



Southwest Virginia Regional Bench Bar Conference

Recent Cases in Lawyer Discipline

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VSB Disciplinary Statistics—Complaints Rec'd

2446	FY 2023 through April 7, 2023
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3115	FY 2022
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2,924	FY 2021
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3091	FY 2020
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3123	FY 2019
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3156	FY 2018
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3304	FY 2017
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3162	FY 2016
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3346	FY 2015
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3546	FY 2014
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3713	FY 2013
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Disciplinary Statistics FY 2022 (July 1, 2021- June 30, 2022)

- The number of active Virginia lawyers was 31,655. The bar received 3,113 bar complaints. Complaints increased 6.5% compared to July 1, 2020, through June 30, 2021. Roughly 70% of the complaints were screened out early in the review process, and less than 15% were dismissed after informal investigation by Intake Counsel. Bar Counsel, the Subcommittees, the Disciplinary Board, and the Circuit Courts' Three-Judge Panels dismissed 361 cases. One hundred and nine (109) lawyers received private (38) or public (71) discipline. Of the 71 lawyers publicly disciplined, 34 lawyers received public reprimands or admonitions; 18 lawyers were suspended; and 19 lawyers' licenses were revoked.

Disciplinary Statistics for FY 2022

Dismissals and Sanctions Statistics Information for FY 22:

Number of cases dismissed in house by Bar Counsel 240

Number of cases dismissed by Subcommittee/District Committee 116

Number of cases dismissed by Board 1

Number of cases dismissed by Circuit Court 4 (3 dismissed on motion of bar counsel)

Number of lawyers who received private discipline – Admonition 24 (24)

Number of lawyers who received private discipline – Reprimand 14 (15)

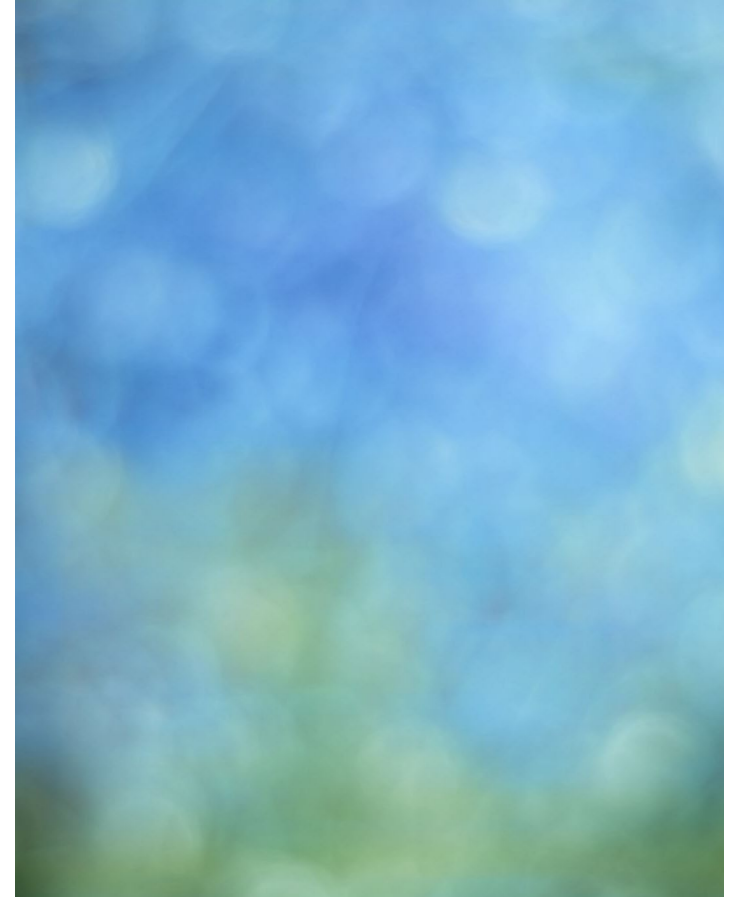
Number of lawyers who received public discipline - Admonition 3 (4)

Number of lawyers who received public discipline – Reprimand 31 (35)

Number of lawyers who received public discipline - Suspension 18 (24)

Number of lawyers who received public discipline - Consent to Revocation 13 (23)

Number of lawyers who received public discipline – Revocation 6 (12)




VSB Disciplinary Statistics—Disposition of Complaints—FY 2023—as of 4/7/2023

1,746—71.4% were resolved summarily at the initial intake level after review and evaluation.

