

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
LEGAL ETHICS OPINION 1899
(Petition ID: 22-3)**

PETITION OF THE VIRGINIA STATE BAR

Stephanie E. Grana, President
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PROPOSED LEGAL ETHICS OPINION 1899

PETITION

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar (“VSB”), by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of Legal Ethics Opinion 1899, as set forth below. The proposed opinion was approved by unanimous vote of the VSB Council on October 21, 2022 (Appendix, p. 1).

I. Overview of the Issues

The VSB Standing Committee on Legal Ethics (“committee”) has proposed Legal Ethics Opinion (“LEO”) 1899.

This proposed opinion provides guidance on how to determine what portion of a flat fee is earned when the representation is prematurely terminated by the client without cause. Specifically, the opinion discusses the use of, and limitations on, conversion clauses that permit the fee to be calculated based on something other than the legal principle of quantum meruit.

The question arises because, under LEO 1606, a flat fee is not considered

earned until the representation is complete, and thus when the representation is prematurely terminated, the fee must be based on quantum meruit because the contractual fee has not been earned. However, there are many reasons why a lawyer and client might prefer to establish an alternative fee arrangement that would clarify what is owed in the event of termination and avoid the multi-factor legal analysis of quantum meruit. This topic has previously been analyzed in LEO 1812, involving a contingent fee agreement, and LEO 1899 concludes that conversion clauses are also permissible in flat fee cases as long as they are reasonable and adequately explained to the client.

Importantly, the proposed opinion concludes that a fee due under a conversion clause cannot exceed the original flat fee, since that would be unreasonable. The proposed opinion also gives guidance on the use of benchmarks to earn a flat fee in stages as the matter progresses, and how those benchmarks can serve as a conversion clause/alternative fee arrangement if the representation is prematurely ended.

The proposed opinion is included below in Section III.

II. Publication and Comments

The Standing Committee on Legal Ethics approved the proposed opinion at its meeting on May 26, 2022 (Appendix, p. 6). The VSB issued a publication release dated May 26, 2022 pursuant to Part 6, § IV, Paragraph 10-2(c) of the

Rules of this Court (Appendix, p. 8). Notice of the proposed opinion was also published in the VSB's June 1, 2022 E-News (Appendix, p. 10), on the VSB's website on the "Actions on Rule Changes and Legal Ethics Opinions" page (Appendix, p. 15), and on the VSB's "News and Information" page on May 27, 2022 (Appendix, p. 17).

When the proposed opinion was released for public comment, two comments were received, from Robert Tuttle (Appendix, p. 18) and David Corrigan (on behalf of the Local Government Attorneys) (Appendix, p. 19). The committee took no action based on these comments.

III. Proposed Opinion

LEGAL ETHICS OPINION 1899. USE OF CONVERSION CLAUSE IN FLAT FEE AGREEMENTS

QUESTIONS PRESENTED

When a lawyer represents a client on a flat (or fixed) fee agreement, can the agreement provide for an alternative fee arrangement if the representation is prematurely terminated by the client without cause? What, if any, limitations apply to such an alternative arrangement?

PREVIOUS OPINIONS

In Legal Ethics Opinion 1606 (Committee Opinion 1994, Approved by Supreme Court 2016), the committee discussed fixed fees (now more commonly

called “flat fees”) as follows:

5. Fixed Fee. The term fixed fee is used to designate a sum certain charged by a lawyer to complete a specific legal task. Because this type of fee arrangement provides the client with a degree of certainty as to the cost of legal services, it is to be encouraged.

A fixed fee is an advanced legal fee. It remains the property of the client until it is actually earned and must be deposited in the attorney’s trust account. If the representation is ended by the client, even if such termination is without cause and constitutes a breach of the contract, the client is entitled to a refund of that portion of the fee that has not been earned by the lawyer at the time of the termination. LE Op. 681. In such circumstances, what portion of the fee has been earned requires a quantum meruit determination of the value of the lawyer’s services in accordance with *Heinzman* and *County of Campbell v. Howard*, 133 Va. 19 (1922).

In Legal Ethics Opinion 1812 (2005), the committee addressed the premature termination of a contingent fee representation, which is also subject to the quantum meruit analysis in the cases identified above. The question presented in LEO 1812 was whether a lawyer can use a so-called conversion clause in a contingent fee agreement, providing that if the representation is terminated prematurely by the client without cause, the fee will be calculated by a method other than quantum meruit. The committee reviewed the existing legal authority and ethics opinions from other states to conclude that “such alternative fee arrangements are permissible in contingent fee contracts so long as the alternative fee arrangements otherwise comply with the Rules of Professional Conduct.” Considering that one of the applicable Rules of Professional Conduct is Rule

1.5(a), requiring the fee to be reasonable, the committee further opined that when determining reasonableness, the alternative fee (conversion clause) must be evaluated not only as of the time when the fee agreement was signed, but as of the time that the lawyer's services were terminated, and in the case of a contingent fee, as of when the recovery, if any, was obtained. If the alternative fee is not reasonable at any of those times, the arrangement is impermissible and the lawyer will be left with only a quantum meruit claim.

