

Ethics



Top Ten Legal Ethics Opinions Every Lawyer Should Know

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LEO 1606

**COMPENDIUM
OPINION ON FEES**

LEO 1606

- Compendium Opinion on Fees
- Issued in 1994, approved by the Supreme Court of Virginia November 2, 2016
- It's the Law!



WHAT YOU NEED TO KNOW

- Fees must be reasonable
 - ✓ See Rule 1.5 for factors
- Fixed fees are encouraged
- A true retainer is rare
 - ✓ It's properly called an "advanced legal fee"



WHAT YOU NEED TO KNOW

**THERE IS NO SUCH THING
AS A NON-REFUNDABLE
ADVANCED LEGAL FEE**



CONTINGENCY FEES

- Ethically permissible when there is a *res* from which to draw the fee
- Rarely ethical in domestic or criminal matters
- Rule 1.5 (c) requires contingency fee agreements to be in writing





LEO 1305

**DISPOSITION OF
CLOSED CLIENT FILES**

DISPOSITION OF CLOSED CLIENT FILES

- No duty to preserve client files indefinitely
- **But**, you must preserve trust account records for five years (Rule 1.15)
- Do not destroy originals where it would harm the client—wills, marriage certificate
- Protect client confidences



DISPOSITION OF CLOSED CLIENT FILES

- See LEO 1818

Electronic Files are OK





LEO 1332

**LAWYERS LEAVING
THE FIRM**

WHAT YOU NEED TO KNOW

- LEO codified in Rule 5.8 (2015)
- No unilateral contacting of clients for solicitation
- Joint communication should offer client choice of counsel



WHAT YOU NEED TO KNOW

- Clients decide
- Unilateral contact only if no agreement by the parties and must not contain false or misleading statements
- If client makes no election, default is client remains with the firm





LEO 1739

REFERRAL FEES

WHAT YOU NEED TO KNOW

- Rule 1.5(e) governs
 - ✓ Terms of division of fees disclosed to client
 - ✓ Client must consent
- Client consent must be obtained in advance of rendering legal services
 - ✓ Preferably in writing
- Total fee must be reasonable



WHAT YOU NEED TO KNOW

- Referring lawyer need not assume full responsibility or continue to participate in the representation as a condition of receiving referral fee
- Referring lawyer is not automatically assuming ethical responsibility for activity of other lawyer
- LEO encourages referrals under appropriate circumstances



WHAT YOU NEED TO KNOW

- However, referring lawyer must assess the client's legal matter and take reasonable steps to ensure that referral will result in competent legal representation in the field in question.

Caution

- Referral fee ethical rules vary from jurisdiction to jurisdiction
- Lawyers may not share fees with non-lawyers





** BONUS **

LEO 1890 - PROPOSED

WHAT YOU NEED TO KNOW

Compendium opinion on a lawyer's duties
when dealing with represented parties

Rule 4.2



FACTORS TO CONSIDER

- Knowledge of representation
- Talk about the representation
- May not use a third party, such as investigator to communicate



FACTORS TO CONSIDER

- May communicate if “authorized by law”—government lawyers involved in criminal investigations
- May communicate with former employees and current employees not in the “control group”



FACTORS TO CONSIDER

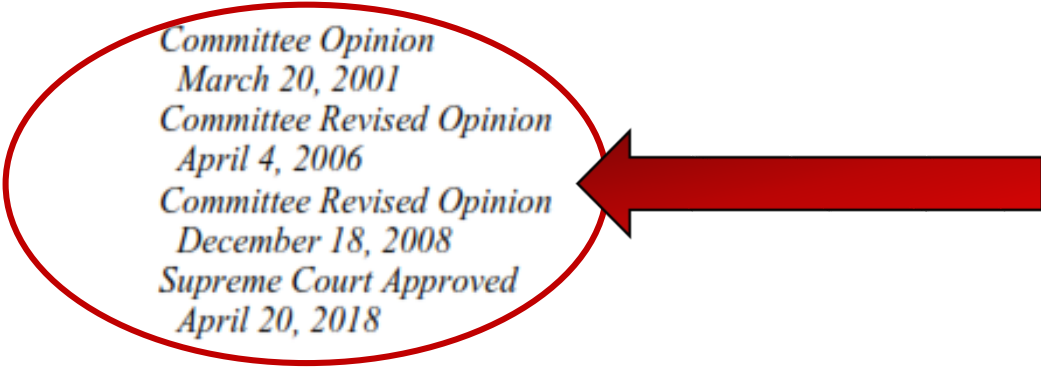
- Plaintiff's attorney may talk to adjuster
- May communicate to give a "second opinion"
- May **NOT** directly communicate settlement offers





LEO 1750

ADVERTISING



*Committee Opinion
March 20, 2001
Committee Revised Opinion
April 4, 2006
Committee Revised Opinion
December 18, 2008
Supreme Court Approved
April 20, 2018*

LEGAL ETHICS OPINION 1750. LAWYER ADVERTISING AND SOLICITATION.

