.

If Respondent does not meet the terms described above, then, as agreed by Respondent, the Virginia State Bar Disciplinary Board shall impose the sanction of revocation. "Revocation" is defined in Part Six, Section IV, Paragraph 13-1 of the Rules of the Supreme Court as follows:

"Revocation" means any revocation of an Attorney's License and, when applied to a lawyer not admitted or authorized to practice law in Virginia, means the exclusion from the admission to, or the exercise of any privilege to, practice law in Virginia.

Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, and as agreed by Respondent, the Clerk of the Disciplinary System shall assess an administrative fee.

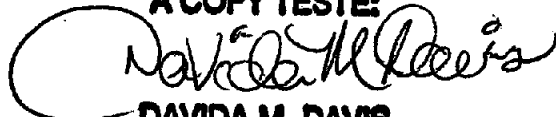
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OF THE VIRGINIA STATE BAR

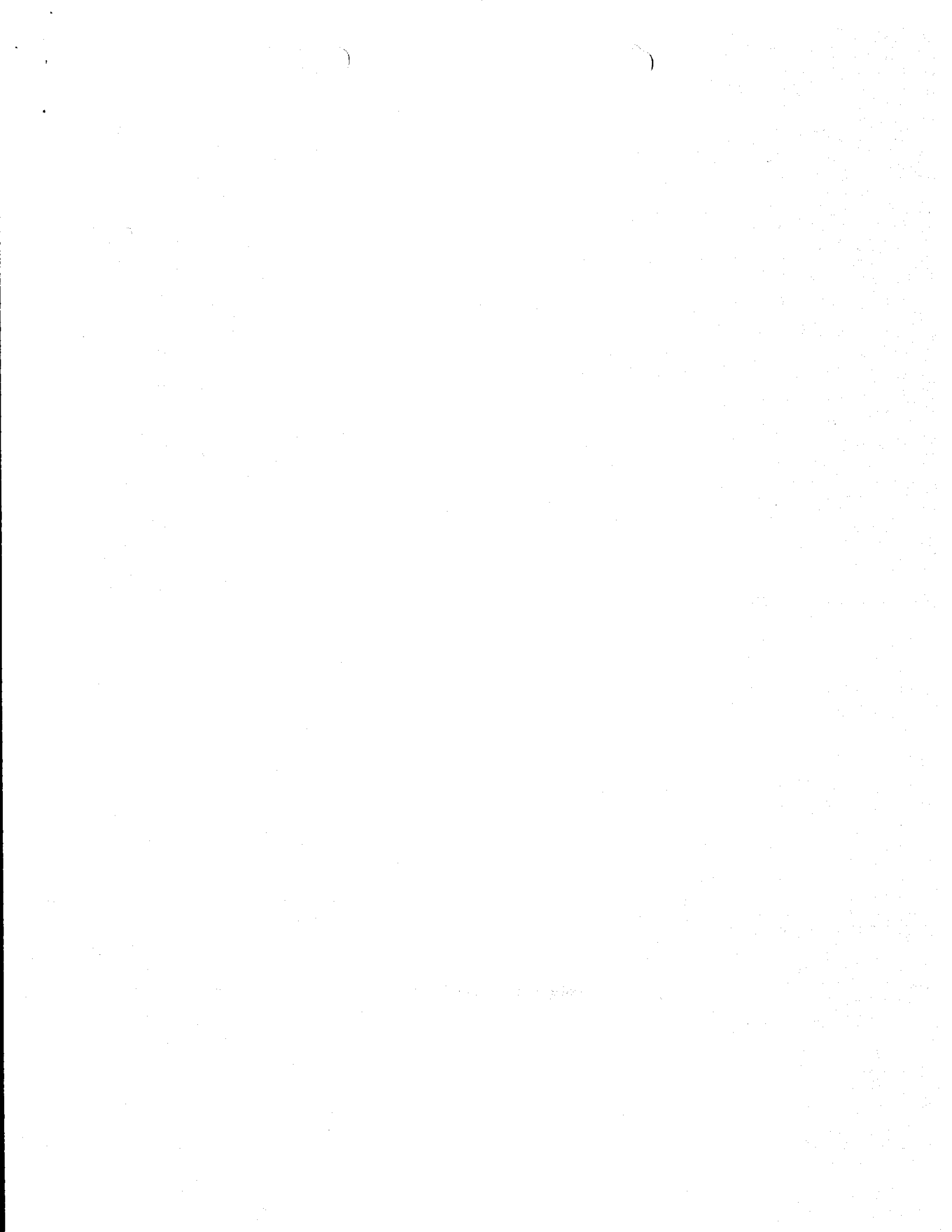

Jonathan S. Gelber
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 16 December, 2014, a true and complete copy of the Subcommittee Determination (PUBLIC Reprimand With Terms) was sent by certified mail, return receipt requested to George Fredrick Braun, Respondent, at 939 26th Street NW #105, Washington, DC 20037, Respondent's last address of record with the Virginia State Bar.