ANALYSIS

Because, unless there is an agreement otherwise, none of the flat fee is earned until the matter is concluded, a flat fee presents the same dilemmas as a contingent fee if the matter is prematurely terminated. If the representation is terminated without cause by the client, there is no question that the lawyer is entitled to some compensation for the work done in the case to that point, and in the absence of an alternative agreement, the legal doctrine of quantum meruit must be applied to determine the lawyer's entitlement to a fee. *See Heinzman v. Fine, Fine, Legum and Fine*, 217 Va. 958, 964 (1977). However, both lawyers and clients might prefer the certainty of agreeing to an alternative fee arrangement at the outset, so that if the representation is terminated, both sides are clear on the lawyer's entitlement to a fee and the risk of a legal dispute about the amount of the lawyer's fee is reduced.

The committee concludes that contingent fees and flat fees should be treated similarly for these purposes, and the above analysis from LEO 1812 applies to conversion clauses in flat fee cases as well. The mechanics, however, will be different since the flat fee does not involve a potential recovery. First, this means that the reasonableness analysis of a conversion clause arrangement will not consider any ultimate recovery, since that concept is irrelevant to a flat fee arrangement. A second difference is that the alternative fee will be capped by the original agreed-to flat fee; the alternative fee arrangement cannot exceed the flat fee because the essence of the flat fee agreement is that the client will never pay more than the flat fee.

As in LEO 1812, a crucial component of a lawyer's ability to use a conversion clause is the duty to adequately explain a fee arrangement to the client under Rule 1.5(b). The conversion clause at issue in LEO 1812 did not satisfy that rule because it was not clear as to whether it established an alternative hourly fee arrangement or established an hourly rate to be used in a quantum meruit calculation; the latter option would be impermissible, even if clearly stated, because the lawyer's usual hourly rate is not the only factor applied in a quantum meruit analysis. Similarly, in a flat fee context, a conversion clause should not attempt to state what the appropriate quantum meruit analysis is, but rather make clear that the clause creates an alternative fee arrangement based on an hourly or

other metric as opposed to the flat fee.

Another option, rather than applying an hourly rate in the event of termination, would be to use benchmarks in the agreement providing that portions of the flat fee can be earned at various points in the representation and then use those benchmarks as the basis for a conversion clause. Again, pursuant to Rule 1.5(a) and (b), the amount earned at each benchmark must be reasonable considering the amount of work to be done in the case, and the arrangement must be adequately explained to the client. Once such an agreement is reached, however, the lawyer can also ask the client to agree that in the event the representation is terminated, the amount of the earned fee will be determined based on the benchmarks that have been reached to that point rather than by quantum meruit. The committee believes that the use of reasonable and adequately-explained conversion clauses as part of the fee agreement is beneficial to the client and the lawyer when undertaking a flat fee representation. Quantum meruit is a multi-factor legal doctrine that provides a remedy for the lawyer when the representation is terminated without cause, but can only be enforced by legal action against the former client. Legal Ethics Opinion 1878 (2021) describes some of the uncertainties involved in applying quantum meruit to a terminated contingent fee matter, including “the ‘unknown’ of the recovery to be had, if any” and “other ‘unknowns,’ such as the balance of work which will actually be required to

complete the matter and the extent to which predecessor counsel's legal services will have contributed to the recovery." On the other hand, a reasonable conversion clause can be adequately explained and agreed to by the client at the outset of the representation and provides more certainty to both the lawyer and the client about what fee will be owed if the representation is not completed.

ANSWER

A lawyer's fee agreement with a client may include an alternative fee arrangement or "conversion clause" if the client terminates the representation prematurely and without cause. However, an alternative fee or conversion provision must be reasonable and adequately explained to the client.

IV. Conclusion

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the VSB. Va. S. Ct. R., Pt. 6, § IV. Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and rules of professional conduct are promulgated and implemented. Proposed LEO 1899 was developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the VSB requests that the Court approve the proposed Legal Ethics Opinion 1899 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

By 
Stephanie E. Grana, President

By 
Cameron M. Rountree, Executive Director

Dated this 7th day of November, 2022.