430—13.9% were resolved through proactive investigation by Intake Counsel

366—14.8% were formally opened and assigned to bar counsel for investigation

14—were summarily closed because Respondents' licenses were revoked



When is Private Discipline Appropriate?

- Private discipline shall be imposed only in cases of minor misconduct when there is little or no injury to a client, the public, the legal system or the profession, and where there is little likelihood of repetition by the Respondent.
- Rebuttable presumption against more than two determinations of private discipline in 10 years. Pt. 6, §IV, ¶ 13-7.E

Areas of Practice Most Likely to Draw Bar Complaints

- Criminal Defense
- Family Law
- Personal Injury
- Real Estate

Behaviors Most Likely to Lead to a Bar Complaint

- Failure to communicate
- Procrastination/Neglect
- Failure to Refund/Return File
- Fee Disputes
- Decision making without client consent or input
- Failure to manage client expectations
- Conflicts of interest



Three-Judge Courts— Va. Code §54.1-3935

- Any attorney who is the subject of a proceeding before a district committee or Disciplinary Board may elect to terminate the proceeding and demand the further proceedings be conducted by a three-judge court.
- However, the three-judge court is to conduct the proceedings using the same procedures that apply to VSB disciplinary actions. Pt. 6, §IV, ¶ 13.



Go On . . .Take the Money and Run

- In the Matter of Nosuk Pak Kim
- Consent to revocation (Aug 2022)
- Kim pleaded guilty to Evasion of Income Tax Assessment
- Received hundreds of thousands of dollars of unreported income in her trust acct which she converted to personal use—owing the Govt \$868,924.54.
- If the VSB doesn't get you, the IRS will.



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To Tell the Truth--Will the real Pope Please Stand Up?

- In the Matter of Joseph Ray Pope (2022)
- Revoked after hearing before Disciplinary Board
- Impersonated a priest in an effort to convince his wife, a devout Catholic to reconcile as she was “committing a great sin against God.”
- Numerous other acts of deceit and dishonesty and using the legal system to engage in emotional terrorism.



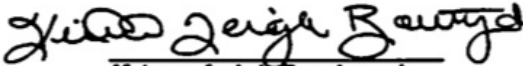
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Reciprocal Discipline—In the Matter of Johnnie Louis Johnson, Jr. (2022)

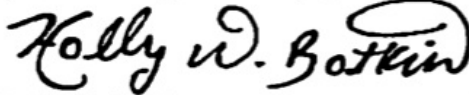
- Hearing before VSB Disc. Board—Revocation
- R was revoked in DC but contested reciprocal discipline by VSB.
- R failed to inform client of rules applicable to attorneys' fees in WC cases, charged the client excessive fees, submitted fee petition with false statements and engaged in “flagrant dishonesty” during the DC bar’s investigation.
- The VSB Disc. Board found that R failed to prove any of the factors required in Para. 13-24 by clear and convincing evidence and reciprocally revoked R’s license to practice law in VA.
- Same discipline imposed unless: (1) no due process in other proceeding; (2) imposing same discipline would result in an injustice; (3) same conduct not grounds for disciplinary action or same discipline in VA; (4) misconduct in other jurisdiction would warrant substantially lesser discipline in VA.

Notarial Misconduct—Sorry!!

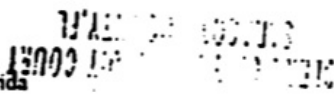
- In the Matter of Doris Weston Gelbman (March 2023)
- Public Reprimand w/Terms (Agreed Disposition)
- In a hurry to file a *lis pendens* to stop sale of home, notaries in R's office were unavailable
- R used an employee's notary stamp to place her notarial seal on the lis pendens w/o the employee's knowledge..
- After bar complaint filed, R admitted the forgery and expressed remorse.


Kristen Leigh Boothroyd

Sworn to and subscribed before me this
18th day of June A.D. 2010,
by Kristen Leigh Boothroyd, who is personally known to me.