Renu Mago Brennan
Assistant Bar Counsel

A COPY TESTE:

DAVIDA M. DAVIS
CLERK OF THE DISCIPLINARY SYSTEM



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Virginia Court Rules RULES OF SUPREME COURT OF VIRGINIA PART SIX INTEGRATION OF THE STATE BAR SECTION II. VIRGINIA RULES OF PROFESSIONAL CONDUCT LAW FIRMS AND ASSOCIATIONS**Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.

(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(d) Foreign Lawyers:

(1) "Foreign Lawyer" is a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Supreme Court of Virginia or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

(2) A Foreign Lawyer shall not, except as authorized by these Rules or other law:

(i) establish an office or other systematic and continuous presence in Virginia for the practice of law, which may occur even if the Foreign Lawyer is not physically present in Virginia; or

(ii) hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia.

(3) A Foreign Lawyer shall inform the client and interested third parties in writing:

(i) that the lawyer is not admitted to practice law in Virginia;

(ii) the jurisdiction(s) in which the lawyer is licensed to practice; and

(iii) the lawyer's office address in the foreign jurisdiction.

(4) A Foreign Lawyer may, after informing the client as required in 3(i)-(iii) above, provide legal services on a temporary and occasional basis in Virginia that:

(i) are undertaken in association with a lawyer who is admitted to practice without limitation in Virginia or admitted under Part I of Rule 1A:5 of this Court and who actively participates in the matter;

(ii) are in or reasonably related to a pending or potential proceeding before a tribunal in Virginia or another jurisdiction, if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(iii) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Virginia or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(iv) are not within paragraphs (4)(ii) or (4)(iii) and arise out of or are reasonably related to the representation of a client by the Foreign Lawyer in a jurisdiction in which the Foreign Lawyer is admitted to practice or, subject to the foregoing limitations, are governed primarily by international law.

(5) A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.



▼ Annotations

Notes

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (c) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[1a] For purposes of paragraphs (a) and (b), "Lawyer" denotes a person authorized by the Supreme Court of Virginia or its Rules to practice law in the Commonwealth of Virginia including persons admitted to practice in this state pro hac vice.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (c) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] Likewise, the definition of the practice of law does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law -- for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies.

[4] Other than as authorized by law or this Rule, a Foreign Lawyer violates paragraph (d)(2)(i) if the Foreign Lawyer establishes an office or other systematic and continuous presence in Virginia for the practice of law. Presence may be systematic and continuous even if the Foreign Lawyer is not physically present here. Such "non-physical" presence includes, but is not limited to, the regular interaction with residents of Virginia for delivery of legal services in Virginia through exchange of information over the Internet or other means. Such Foreign Lawyer must not hold out to the public or otherwise represent that the Foreign Lawyer is admitted to practice law in Virginia. See also, Rules 7.1(a) and 7.5(b). Despite the foregoing general prohibition, a Foreign Lawyer may establish an office or other systematic and continuous presence in Virginia if the Foreign Lawyer's practice is limited to areas which by state or federal law do not require admission to the Virginia State Bar. Examples of lawyers admitted in another United States jurisdiction include those lawyers whose practices are limited to federal tax practice before the IRS and Tax Court, patent law before the Patent and Trademark Office, or immigration law. A Foreign Lawyer admitted to practice in a jurisdiction outside the United States may be authorized to practice under Rule 1A:7 as a foreign legal consultant and may likewise establish an office or other systematic and continued presence in Virginia.