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APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

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**MINUTES OF THE VIRGINIA STATE BAR
COUNCIL MEETING**

Date: October 21, 2022, 9:00 am
Location: Boar's Head Resort, 200 Ednam Drive, Charlottesville

The VSB Council met in-person on Friday, October 21, 2022. At 9:04 a.m., President Stephanie E. Grana called the meeting to order. Seventy-one (71) Council members attended in-person satisfying Pt. 6., § IV, Para. 7 of the Rules of the Supreme Court of Virginia. There was no remote participation.

Council members in attendance:

President Stephanie E. Grana	Member Kathryn N. Dickerson
President-elect Chidi I. James	Member Brian C. Drummond
Immediate Past President Jay B. Myerson	Member Stephen K. Gallagher
Member D.J. Hansen	Member Carly J. Hart
Member Ryan G. Ferguson	Member Sandra L. Havrilak
Member Naveed Kalantar	Member Tamika D. Jones
Member Bretta Zimmer Lewis	Member Nathan J. Olson
Member Matthew R. Foster	Member Luis A. Perez
Member Neil S. Lowenstein	Member Debra L. Powers
Member Charlene A. Moring	Member Robert B. "Bob" Walker
Member Thomas G. Shaia	Member Michael M. York
Member Derek A. Davis	Member R. Penn Bain
Member Benjamin M. Mason	Member Susan F. Pierce
Member Veronica E. Meade	Member G. Andrew Hall
Member E. M. Wright, Jr.	Member W. Huntington "Hunter" Byrnes, Sr.
Member P. George Eliades II	Member Daniel P. Frankl
Member Timothy R. Baskerville	Member Kevin W. Holt
Member Mark D. Dix	Member Eugene N. Butler
Member Cullen D. Seltzer	Member William T. Wilson
Member Samuel T. Towell	Member Peter K. McDermott II
Member Henry I. Willett, III	Member W. Grant Back
Member Craig B. Davis	Member Bruce H. Russell II
Member Thomas A. Edmonds	Member Bradley D. Fleming
Member Joel R. McClellan	Member D. Sue Baker
Member Allen F. Bareford	Member Anna B. Bristle
Member Richard H. Howard-Smith	Member at Large James W. Hundley
Member Ann Marie Park	Member at Large Lenard T. "Len" Myers, Jr.
Member Carole H. Capsalis	Member at Large Molly E. Newton
Member Jennifer S. Golden	Member at Large Lonnie D. "Chip" Nunley III
Member Adam M. Krischer	Member at Large Patricia E. Smith
Member David E. Sher	Member at Large Joanna L. Suyes
Member Nicholas J. Gehrig	Member at Large Nicole E. Upshur
Member Sebastian M. Norton	CLSBA Chair Luis A. Perez
Member Todd A. Pilot	Diversity Conference Chair Alicia R. Johnson
Member Susan M. Butler	Senior Lawyers Conference Chair Gary C. Hancock
Member Gary V. Davis	Young Lawyers Conference President Craig E. Ellis

Members absent:

Member Corrynn J. Peters	Member Susheela Varky
Member Susan B. Tarley	Member G. L. "Rex" Flynn, Jr.
Member Shaun Huband	Member Susan M. Pesner
Member Ryan G. Ferguson	Member at Large David P. Weber
Member Neil S. Talegaonkar	Member at Large Lisa A. Wilson

Council Invitees:

Solomon H. Ashby, Jr.	Old Dominion Bar Association
Valerie O'Brien	Virginia Trial Lawyers Association
K. Danielle Payne	Virginia Association of Criminal Defense Attorneys

Also attending:

Cameron M. Rountree	VSB	Executive Director and Chief Operating Officer
Renu M. Brennan	VSB	Bar Counsel
Crista L. Gantz	VSB	Director of Access to Legal Services
Crystal T. Hendrick	VSB	Director of Finance and Procurement
James M. McCauley	VSB	Ethics Counsel
Shawne D. Moore	VSB	Assistant to the Executive Director
Caryn B. Persinger	VSB	Director of Communications
Mallory J. Ralston	VSB	Meetings Coordinator
Dolly C. Shaffner	VSB	Meetings Coordinator
Maureen D. Stengel	VSB	Director of Bar Services

I. Reports and Information Items

A. President's Report

Ms. Grana reported on her activities. Her written report was included in the materials provided to Council.

B. Executive Director's Report

Mr. Rountree reported on matters relating to the VSB. His written report was included in the materials provided to Council.

C. Financial Reports

Ms. Hendrick presented the financial report for the year ending June 30, 2022, and as of August 31, 2022. Her written reports were included in the materials provided to Council.

D. Bar Counsel Report

Ms. Brennan reported on the activities in the Office of Bar Counsel. Her written report was included in the materials provided to Council.