The Standing Committee on Lawyer Advertising and Solicitation reviewed all of its previous opinions, and issued a compendium opinion March 20, 2001, summarizing many of the existing advertising opinions and incorporating previously issued legal ethics opinions on the subject of lawyer advertising. The Committee updated this opinion in 2005 and 2008 to reflect rule amendments and lawyer advertising amendments that had been adopted since 2001. The Standing Committee on Legal Ethics is now further updating the opinion to incorporate the significant rule changes effective July 1, 2017.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 2nd day of October, 2019.

On June 19, 2019 came the Virginia State Bar, by Marni E. Byrum, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, pursuant to the Rules for Integration of the Virginia State Bar, Part Six, Section IV, ¶ 10-4, and filed a Petition requesting amendments to Legal Ethics Opinion No. 1750.

Whereas it appears to the Court that the Virginia State Bar has complied with the procedural due process and notice requirements of the aforementioned Rule designed to ensure adequate review and protection of the public interest, upon due consideration of all material submitted to the Court, it is ordered that Legal Ethics Opinion No. 1750 be amended as follows, effective immediately:

LEGAL ETHICS OPINION 1750. LAWYER ADVERTISING AND SOLICITATION.

WHAT YOU NEED TO KNOW

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.



WHAT'S MISLEADING

- Actors posing as lawyers in firm without disclosure
- “Smith and Associates” when Smith has no associates
- “You must consult a lawyer before settling with the insurance company”



WHAT'S MISLEADING

- “Million dollar verdict won for Mr. Jones!” (When firm turned down \$2 million offer)
- “The Most Experienced Lawyers”
- Client statements “The Best!”



WHAT'S OKAY

- Use of trade names
- Case results without specific disclaimer if it is a “complete and true statement of what happened in the case” - *i.e.* “Five million settlement following a three day mediation.”



WHAT'S OKAY

- Client soft endorsements “Lawyer always returned my call”
- Lawyer listed in “Best Lawyers in America” or “Super Lawyers”
- Lawyer is “A.V. rated”
- “Specialist” if there is a certifying organization (but not “expert”)



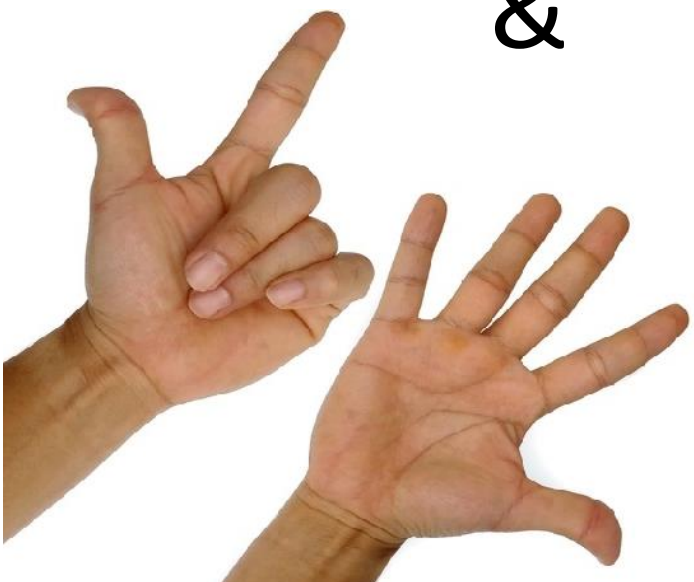
WHAT'S OKAY



Injured?
*Don't pull **YOUR** hair out!*
MyBaldLawyer.com
770-982-1800
Mason & Associates, P.C.



&



LEO 1886 & 1887
LAWYER IMPAIRMENT

IMPAIRMENT MEANS:

“Any physical or mental condition that materially impairs fitness of an Attorney to practice law.”

LEO 1886: WHEN A LAWYER YOU SUPERVISE IS IMPAIRED

Governed by Rule 5.1

- Take reasonable steps to prevent impaired lawyer from violating ethical rules
- Paramount obligation is to protect the interests of the clients



LEO 1887: DUTY WHEN A LAWYER OVER WHOM NO ONE HAS SUPERVISORY AUTHORITY IS IMPAIRED

- No ethical duty to proactively address impairment or protect that lawyer's clients.
- Moral obligation?