[5] Paragraph (d)(4) identifies circumstances in which a Foreign Lawyer may provide legal services on a temporary basis in Virginia that do not create an unreasonable risk to the interests of their clients, the public, or the courts. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. Except as authorized by this rule or other law, a Foreign Lawyer may not establish an office or other systematic and continuous presence in Virginia without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign Lawyer's services are provided on a "temporary basis" in Virginia, and may therefore be permissible under paragraph (d)(4). Services may be "temporary" even though the Foreign Lawyer provides services in Virginia on a recurring basis, or for an extended period of time, as when the Foreign Lawyer is representing a client in a single lengthy negotiation or litigation. "Temporary" refers to the duration of the Foreign lawyer's presence and provision of services, while "occasional" refers to the frequency with which the Foreign lawyer comes into Virginia to provide legal services.

[7] Paragraph (d)(1) requires that the Foreign Lawyer be authorized to practice in the jurisdiction in which the Foreign Lawyer is admitted and excludes a Foreign Lawyer who, while technically admitted, is not authorized to practice because, for example, the Foreign Lawyer is in inactive status.

[8] Paragraph (d)(4)(i) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice Virginia. For this paragraph to apply, however, the lawyer admitted to practice in Virginia must actively participate in and share responsibility for the representation of the client.

[9] Foreign Lawyers not admitted to practice generally in this jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. Under paragraph (d)(4)(ii), a Foreign Lawyer does not violate this Rule when the Foreign Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of Virginia requires a Foreign Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Foreign Lawyer to obtain that authority.

[10] Paragraph (d)(4)(ii) also provides that a Foreign Lawyer rendering services in Virginia on a temporary basis does not violate this Rule when the Foreign Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Foreign Lawyer is authorized to practice law or in which the Foreign Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Foreign Lawyer may engage in conduct temporarily in Virginia in connection with pending litigation in another jurisdiction in which the Foreign Lawyer is or reasonably expects to be authorized to appear, including taking depositions in Virginia.

[11] ABA Model Rule Comment not adopted.

[12] Paragraph (d)(4)(iii) permits a Foreign Lawyer to perform services on a temporary basis in Virginia if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. The Foreign Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (d)(4)(iv) permits a Foreign Lawyer to provide certain legal services on a temporary basis in Virginia that arise out of or are reasonably related to that lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted but are not within paragraphs (d)(4)(ii) or (d)(4)(iii). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (d)(4)(ii), (d)(4)(iii), and (d)(4)(iv) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors evidence such a relationship. The Foreign



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Lawyer's client may have been previously represented by the Foreign Lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the Foreign Lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the Foreign Lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Foreign Lawyer in assessing the relative merits of each. In addition, the services may draw on the Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[14a] Paragraph (d)(4)(iv) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction in which the Foreign Lawyer is admitted to practice.

[15-18] *ABA Model Rule Comments* not adopted.

[19] A Foreign Lawyer who practices law in Virginia pursuant to this Rule is subject to the disciplinary authority of Virginia. See Rule 8.5 (a).

[20] *ABA Model Rule Comment* not adopted.

[21] Paragraph (d)(4) does not authorize communications advertising legal services to prospective clients in Virginia by Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Foreign Lawyers may communicate the availability of their services to prospective clients in Virginia is governed by Rules 7.1 to 7.5.

Prior Rule Comparison

Neither former Rule 5.5 nor any other of the Virginia Rules of Professional Conduct provided any criteria for practice in Virginia by a foreign lawyer (non-Virginia or non-U.S.). Such practice was controlled by Part 6, §1 (C) of the Rules of the Virginia Supreme Court which defined "on-lawyer" and set out the parameters for temporary practice in Virginia by a "foreign lawyer," defined only as admitted to practice and in good standing in any state in the U.S. There was no provision for practice by a foreign, non-U.S. lawyer. Enforcement of Part 6, §1 (C) fell within the authority of the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law. Rule 5.5 allows for temporary and occasional practice in Virginia by both non-Virginia and non-U.S. lawyers and places enforcement within the Virginia State Bar's disciplinary system.

Committee Commentary

The Committee adopted this Rule in light of the recommendation of the American Bar Association (ABA) that the states adopt more specific rules governing multi-jurisdictional practice. This rule adopts language similar to ABA Model Rule 5.5 allowing for circumstances of temporary and occasional practice by lawyers licensed in other U.S. jurisdictions, but expands such practice to include lawyers licensed in non-U.S. jurisdictions. Paragraphs (a) and (b) are identical to paragraphs (b) and (c) in former Virginia Rule 5.5.

Effects of Amendment. --

The amendment effective March 1, 2009, adopted December 30, 2008, rewrote the Rule and Commentary thereto.

