



Virginia State Bar

THIRD DISTRICT COMMITTEE, SECTION II

PLEASE REPLY TO:
Barbara Lanier, Clerk
707 East Main Street
Suite 1500
Richmond, VA 23219-2800

March 24, 2011

RECEIVED

PERSONAL AND CONFIDENTIAL

MAR 24 2011

CHARGE OF MISCONDUCT

VS B CLERK'S OFFICE

CERTIFIED MAIL

Horace Frazier Hunter, Esquire
217 East Clay Street
Richmond, VA 23219-1325

Re: In the Matter of Horace Frazier Hunter
VSB Docket No. 11-032-084907

Dear Mr. Hunter:

Pursuant to the Rules of the Virginia Supreme Court, Part 6, Section IV, Paragraph 13-16.A., I am hereby serving you with a Charge of Misconduct in the referenced matter.

The hearing will be held on Friday, June 10, 2011, at 9:30 AM, at the Virginia State Bar, 707 East Main Street, Suite 1500, the Board Room, Richmond, Virginia 23219. At that time, the Third District Committee, Section II will consider allegations that you have engaged in conduct contrary to the Rules of Professional Conduct as follows:

1. At all times relevant hereto, Respondent Horace Frazier Hunter (Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent practices with the firm of Hunter & Lipton which maintains a website, www.hunterlipton.com (the website).
3. Respondent's firm's letterhead states the firm is a professional corporation, identifying the firm as "Hunter & Lipton PC." This representation is consistent with the on-line records of the Virginia State Corporation Commission. However, the website represents that the firm is Hunter & Lipton, LLP. The firm cannot be both a professional corporation and a limited liability partnership. Thus, one of the representations as to the firm's entity status is inaccurate.
4. The home page of the website states as follows:

“Do you need Richmond attorneys?”

Hunter & Lipton LLP is a law practice in Richmond, Virginia specializing in litigation matters from administrative agency hearings to serious criminal cases. As experienced Richmond attorneys, we bring a genuine desire to help those who find themselves in difficult situations. Our partnership was founded on the idea that everyone, no matter what the circumstance, deserves a zealous advocate to fight on his or her behalf.

People make mistakes, and may even find themselves in situations not of their own making. And for these people, the system can be extraordinarily unforgiving and unjust—but you do not have to face this system alone. If you find yourself in a difficult legal situation, the Richmond attorneys of Hunter & Lipton LLP would consider it a privilege to represent you. Please contact our office with any questions or to schedule a consultation.”

Accordingly, based on the home page, at least one purpose of the website is to market the firm and Respondent to the public and to attract business.

5. The website contains a “News” tab, under which are tabs for “This Week in Richmond Criminal Defense”™ and “Archives.”
6. “This Week in Richmond Criminal Defense”™ discusses a recent case or cases handled by Respondent and/or a news item or items. “This Week in Richmond Criminal Defense”™ is not interactive. It typically contains one or two posts. While the author of the post is generally not identified, Respondent is identified as the author of at least one post.
7. The “Archives” tab contains a listing of links to all the posts regarding Respondent’s cases or news from “This Week in Richmond Criminal Defense”™ since 2007. The bulk of the posts under the “Archives” tab are discussions of Respondent’s cases.
8. In July 2010, the Virginia State Bar requested that Respondent include a disclaimer, as set forth in Rule 7.2(a)(3) of the Virginia Rules of Professional Conduct, to ensure that Respondent’s discussion of the case results on his website does not mislead the public. As set forth below in full, Rule 7.2(a)(3) requires that any advertisement of specific or cumulative case results contain a disclaimer that puts the case results in a context that is not misleading.
9. Respondent declined to include a disclaimer that meets the requirements of Rule 7.2(a)(3). Respondent argues that his discussion of cases results is not subject to regulation by Rule 7.2(a)(3) because, according to Respondent, his discussion of his cases does not constitute an advertisement.
10. Respondent’s discussion of his case results indisputably constitutes a communication by Respondent about cases he has handled and his legal services. Such communications are regulated by the Virginia Rules of Professional Conduct, including Rules 7.1 and 7.2. These Rules prohibit misleading statements of law or fact. In order to ensure the discussion of the case results does not mislead the public, Rule 7.2(a)(3) requires a

disclaimer which puts the case in a context that is not misleading; which states that the case results depend upon a variety of factors unique to each case; and which states that the case results do not guarantee or predict a similar result in any future case undertaken by Respondent. The disclaimer must precede the communication of the case results. The disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used in Respondent's discussion of the case results and in the same color and against the same colored background as the text used in the discussion.

11. Respondent proposed an insufficient disclaimer which, instead of clarifying the communication for the public, actually created the possibility of greater confusion. Respondent suggested the following disclaimer:

"This Week in Richmond Criminal Defense is not an advertisement, it is a blog. The views and opinions expressed on this blog are solely those of attorney Horace F. Hunter. The purpose of these articles is to inform the public regarding various issues involving the criminal justice system and should not be construed to suggest a similar outcome in any other case."

