

Attorney Jane A. Fletcher  
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Sent Via Email: webintake@vsb.org

June 21, 2021

Subject: Refusal to Investigate Attorney Steven Giballa, Potential Violations of Rules 3.3, 3.4, 3.5

Dear Attorney Fletcher,

The response from the Virginia State Bar refusing to investigate Attorney Steven Giballa for Potential Violations of Rules 3.3, 3.4, 3.5 is not acceptable. The Virginia State Bar determined, with no examination of the written evidence submitted to it, that Attorney Giballa did not act unethically simply because he was opposing counsel. The Virginia State Bar further postulates because Mr. Giballa was opposing counsel in the matter it must have been "a disagreement with the positions or tactics" and no ethical violations could have taken place.

I would respectfully remind the Virginia State Bar that ethical rules apply to both to sides of the litigation process. The precedent the Virginia State Bar is setting is it will not investigate potential misconduct against an attorney acting as opposing counsel, and thus any action taken against an adversary in a court proceeding shall be deemed as ethical, which is unreasonable on its face. The nature of litigation is such that ethical violations are most likely to occur between adversaries as opposed to between supporting counsel. This precedent means the Virginia State Bar cannot be self-policing in matters of misconduct, and indeed the reputation of the Virginia State Bar in the press supports the inference of their inability and unwillingness to investigate and sanction attorneys even when wholly appropriate.

Very simply, the Virginia State Bar was provided 15 documents with many examples of potentially egregious violations of numerous Virginia State Bar ethics rules, yet it refuses to even consider the evidence presented to it as the principal enforcer for ethical attorney behavior.

The Virginia State Bar has refused to engage in appropriate fact finding into potential improprieties of one of its members, study the written records submitted to it in this matter, and reach a fair and impartial decision regarding sanctions based on the evidence of record submitted.

Therefore, I have no recourse but to request the Attorney General in the State of Virginia, Mark Rankin Herring, to investigate both this matter, and the Virginia State Bar's unwillingness to act in an appropriate manner as the principal arbitrator of ethical misconduct complaints.

Sincerely,

[Redacted signature block]

[Redacted contact information]

cc: Mark Rankin Herring, Attorney General of Virginia