The amendment effective December 13, 2013, adopted December 13, 2013, in Comment [5], deleted the "s" in "Paragraphs", "(i), (ii) and (iii)" and changed "identify" to "identifies"; and in Comment [13], deleted the last sentence.

The amendment, effective February 1, 2016, adopted November 17, 2015, in Comment [1a], substituted "paragraphs (a) and (b)" for "paragraphs (a), (b), and (c)."

Case Notes

Availability of declaratory determination as to whether practice unauthorized. -- The fact that the unauthorized practice of law is a misdemeanor did not preclude declaratory relief to attorneys who sought determination as to whether a title insurance company's activities constituted the unauthorized practice of law, where their goal was not solely to stop the illegal conduct of others, but to insure their own conduct conformed to the law and the tenets of the legal profession. The availability of criminal proceedings under former § 54-44 (see now § 54.1-3904), a writ of quo warranto, under § 8.01-636 and advisory opinions under the Rules of Court, Part Six, § IV, Para. 10 did not preclude the use of declaratory judgment. *Blodinger v. Broker's Title, Inc.*, 224 Va. 201, 294 S.E.2d 876 (1982) (decided under former DR 3-101).

No cause of action for negligent supervision. -- See *Lockney v. Vroom*, 61 Va. Cir. 359, 2003 Va. Cir. LEXIS 263 (Norfolk 2003).

VIRGINIA COURT RULES ANNOTATED

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Virginia Court Rules RULES OF SUPREME COURT OF VIRGINIA PART SIX INTEGRATION OF THE STATE BAR SECTION II. VIRGINIA RULES OF PROFESSIONAL CONDUCT MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

▼ Annotations

Notes

[1] ABA Model Rule Comment not adopted.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] ABA Model Rule Comment not adopted.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law. See also Rule 3.1, Rule 3.4(d).

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Virginia Code Comparison

With regard to paragraphs (a) through (c), DR 1-102(A) provided that a lawyer shall not:

- *(1) Violate a Disciplinary Rule or knowingly aid another to do so.
- (2) Circumvent a Disciplinary Rule through actions of another.
- (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.*

Paragraph (d) is substantially the same as DR 9-101(C).

There was no direct counterpart to paragraph (e) in the Disciplinary Rules of the Virginia Code. EC 7-31 stated in part that "[a] lawyer ... is never justified in making a gift or a loan to a [judicial officer] under circumstances which might give the appearance that the gift or loan is made to influence official action." EC 9-1 stated that a lawyer "should promote public confidence in our [legal] system and in the legal profession."

Committee Commentary

Much of this Rule parallels provisions of the Disciplinary Rules of the Virginia Code. Paragraph (e), however, sets forth a prohibition not in the Virginia Code, and the Committee believed it is an appropriate addition.

Effects of Amendment. --

The amendment, effective March 25, 2003, adopted March 25, 2003, deleted "professional" preceding "conduct involving" and added "which reflects adversely on the lawyer's fitness to practice law" in subsection (c).

Case Notes

Construction with federal law. -- While an United States District Court utilizes the Code of Professional Responsibility as adopted by the Supreme Court of Virginia, it must nevertheless look to federal law in order to interpret and apply those rules and should not abdicate to the state's view of what constitutes professional conduct even in diversity cases. Armsev v. Medshares Mt. Servs., Inc., 184 F.R.D. 569 (W.D. Va., 1998) (decided under former DR 1-102).

Attorney's knowing and intentional misrepresentation satisfies scienter requirement. -- It is an attorney's knowing and intentional misrepresentation, not a wrongful intent to defraud his client, which satisfies the scienter requirement. Gay v. Virginia State Bar ex rel. Second Dist. Comm., 239 Va. 401, 369 S.E.2d 470 (1990) (decided under former DR 1-102).

Removal of goods from premises of employer. -- Removal by an attorney of office equipment from the office of the real estate corporation that employed him as its agent constituted misconduct. Smolka v. Second Dist. Comm., 224 Va. 161, 295 S.E.2d 267 (1982) (decided under former DR 1-102).

Fabrication of charges for legal services in order to avoid repayment to client of client's overpayment constitutes misconduct. Blue v. Seventh Dist. Comm., 220 Va. 1056, 265 S.E.2d 752, stay denied, 448 U.S. 904, 100 S. Ct. 3045, 65 L. Ed. 2d 1134 (1980) (decided under former DR 1-102).