Respondent's disclaimer does not comport with Virginia Rule of Professional Conduct 7.2(a)(3), and the disclaimer fails to put his discussion of case results in a context that is not misleading.

12. Respondent's website discusses information regarding his clients' cases, the disclosure of which would be embarrassing or be likely to be detrimental to the client. Pursuant to Rule 1.6 of the Virginia Rules of Professional Conduct, Respondent must obtain his clients' consent in order to disclose this information. In response to the Bar's complaint to Respondent that it was unclear that his clients were aware of and had consented to the disclosures, Respondent argued that disclosure of the information did not violate Rule 1.6 because the matters discussed were in the public domain. Respondent has thus failed to demonstrate that he obtained his clients' consent. Rule 1.6 requires that the attorney obtain the client's consent prior to disclosure of information gained during the attorney-client relationship, whether or not the information is publicly available.
13. In one post or discussion of a case, Respondent, using a pseudonym for the client, discusses the case of a juvenile client. Respondent has conceded that he did not obtain this client's consent prior to revealing the information on his website. The information discussed is not publicly available as such proceedings are closed to the public.

Such conduct by Horace Frazier Hunter constitutes violations of the following provisions of the Rules of Professional Conduct:

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) To the extent a lawyer reasonably believes necessary, the lawyer may reveal:

- (1) such information to comply with law or a court order;
- (2) such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (3) such information which clearly establishes that the client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation;
- (4) such information reasonably necessary to protect a client's interests in the event of the representing lawyer's death, disability, incapacity or incompetence;
- (5) such information sufficient to participate in a law office management assistance program approved by the Virginia State Bar or other similar private program;
- (6) information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, printing, or other similar office management purposes, provided the lawyer exercises due care in the selection of the agency, advises the agency that the information must be kept confidential and reasonably believes that the information will be kept confidential.

(c) A lawyer shall promptly reveal:

- (1) the intention of a client, as stated by the client, to commit a crime and the information necessary to prevent the crime, but before revealing such information, the attorney shall, where feasible, advise the client of the possible legal consequences of the action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned, and, if the crime involves perjury by the client, that the attorney shall seek to withdraw as counsel;
- (2) information which clearly establishes that the client has, in the course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal. Before revealing such information, however, the lawyer shall request that the client advise the tribunal of the fraud.

For the purposes of this paragraph and paragraph (b)(3), information is clearly established when the client acknowledges to the attorney that the client has perpetrated a fraud; or

- (3) information concerning the misconduct of another attorney to the appropriate professional authority under Rule 8.3. When the information necessary to report the misconduct is protected under this Rule, the attorney, after consultation, must obtain client consent. Consultation should include full disclosure of all reasonably foreseeable consequences of both disclosure and nondisclosure to the client.

RULE 7.1 Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

- (1) contains false or misleading information; or
- (2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits; or
- (4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

(b) Public communication means all communication other than "in-person" communication as defined by Rule 7.3.

RULE 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communications, including public media. In the determination of whether an advertisement violates this Rule, the advertisement shall be considered in its entirety, including any qualifying statements or disclaimers contained therein. Notwithstanding the requirements of Rule 7.1, an advertisement violates this Rule if it:

- (1) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (i) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or
- (2) contains a portrayal of a client by a non-client without disclosure that the depiction is a dramatization; or
- (3) advertises specific or cumulative case results, without a disclaimer that (i) puts the case results in a context that is not misleading; (ii) states that case results depend upon a variety of factors unique to each case; and (iii) further states that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer. The disclaimer shall precede the communication of the case results. When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the text used to advertise the specific or cumulative case results.

RULE 7.5 Firm Names And Letterheads

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Pursuant to Paragraph 13 of the Rules of Court, all district committee matters posted on the bar's website hearing docket are public. However, this matter will not be posted on the public hearing docket until 21 days after the date of this notice. Until this matter is posted on the public hearing docket, you can attempt to negotiate with bar counsel an agreed disposition imposing private discipline. Once this matter is posted on the website public hearing docket, any discipline imposed, whether by agreed disposition or following a hearing, must be public.

As discussed in my letter to you dated January 21, 2011, based on the correspondence between you and the Bar and based on the fact that this matter concerns your website, there were no matters which required factual investigation. Accordingly, the matter was not submitted to a Virginia State Bar investigator for investigation, and the subcommittee did not consider any report of investigation in this matter.

I would like to discuss this matter with you at your earliest convenience to determine whether we can stipulate to any evidence or otherwise come to an agreement on the issues, facts and/or disposition of this matter. Time is of the essence if there is a possibility of private discipline. Please call me at if you wish to discuss this case.

Very truly yours,



Renu Mago Brennan
Assistant Bar Counsel

RMB/elg

cc: Barbara S. Lanier, Clerk of the Disciplinary System
Third District Committee, Section II:
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