Holly W. Botkin

Notary Public, State of Florida
(SEAL)



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Money Matters

- In the Matter of Thomas Martin Liles (March 2023)
 - Consent to Revocation
 - R obtained \$35K judgment for Client; deposited the funds into his personal acct and spent some of the \$\$.
 - R's firm discovered the defalcation and confronted him.
 - R admitted to his misconduct
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- Virginia State Bar ex. Rel Seventh Dist. Comm. v. Bradley Glenn Pollack
 - 6 mo suspension w/terms by three judge court
 - R took advanced fees from 3 different clients but did not deposit any of the advanced fees into his trust acct
 - Failed to maintain req'd records

Money Matters— The Sequel

- VSB ex rel Eighth Dist. Comm v. Dale Reese Jensen
- 3-Judge Court (July 2022)
- 60-day susp. w/terms
- R accepted flat fees that he d/n deposit in trust; said he would not refund any fees once work started
- Failure to keep req'd records

- In the Matter of Susan Page Allen (Jan 2023)
- Agreed disposition—Public Reprimand w/terms
- R served as escrow agent for 6 construction loans. R knew that her staff employee and borrower were friends.
- R's employee originated wire transfers totaling \$1.2 Million over a 2 year period. R did not supervise or require employee to obtain authorization to release funds.
- After R was alerted to the problem and employee confessed the misappropriation, R cont'd to employ this staff person for another 2 ½ years!



Neglect and Failure to Communicate

- VSB ex rel 5th Dist. Comm v. James McMurray Johnson (2022)
- Three Judge Court
- 90-day suspension w/terms—2 years probation
- R accepted a med mal case in 10/2014, just before the S/L was to run.
- R needed a certificate of merit from an expert but did not have one when he filed suit nor when the deadline ran for serving process on the defs.
- R non-suited the case in 2019, 2 years after the deadline to serve the defs.
- R served as counsel until 11/2020 when his license was suspended. R never had an expert's certificate of merit.
- During the 6 year representation client called expressing frustration with lack of progress and lack of communication.

“What We’ve Got Here is a Failure to Communicate.” —Cool Hand Luke (1967)



- In the Matter of Duncan Kenner Brent
 - Public Reprimand w/Terms
 - Agreed Disposition
- R handled PI case and filed in GDCt just before S/L ran. Def was not served. R intended to nonsuit but never did.
 - R did not communicate w/Client for nearly 3 years!
 - R acknowledged that he allowed this matter to “drop off his calendar.”



Sex With Client = Conflict on Interest

- VSB ex rel 6th Dist. Comm v. Joseph Taylor Brown (2022)
- Three Judge Court—Public reprimand w/Terms
- Divorce Case—R's client, W, accused of adultery
- R and W had sexual relations even knowing H was monitoring W's whereabouts
- R withdrew from case citing conflict of interest.
- R appealed. SCV affirmed.

Conflict of Interest— Playing on Both Sides

- In the Matter of Alisa Lachow Correa (2023)
- Agreed Disposition—Public Reprimand w/Terms; 2 yr. probation.
- R loaned \$25K to a friend, then later represented the friend in a Chap. 13 Bankruptcy, listing herself as a creditor.
- Court DQ'd R saying conflict was “unmistakable and obvious.”
- She then objected to the Ch. 13 plan she had filed!
- Violated RPC 1.7(a)(2).



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Conflict of Interest—VSB ex rel Second Dist. Comm. v. Kevin Benedict Rack (2022)

- Three-judge panel; Agreed Disposition—Public Reprimand w/Terms
- R was hired to draft a trust agreement for C’s daughter. The trust agreement named R as trustee.
- R used his firm to provide legal services to the trust w/o obtaining client’s informed consent. See LEO 1515 (app’d by SCV 1994):
- The committee is of the opinion that the attorney named as executor or trustee must disclose and obtain the consent of the testator/grantor prior to the execution of the trust/will when the attorney intends to or is considering retaining his law firm as attorney for the trust or estate. The committee is of the further opinion that the disclosure must include the general compensation to be paid to the law firm. The role of the attorney who serves as fiduciary to a trust or estate and additionally engages his law firm as attorney for the same entity presents a personal conflict as described by DR:5-101(A). In such a situation, the attorney's own financial, business, or personal interest may potentially affect the exercise of his professional judgment on behalf of the trust or estate.