DUTY TO REPORT TO THE BAR?

- Duty to report when you have “reliable information that the impaired lawyer has committed a violation of the Rules that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness to practice law.”





LEO 1885

MATCHING SERVICES

WHAT YOU NEED TO KNOW

- Lawyer must ensure fee set by service is reasonable under Rule 1.5(a)
- Advanced legal fee cannot be held by a lay business firm

(Rule 1.15—client funds must be held in attorney trust account—attorney cannot surrender ability to refund unearned fee to client)

WHAT YOU NEED TO KNOW

- Lawyer cannot share fees with a non-lawyer

This is not a fixed marketing fee!

- A lawyer may limit the scope of the representation



LEO 1767

CLIENT WITH DISABILITY

WHAT YOU NEED TO KNOW

- RPC 1.14 governs client with disability
- Duty to Maintain Normal Relationship
- If client is at risk of physical or financial harm, duty to take reasonable steps to protect client, including seeking appointment of guardian or conservator
- Conflict of interest for an attorney to represent one client (daughter) against another client (mother) in petitioning for a guardianship.



LEO 1856
MULTIJURISDICTIONAL
PRACTICE

WHAT YOU NEED TO KNOW

- Foreign lawyers may not establish a law practice in Virginia - but patent lawyers can
- Foreign lawyers may provide legal services on a temporary and occasional basis in Virginia
- Pro Hac Vice
- Services related to foreign lawyer's representation in home jurisdiction



FINDING LEOS

https://www.vsb.org/site/regulation/leos

The screenshot shows the Virginia State Bar website. The header includes the logo and the text "Virginia State Bar An agency of the Supreme Court of Virginia". A search bar is located in the top right. The navigation menu includes "Home", "News", "Events", "Committees and Boards", "Conferences", "Sections", "Publications", "Classifieds", "Contact Us", and "About the Bar". The "Professional Regulation" tab is selected. The left sidebar contains a list of links: Real Estate Settlement Agents, Disciplinary Board, Disciplinary System Actions, Ethics Questions and Opinions, FAQs, LEOs Online, Request an LEO, Actions on LEOs, Mission of Legal Ethics Committee, Members of Legal Ethics Committee, More Resources, Submit a Legal Ethics Question, FAQs for Lawyers Who Receive A Bar Complaint, FAQs for Suspended & Revoked Lawyers, Fee Dispute Resolution Program, Guide to Lawyer Discipline, How to File a Misconduct Complaint About a Lawyer, Lawyer Advertising and Solicitation, Professional Guidelines and Rules of Professional Conduct, Rule Changes, Statutory Changes, Actions on Legal Ethics Opinions, and Comments on Proposed Changes, Public Disciplinary Hearings, and Unauthorized Practice of Law. The main content area is titled "PROFESSIONAL REGULATION" and "Legal Ethics Opinions Online". It features a "Google Custom Search" box with a search button. Below the search box, there is a paragraph of text: "Tom Spahn, a partner with McGuireWoods, has summarized all of these opinions and organized them under a user-friendly topical index. Visit the [McGuireWoods website](#) to access these resources." This is followed by two links: "[LEO Index: Virginia Rules of Professional Conduct](#) (Word doc)" and "[LEO Topical Index courtesy of Tom Spahn](#) (Word doc)". A section titled "Legal Advertising Opinions" contains a paragraph: "In 2018, the Standing Committee on Legal Ethics withdrew 12 Legal Advertising Opinions (LAOs) issued by the former Standing Committee on Lawyer Advertising and Solicitation, as the LAOs had become obsolete, superseded by amendments to the Rules of Professional Conduct, or had been restated in whole or in part in [LEO 1750](#). The one Legal Advertising Opinion that remains current and enforceable is [Legal Advertising Opinion A-0114](#), concerning communication to the public involving a lawyer's recognition by a listing in a publication such as *The Best Lawyers in America*." At the bottom, there is a "Jump to:" section with a list of page numbers: 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1100, 1202, 1300, 1400, 1500, 1600, 1700, 1800.



<https://www.vsb.org/site/regulation/leos>

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This database contains short summaries of Virginia's and the American Bar Association's legal ethics opinions. If you do not already know how to access and use these summaries, you might want to review the Guide (using the link below). If you have any questions or comments, please contact Thomas Spahn spahn@mcguirewoods.com

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Ethnics



Questions?