E. Conference of Local & Specialty Bar Associations Report

Chair Luis Perez reported on the activities of the Conference of Local & Specialty Bar Associations. His written report was included in the materials provided to Council.

F. Diversity Conference Report

Chair Alicia Johnson reported on the activities of the Diversity Conference. Her written report was included in the materials provided to Council

G. Young Lawyer Conference Report

Conference President Craig Ellis reported on the activities of the Young Lawyers Conference. His written report was included in the materials provided to Council.

H. Senior Lawyers Conference Report

Chair Gary Hancock reported on the activities of the Senior Lawyers Conference. His written report was included in the materials provided to Council.

I. Access to Legal Services Report

Chair Joanna Suyes reported on the activities of the Standing Committee on Access to Legal Services and presented the Voluntary Pro Bono Reporting Summary for Year 4 (2021-2022 Bar Year Contributions for renewals processed as of September 20, 2022). Her written report was included in the materials provided to Council

J. Standing Committee on Legal Ethics

Chair Michael York presented Mr. McCauley with a plaque in appreciation of his service as staff liaison to the committee.

II. Action Items

A. Minutes of the June 16, 2022 Meeting

A motion was made by Bruce Russell and seconded by Jay Myerson, to vote to approve the minutes of the June 16, 2022 meeting. Council approved, by unanimous vote, the minutes of the June 16, 2022 meeting.

B. Minutes of the September 7, 2022 Meeting

A motion was made by Chidi James and seconded by Jay Myerson, to vote to approve the minutes of the September 7, 2022 meeting. Council approved, by unanimous vote, the minutes of the September 7, 2022 meeting.

C. Paragraph 3 Revisions to Judicial Class Membership

A summary of the proposed amendments to Part 6, Section IV, Para. 3, defining judicial class membership, was presented by Robert B. Walker, on behalf of the Special Committee on Bench-Bar Relations. A motion was made by Jay Myerson and seconded by Luis Perez, to vote to accept the proposals of the Bench-Bar Relations Committee. Council unanimously voted to recommend the Committee's proposal to the Supreme Court.

D. Legal Ethics Opinion 1899

Mr. McCauley presented the memo from Ethics Counsel to the Council for Proposed LEO 1899, Use of Conversion Clause in Flat Fee Agreements, and a draft opinion. A copy of the memo and draft opinion were included in the materials provided to the Council. After brief questions from Cullen Seltzer, a motion was made by Jay Myerson and seconded by Chidi James, to vote to approve the draft opinion. Council voted unanimously to approve the draft to send to the Supreme Court for approval.

E. Election of Disciplinary Board Chairs

Ms. Havrilak presented the September 26, 2022 memo to Bar Council from the Clerk of the Disciplinary System requesting approval of Disciplinary Board Vice-Chair recommendations to fill vacancies caused by the resignation of Steven B. Novey due to his appointment to the Circuit Court for the 12th judicial circuit. The Board recommended Second Vice-Chair Kamala H. Lannetti to fill the First Vice-Chair vacancy, and board member David J. Gogal to fill the Second Vice-Chair vacancy. Copies of the clerk's memo were included in the materials provided to Council. A motion was made by Luis Perez and seconded by Jay Myerson, to vote to accept the Disciplinary Board's vice-chair recommendations. Council voted unanimously to accept and refer the committee's recommendations to the Supreme Court.

F. Election of District Disciplinary Committee Members

Mr. Rountree presented nominees for attorney vacancies on the First, Fourth, Sixth and Seventh district disciplinary committees. Copies of the district committee ballots were included in the materials provided to the Council. A motion was made by Len Myers and seconded by Chidi James, to vote to elect the nominees as presented. Council elected by unanimous vote, the nominees in each district:

- First District
 - Aaron F. Kass
 - Nancy G. Parr
- Fourth District, Section I
 - Edwin Y. Szeto
- Sixth District
 - Adam R. Kinsman
- Seventh District
 - Benjamin B. Fitzgerald

G. Approval of Resolution Honoring Ethics Counsel James M. “Jim” McCauley

Mr. Rountree presented a Resolution dated October 21, 2022 to honor retiring ethics counsel James M. “Jim” McCauley. A copy of the resolution was included in the materials provided to Council. A motion was made by Jay Myerson and seconded by Chidi James, to vote to approve the Resolution. The vote was recorded by the Poll Everywhere live voting tool. The Council unanimously voted, as follows, to approve the resolution. The results are appended to these minutes.

The President invited a motion to adjourn the meeting. A motion was made and seconded, and at 11:24 a.m. the meeting was adjourned.

Minutes

The **Standing Committee on Legal Ethics** met in the offices of the Virginia State Bar in Richmond, Virginia on May 26, 2022, commencing at 10:00 a.m.