In the Matter of William Hale Thompson (2022)—VSB Disciplinary Bd



- R accepted flat fee of \$5K from client.
- Flat fee was deposited in IOLTA, but less than a month later and well before he completed the representation the IOLTA balance fell below \$5K.
- Client terminated R and requested file and refund. R did not send file, refund or an accounting.
- Rules violated: 1.5 (fees) Rule 1.15(b) and Rule 1.16.
- Public Reprimand w/Terms—engage CPA to review trust account and assess compliance with Rule 1.15.

UPL—Dirty Deeds Done Dirt Cheap

- VSB ex rel 5th Dist Comm v. Jay Arthur Rosenberg (2022)
 - Consent to Revocation
 - From 2018-2021, R's firm prepared 2,000-2,200 deeds per year for VA real estate transactions. The work was outsourced to a firm in India.
 - Random sampling revealed many had spelling and grammar errors and some had substantive errors.
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- Deeds were reviewed by a VA lawyer before delivery to clients.
 - R refused to provide names of his firm's VA-based clients and would not allow a second sampling of his work.
 - Violations—Rules 1.1 (Competence); 1.3(a)(Diligence); 5.5(c)(UPL) and 8.1(c)-(d)(failure to cooperate with bar investigation)

Unauthorized Practice of Law

- In the Matter of Robert Overby, Jr.
 - VSB Disciplinary Board (2023)
 - Public Reprimand with Terms by Agreed Disposition
 - R admitted in DC but not VA.
 - Appeared in Fairfax GD Court to help a friend's son who had a summons for reckless driving
 - Filled out appearance of counsel sheet but did not sign it and left bar # blank
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- Told prosecutor client was running late and that R was an atty. R spoke to police officer and explained that client had taken driver improvement course
 - Prosecutor agreed to a \$100 fine, but client did not pay the fine and a show cause issued. R appeared on the show cause; R was asked to sign and memorialize the plea agreement and wrote his DC Bar number on the form.
 - Prosecutor told judge R was not licensed in VA and judge vacated the plea and cont'd the case.

UPL Violations by Foreign Lawyer

- Rule 8.5 Disciplinary Authority; Choice of Law

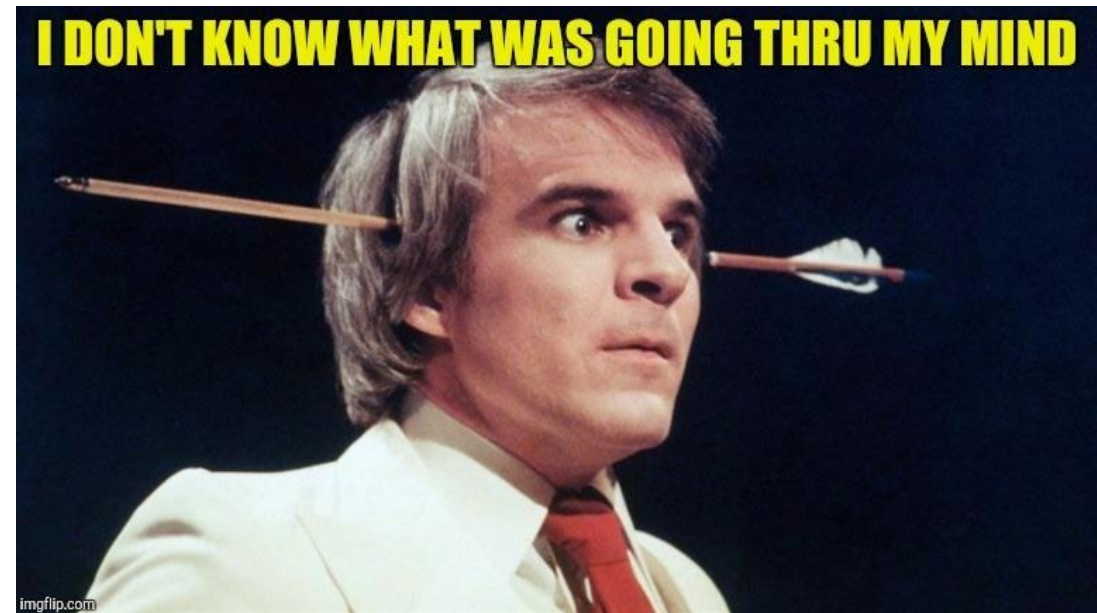
...A lawyer not admitted in Virginia is subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia.

- Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice

... (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.