Sending of letter with forged signature. -- Where attorney sent an undated letter, purportedly signed by another, requesting cancellation of the insurance, and the attorney required his wife, who was also his secretary, to forge his signature, the evidence was sufficient to support the finding of the disciplinary board that the attorney violated this rule. Gibbs v. Virginia State Bar, 232 Va. 39, 348 S.E.2d 209 (1986) (decided under former DR 1-102).

Recording third-party conversations. -- The recordation, by a lawyer by his authorization, of conversation between third persons, to which he is not a party, without the consent or prior knowledge of each party to the conversation, is conduct involving dishonesty, fraud, or deceit under this section. Gunter v. Virginia State Bar, 238 Va. 617, 385 S.E.2d 597 (1989), cert. denied, 500 U.S. 953, 111 S. Ct. 2260, 114 L. Ed. 2d 712 (1991) (decided under former DR 1-102).

Failure to ascertain that liens satisfied before certifying so. -- Certification to a title insurance company that the prior liens had been satisfied and released of record was certainly a knowing and intentional act. Necessarily implicit in the attorney's certification was the representation that he, or someone for whom he was responsible, had satisfied the prior liens and ascertained from the land records that those liens had been released. The attorney performed the same sort of knowing and intentional act and made the same type of representation when he showed on a settlement statement that the prior deed of trust had been satisfied. Where neither he nor anyone for whom he was responsible had satisfied any of the prior liens or ascertained whether the liens had been released of record, and he knew that neither he nor anyone for whom he was responsible had performed any of these necessary acts, the board did not err in finding the attorney had violated subdivision (A)(4) of this rule. Pickus v. Virginia State Bar, 232 Va. 5, 348 S.E.2d 202 (1986) (decided under former DR 1-102).

Prosecutor may not deny intention to call witness to avoid discovery. -- Where the Commonwealth's attorney knows that an informant's appearance as a witness is impending, or intends in all likelihood to call the witness, the prosecutor may not deny his or her intention to call the witness as a pretext to avoid discovery. Courts have the responsibility to monitor the conduct of those attorneys who appear before them and assure adherence to professional standards. Moreno v. Commonwealth, 10 Va. App. 408, 392 S.E.2d 836 (1990) (decided under former DR 1-102).

Disputing propriety of sentence. -- An attorney was subject to discipline where, after the court pronounced his client's sentence, the attorney vociferously expressed his disagreement with the sentence and, after having been held in contempt, took several steps towards the bench while raising his voice and continuing to express his view that the sentence was unjustified and outrageous. Morrissey v. Virginia State Bar ex rel. Third Dist. Comm., 260 Va. 472, 538 S.E.2d 677 (2000) (decided under former DR 1-102(A)(3)).

Virginia State Bar could discipline one who violated former § 51-179. -- Because violations of former § 51-179 bore a substantial relationship to an attorney's fitness to practice law, the Virginia State Bar has authority to discipline a violator. Thompson v. Walker, 583 F. Supp. 175 (E.D. Va., 1984), aff'd, 758 F.2d 1004 (4th Cir., 1985) (decided under former DR 1-102).

Duties not limited to dealings with clients. -- Where commonwealth's attorney deliberately concealed from complainant in abduction and rape case that defendant was willing to pay up to \$50,000 to complainant as part of plea agreement, and where commonwealth's attorney misled complainant into believing that psychiatric evidence about her might be admissible in order to influence her to settle for \$25,000, and where commonwealth's attorney contended that neither of these acts violated this rule because he was not complainant's attorney, the court stated that an attorney's duty not to practice deceit or misrepresentation is not confined to dealings with his client; it also extends to others who may be adversely affected by such conduct. Morrissey v. Virginia State Bar, 248 Va. 334, 448 S.E.2d 615 (1994) (decided under former DR 1-102).

Necessity of disclosure of charitable contribution as part of plea agreement. -- When commonwealth's attorney, during presentation of plea agreement to judge for his acceptance, deliberately concealed the \$25,000 charitable contributions to be made by defendant's father, and

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 3, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN L. ROMAKER
17418 TAM O SHANTER DR
POWAY, CA 92064 - 1327**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TERESE E. LAUBSCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 3, 2018.



Erick Estrada
Court Specialist
State Bar Court