Members present:

Dennis J. Quinn, Chair
 Michael M. York, Vice-Chair
 Vera “Katie” Dougherty
 Teresa Goody-Guillen (Remote)
 Michael HuYoung
 K. Brett Marston
 Jeffery K. Mitchell
 Michael W. Robinson (Remote)
 Nia A. Vidal

Also present:

Karen A. Gould, Executive Director
 James M. McCauley, Ethics Counsel
 Emily F. Hedrick, Senior Assistant Ethics Counsel (Remote)
 Dorian L. Dalton, Assistant Ethics Counsel
 Kristi R. Hall, Exec. Assistant/Paralegal (Remote)

I. Approval of Minutes

The minutes of the March 24, 2022, meeting were unanimously approved.

II. Legal Ethics Opinions

A. LEO 1897 – Reply all to emails (Rule 4.2)

After discussion, the committee voted to submit the proposed draft opinion to Council for approval at its June 16, 2022, meeting.

B. LEO 1898 – Cryptocurrency

After discussion, the committee voted to submit the proposed draft opinion to Council for approval at its June 16, 2022, meeting.

C. LEO 1899 – Conversion clause when flat fee representation is prematurely terminated without cause.

After discussion, this proposed draft opinion was released for public comment.

***ALL unfinished business of the Standing Committee on Legal Ethics is confidential, pursuant to SCV Rule Part 6, Section IV, Paragraph 10.**

D. LEO Request – Immigration courts/Last minute scheduling

After discussion, the committee directed staff to LEI the request.

III. Adjournment

The Chair adjourned the meeting at 12:56 p.m.



Virginia State Bar Seeking Public Comment

1111 East Main Street, Suite 700
Richmond, Virginia 23219-0026
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD (804) 775-0502

MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: May 26, 2022

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON PROPOSED LEGAL ETHICS OPINION 1899

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory Legal Ethics Opinion 1899, Use of Conversion Clause in Flat Fee Agreements. This proposed opinion generally addresses the use of a conversion clause that specifies what fee is earned when a lawyer represents a client on a flat (or fixed) fee arrangement and the representation is prematurely terminated by the client without cause.

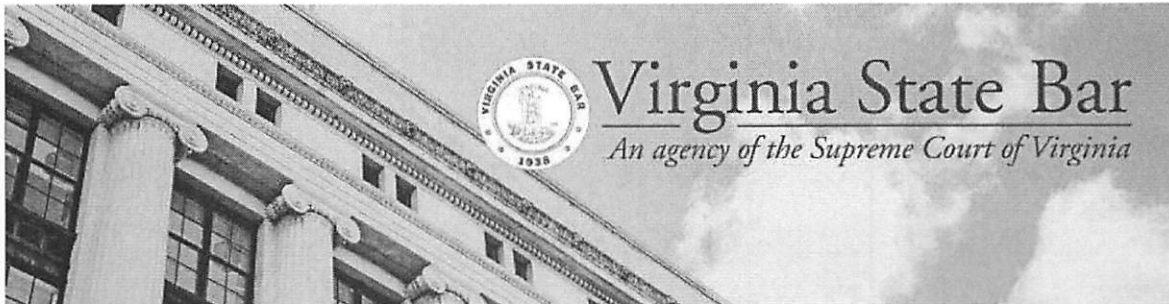
In this proposed opinion, the Committee concluded that a lawyer's fee agreement with a client may include a "conversion clause" if the client terminates the representation prematurely and without cause. However, a conversion provision must be reasonable and adequately explained to the client. The proposed opinion identifies the ways in which a conversion clause can be beneficial to both the client and the lawyer by providing certainty about the client's obligations and the fee earned by the lawyer.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **June 30, 2022**. Comments may be submitted via email to publiccomment@vsb.org.

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Governance

The **Supreme Court of Virginia** is seeking comment on action when the **constitutionality of a law is challenged**. Currently, at least 29 states have rules or statutes requiring notice to the state attorney general and an opportunity to intervene when a case in state court questions the constitutionality of a state law. The Court seeks comments from the bench and bar on adopting a similar procedure for cases in Virginia that challenge the constitutionality of a Virginia law. **Deadline: August 1, 2022.**



The **U.S. Court of Appeals for the Fourth Circuit** intends to adopt Local Rule 28(g); amend Local Rules 25(a) & (b), 30(b) & 31(d); and amend Internal Operating Procedures (I.O.P.s) 47.1 & 47.2, and **seeks comments** on these changes, which will take effect July 15, 2022, subject to revision in light of comments received.