UPL—In the Matter of Mathew Taylor Morris— Agreed Disposition—Public Reprimand w/Terms

- R's license was admin suspended for non-payment of dues. R later paid dues, late fees and was reinstated.
- During the 4 weeks he was suspended Morris appeared as an Asst. CA in 82 cases.
- R asserted that he "didn't know the [bar dues] were due." R claimed he did not receive any notices from VSB re late dues or the suspension.
- 2 yr. probation—no new violations



In the Matter of Patrick Nicholas Anderson; VSB Disc. Bd (2023)—90 day Suspension



- Client terminated R and had credit card company chargeback a payment of \$1K Client paid R.
- R instructed associate to prepare letter challenging the chargeback using a standard template that accused Client of “illegal manipulation of cellular data plans” and that the Client was “guilty of committing various types of fraud.”
- Also provided complete copy of client’s file to credit card company.
- Associate told R that associate thought the letter was unethical and refused to sign it.
- Violation of Rule 1.6 (confidentiality) and Rule 1.9(c) (disclosure of former client information)

You Talk Too Much—Part 2

In the Matter of Stacey Tharp Davenport (2023)

- Chesterfield Commonwealth's Attorney cited for ethics violation in Lunsford murder trial



- R is CA for Chesterfield County— issued a press release announcing an upcoming murder trial. In press release R was quoted as discussing the “brutality of [the] murder,” even though the victim’s body was never recovered.
- Defense counsel obtained an order from Judge Lynn Brice who wrote: “The press releases, the content of them, the overall timing of the recent publicity, all in the Court’s mind present a substantial risk of interfering with the fairness of this jury trial.”
- Rule violated—Rule 3.6 (trial publicity).
- Public admonition—Agreed disposition by subcommittee.

Threatening Criminal Prosecution; Bullying Unrepresented Persons

- VSB ex rel Third Dist. Comm. v. Kimberly Alice Chandler (2022)
- Agreed Disposition before Three-Judge Panel
- R told a creditor that she was a witness in a fed'l case and would be subpoenaed—never happened.
- R and another lawyer she supervised, threatened criminal action if the creditor did not agree to settlements R wanted—R never followed through on her threats.
- Violations—Rules 3.4(i), 4.3(b), 5.1(b-c) 8.4(a-b)
- Public Reprimand w/Terms



Overzealous Advocacy—VSB ex rel Seventh Dist. Comm v. Leiser (2023)—3 Judge Panel Hearing

- As part of COVID-related transition plan Loudoun Co. Circuit Court limited motions to 3 pages and supporting briefs to 5 pages absent leave of court.
- R filed 14-page motion to dismiss; later filed a two-page motion to dismiss and 14-page memorandum of law in support w/o leave of court.
- Because R did not have his motion to dismiss heard, the opposing party/plaintiff moved for default judgment. R filed 10-page brief in opposition.
- Judge Fisher considered the brief anyway and denied the motion for default judgment and also denied R's motion to dismiss.
- R filed a motion to reconsider in which he accused Judge Fisher of a "superficially clever but ultimately sophomoric and transparent attempt to avoid detection its chicanery and exposure of the real reason behind its decision" and "pretending to have actually engaged in a good faith analytical process." R asserted that "the relative merits of the parties' arguments were completely irrelevant to [the court's] decision-making process" and that the "real" goal was to punish R for filing briefs that exceeded the page limit.
- During the VSB investigation R continued to attack Judge Fishers honesty and integrity.
- R told the bar investigator that his non-compliance with the court's page limitations was his "Rosa Parks moment," and that he "was not going to get out of his seat and move to the back of the bus."
- Rules violated—8.2 (criticism of judges); Rule 3.4(d)(violation of standing rule of tribunal)
- Public Reprimand w/Terms, three years probation, 10 hours of CLE in Ethics and Professionalism, counseling with Thomas Spahn

Takeaways— Avoiding Bar Complaints in the First Place!

- Communicate w/Client and always respond to inquiries
- Don't Procrastinate—Git 'er Done!
- Use Written Engagement Letters or Contracts.
- Don't Dabble—stick with what you know.
- Screen Potential Clients thoroughly before accepting their case.

- Manage Client Expectations/Define the scope of the representation, i.e., what you will do, what you won't do and what you expect the client to do
- Have a clearly understood fee arrangement; withdraw if client does not pay you.
- Get a sufficient advance fee upfront if you are taking an hourly or fixed fee case