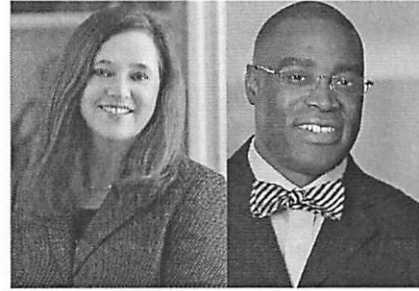
Nicholas J. Gehrig of Redmon, Peyton & Braswell, LLP in Alexandria **has been elected** to represent the **Eighteenth Judicial Circuit** on Bar Council in a special election. He will complete John K. Zwerling's term and be eligible for election to two additional terms.

On Tuesday, May 31, 2022, the **Supreme Court of Virginia** issued a **fortieth declaration of judicial emergency** in response to the COVID-19 pandemic that is effective until June 22, 2022.

VSB Annual Meeting Live and Live Streamed 

The **VSB Annual Meeting**, an over 80-year tradition, is back in full swing in Virginia Beach. Never been? We'd love to see you there!

8.0 hours of CLE, networking with your peers, winning at bingo or running, and dancing to **Johnny Pog and the Slammers** at the Annual Banquet where Jay B. Myerson will pass the gavel to **Stephanie E. Grana**, our new VSB President, and **Chidi I. James** will step into the role of president-elect.



Register now and check out the great list of events we have planned!

Can't attend the Annual Meeting? Watch the live-streamed CLEs on June 16 and 17. **Just \$100 for 8.0 hours—live or on-demand.**

All registrants, including on-site, live stream, and on-demand, will have access to the recorded videos until October 31, 2022.

Legal Ethics



Legal Ethics

The VSB's Standing Committee on Legal Ethics is seeking public comment on proposed advisory **Legal Ethics Opinion 1899**, the Use of Conversion Clause in Flat Fee Agreements. Deadline for comment is June 30.

Discipline

Disciplinary hearings are public meetings and may be viewed as they occur by following the [disciplinary docket](#).

Recent disciplinary system actions:

Barry Ray Taylor, license suspended, effective May 18, 2022.

Shelton Scott Baker, license suspended, effective May 20, 2022.

Jody Lyn Castillo, public reprimand, effective May 6, 2022.

Andrew Paul Hill, public reprimand, effective May 13, 2022.

Private discipline: 2 private admonitions, 2 private reprimands.

Compliance

Your annual dues and renewal statements for the 2022-23 year will be mailed in mid-June to each lawyer's address of record. Is your AOR up to date?



Online renewal will be available and is encouraged.

Pro Bono / Access to Justice

GET TO 30!
PRO BONO CHALLENGE

The Virginia State Bar is celebrating the 30th anniversary of the Access to Legal Services Committee and the many lawyers over the last three decades who have volunteered as pro bono advocates. Beginning July 1, 2022, and ending March 31, 2023, we ask each of the amazing Virginia lawyers to help us achieve:

300,000 pro bono hours & \$1 Million in donations to legal services providers!

THE SERVICE CHALLENGE

Log 30 hours of pro bono service per lawyer to be named a VSB Pro Bono Advocate!

Ways to GET TO 30 Hours

- Answer two questions per week on Virginia Free Legal Answers (45 minutes/week)
- Do two pro bono hotline shifts per month (4 hours per month)
- Take three unrepresented divorces or other civil cases from legal aid (same 10-hour case every three months)

Learn about more ways to engage in pro bono service to meet the challenge by visiting vsb.org

THE DONATION CHALLENGE

Donate at one of the three levels per lawyer to earn VSB Star Donor status!

Ways to GIVE \$30

- WEEKLY – a cumulative total of \$1200 (the equivalent of your daily specialty collect)
- BI-WEEKLY – a cumulative total of \$600 (the equivalent of one weekly dinner out)
- MONTHLY – a cumulative total of \$370 (the equivalent of a daily smoking machine total)

View a list of Qualified Legal Service Providers to donate to meet the challenge by visiting vsb.org

PRO BONO: FOR THE GOOD

Ready to get started?

We'll email you a welcome packet and instructions to get started volunteering or donating, or both! Once a month, we will send you encouragement to reach your goal.

Sign up at bit.ly/GetTo30

Questions? Contact Crista Gantz at cgantz@vsb.org

The GET TO 30 Challenge runs July 1, 2022, through March 31, 2023. Contributions made during the period will count toward the challenge goals. We'll be able to report on a lawyer's service from our 17 providers. Your most complete list must be submitted by April 14, 2023, to be considered for recognition and challenge.

In celebration of the 30th anniversary of the Access to Legal Services Committee, the **Get to 30! Challenge** is asking lawyers to do 30 hours of pro bono or donate \$30 at three different recurring levels beginning July 1. Get the full details and get ready!

The **Legal Aid Luncheon** at the VSB Annual Meeting will celebrate Jessica Choate of **George Mason Law School** and Jennifer Locke of **Blue Ridge Legal Services**. We would love to see you at the beach on June 17.

Email cgantz@vsb.org for more information on either of these programs.

Virginia Lawyer Referral Service

The VLRS had over 150 unreferral calls from people seeking lawyers during January–March 2022. We need lawyers statewide, particularly in Charlottesville, Fredericksburg, Lynchburg, Roanoke & Winchester for the practice areas of Collections, Consumer, Family, Labor, and Real Estate Laws. For more information on becoming a VLRS panelist, please contact Toni Dunson at VLRS@vsb.org.



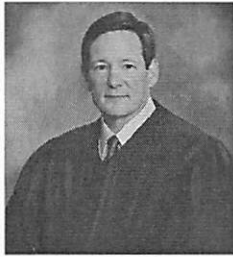
News



The **Technology and the Future Practice of Law Committee** has released its **2022 report** on tech issues impacting lawyers and their practices. The report covers myriad tech issues that have evolved from the COVID pandemic.

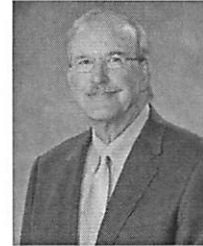
The **Virginia Law Foundation Seeks Nominees for Fellows Class**. The deadline for submissions is June 15. Virginia Law Foundation Fellows are outstanding lawyers who are leaders in the profession and the community.

Awards



The **Judicial Council of Virginia** has named the **Honorable Donald W. Lemons**, senior justice of the Supreme Court of Virginia, as the recipient of the 2022 Harry L. Carrico Outstanding Career Service Award, given to a judge who "demonstrated exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom, and humility."

Daniel P. Frankl, a founder of Frankl, Miller, Webb & Moyers, LLP in Roanoke, has been awarded the VSB Conference of Local and Specialty Bar Associations (CLSBA) 2022 Local Bar Leader of the Year Award for his years of service to the Roanoke bar and the community, particularly his assistance to children in need.



G. "Rex" Flynn, founder of The Flynn Law Firm, PLLC in Arlington has been awarded 2022 Specialty Bar Leader of the Year by the VSB CLSBA. The award recognizes lawyer volunteers who lead local bar associations and "offer important service to the bench, bar, and public."



The **Virginia Beach Bar Association** (VBBA) has been named the Bar Association of the Year for its

CLEs, community outreach, and charitable works. The VBBA's elected leadership includes: Edwin A. Booth of Parks Zeigler, PLLC, president; Ryan G. Ferguson of Bischoff Martingayle, P.C., president-elect; Allison W. Anderson of Parks Zeigler, PLLC, secretary; and C. Andrew Rice of the Office of Commonwealth's Attorney, treasurer.

The **Virginia Bar Association** has been selected to receive the inaugural Award for Excellence in Wellness and Well-Being in the Legal Profession by the Virginia State Bar President's Special Committee on Lawyer Well-Being in 2022.




The **Military Law Section** has named **Marcia McCarthy Dillon** of McDermott, Will & Emery, and **Wendy B. Harris**, Fredericksburg public defender, as recipients of the Military Law Section Pro Bono Award. Lawyers are recognized who actively practice in support of veterans and/or active duty servicemembers.

Special consideration is given to recognize lawyers who practice before

Virginia's Veterans' Docket. They will receive their awards on June 17 at the VSB Annual Meeting.

Virginia Lawyer

The Military Law Issue: In the Mail! 

Thank you to the Military Law Section for sponsoring the June issue and for their fine and topical articles on:

- Ukraine and NATO
- Veterans' Benefits
- Court-martial after retirement

And as always, thank you to our authors, advertisers, and the lawyers of the Commonwealth for making *Virginia Lawyer* a vibrant chronicle of the legal profession in Virginia.



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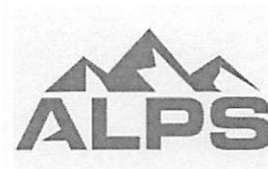
Continuing Legal Education



If you are looking for CLE credit, don't forget to check our list of **low-cost and free CLE**.

ALPS will be hosting its FREE live **Fall Ethics CLE Tour of Virginia** and did we mention those CLE hours will be FREE?

[Find your city and registration details here.](#) Virtual options are also available!



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The Virginia State Bar

Professional Guidelines

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Proposed | Legal Ethics Opinion 1899, Use of Conversion Clause in Flat Fee Agreements. Comments due by June 30, 2022.

Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory Legal Ethics Opinion 1899, Use of Conversion Clause in Flat Fee Agreements. This proposed opinion generally

addresses the use of a conversion clause that specifies what fee is earned when a lawyer represents a client on a flat (or fixed) fee arrangement and the representation is prematurely terminated by the client without cause. ¹⁶

In this proposed opinion, the Committee concluded that a lawyer's fee agreement with a client may include a "conversion clause" if the client terminates the representation prematurely and without cause. However, a conversion provision must be reasonable and adequately explained to the client. The proposed opinion identifies the ways in which a conversion clause can be beneficial to both the client and the lawyer by providing certainty about the client's obligations and the fee earned by the lawyer.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at (804) 775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **June 30, 2022**. Comments may be submitted via email to publiccomment@vsb.org.

[View proposed LEO 1899 \(PDF\)](#)

Updated: May 26, 2022

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1111 East Main Street, Suite 700 | Richmond, Virginia 23219-0026
All Departments (804) 775-0500
Voice/TTY 711 or (800) 828-1120
Office Hours: Mon.-Fri. 8:15 am to 4:45 pm (excluding holidays)
The Clerk's Office does not accept filings after 4:45 pm



Virginia State Bar

An agency of the Supreme Court of Virginia

NEWS AND INFORMATION

May 27, 2022

VSB Seeks Comment on Use of Conversion Clause in Flat Fee Agreements

The Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory [Legal Ethics Opinion 1899](#), Use of Conversion Clause in Flat Fee Agreements. This proposed opinion generally addresses the use of a conversion clause that specifies what fee is earned when a lawyer represents a client on a flat (or fixed) fee arrangement and the representation is prematurely terminated by the client without cause.

In this proposed opinion, the Committee concluded that a lawyer's fee agreement with a client may include a "conversion clause" if the client terminates the representation prematurely and without cause. However, a conversion provision must be reasonable and adequately explained to the client. The proposed opinion identifies the ways in which a conversion clause can be beneficial to both the client and the lawyer by providing certainty about the client's obligations and the fee earned by the lawyer.

Inspection and Comment

[View the proposed opinion](#) or contact the Office of Ethics Counsel at (804) 775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than **June 30, 2022**. Comments may be submitted via email to publiccomment@vsb.org.

Updated: May 27, 2022

From: Robert Tuttle
To: publiccomment
Subject: EXTERNAL SENDER Comment on proposed LEO 1899
Date: Thursday, June 2, 2022 9:57:41 AM

You don't often get email from rtuttle@law.gwu.edu. [Learn why this is important](#)

Dear Ms. Gould,

I have been teaching legal ethics at GWU since 1994, and have always followed (and often taught my students) the VSB's Rules of Professional Conduct when they depart from the ABA's Model Rules. Rule 1.5 has been of particular interest because it shifts the standard for legal fees from "not unreasonable" (ABA MR) to "reasonable." Overall, I think the proposed LEO 1899 maintains that burden on counsel, but I was surprised that the LEO does not more strongly urge -- in its parallel with contingent fee agreements -- that all fixed fee/conversion clause arrangements also be confirmed in writing. The complexity of both fee arrangements seem comparable, so the client protection (and capacity for retrospective review) should also be comparable.

Thank you for your work and please let me know if you have any questions. I am an inactive member of the Virginia Bar but active in the DC Bar.

Sincerely,
Bob Tuttle

--

Robert Tuttle

Berz Research Professor of Law & Religion

GWU Law School - Stuart 417

(202)236-0518 (c)

SSRN site: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=271025

website: www.law.gwu.edu/Faculty/profile.aspx?id=1730

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DAVID P. CORRIGAN
804.762.8017
DIRECT FAX | 804.212.0862
dcorrigan@hccw.com
Respond to: Richmond

June 23, 2022

VIA EMAIL at publiccomment@vsb.org

Karen A. Gould, Executive Director
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

Re: Proposed Legal Ethics Opinion 1899

Dear Ms. Gould:

Thank you for seeking public comment on proposed advisory Legal Ethics Opinion 1899, regarding Use of Conversion Clause in Flat Fee Agreements.

After reviewing the proposed opinion, the Ethics Committee of the Local Government Attorneys of Virginia, Inc. ("LGA") has determined that the proposed LEO does not have any impact unique to the practice of local government law. Therefore, the Committee has no comment on this proposed LEO. However, we do appreciate the continuing opportunity to provide comments on proposed Legal Ethics Opinions and Rule changes.

Very truly yours,

David P. Corrigan
Chair, LGA Ethics Committee

cc: Michelle Robl, Esq., LGA President (via email)
Andy Herrick, Albemarle County Deputy County Attorney (via email)

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