

ORGANIZATION & GOVERNMENT OF THE VSB

1. NAME.—The name of the Association shall be the Virginia State Bar.
2. MEMBERSHIP.—The membership of the Virginia State Bar shall comprise all attorneys at law in this Commonwealth.
3. CLASSES OF MEMBERSHIP.— Members of the Virginia State Bar shall be divided into five classes, namely: (a) Active Members, (b) Associate Members, (c) Judicial Members, (d) Disabled and Retired Members and (e) Emeritus Members. Each member shall submit in writing to the membership department of the Virginia State Bar an address of record which will be used for all membership and regulatory purposes, including official mailings and notices of disciplinary proceedings. If a member’s address of record is not a physical address where process can be served, the member must submit in writing to the membership department an alternate address where process can be served. The alternate address is personal information and shall not be disclosed pursuant to Section 2.2-3704, Code of Virginia. Members have a duty promptly to notify the membership department in writing of any changes in either the address of record or any alternate address.
  - (a) Active Members—Those persons who are admitted to practice law in this state and who are engaged in the practice of law, either full-time or part-time, salaried or non-salaried, shall be active members of the Virginia State Bar. Those persons who are admitted to practice law in this state, but who are not presently so engaged, may acquire active status by paying the fee prescribed for active members. Each active member’s address of record will establish the judicial circuit in which the member is entitled to vote and hold office in the Virginia State Bar.
  - (b) Associate Members—Those persons who have heretofore or may hereafter be admitted to practice law in the courts of this state but who are not presently so engaged and all persons on the law faculties of any law schools of this state that have been approved by the American Bar Association may become associate members of the Virginia State Bar upon application to the secretary and payment of the required dues. Associate members shall be entitled to all the privileges of active members except that they may not practice law, vote or hold office (other than as members of committees) in the Virginia State Bar.
  - (c) Judicial Members—All full-time judges of the State (including federal judges), other officers qualified but forbidden by statute to practice law, and all retired judges who are receiving retirement benefits and are prohibited from appearing as counsel in any case in any court of the Commonwealth under section 51.1-309 of the Code of Virginia shall constitute the Judicial Membership of the Virginia State Bar. They shall pay no dues but shall be entitled to all of the privileges of active members except that they may not vote or hold office in the Virginia State Bar, and shall comply with any statutory limitations regulating their practice of the law.
  - (d) Disabled and Retired Members—Any active member of the bar who retires from the practice of law may, either at age 70 or over, or on the basis of a permanent disability, submit to the executive director of the Virginia State Bar a written request to be transferred to the disabled and retired class of membership. Members who are electing this status based on a permanent disability must submit adequate medical and/or psychological documentation with the request. Members qualifying for transfer to the disabled and retired class shall not be entitled to practice law. Further, such members shall not be eligible to vote or hold office in the Virginia State Bar. Those retired members who, after removal from active membership on account of age or disability, desire to return to the practice of law must submit a petition to the executive director in writing for reinstatement to active membership and state in the petition each circumstance that has changed since the member elected disabled or retired status. Adequate medical and/or psychological documentation must be submitted with the petition showing that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending when the executive director receives a petition for reinstatement, or if the member appears to suffer from a disability, the executive director shall defer consideration of the petition until the misconduct or disability issues are resolved. The Executive Committee of the Virginia State Bar shall consider and act on any such petition, taking into account the recommendation of the executive director. The Executive Committee may deny a petition for reinstatement if the member is publicly disciplined or is determined to have a disability raising a serious question as to the member’s fitness or capacity to practice law. If the Executive Committee approves the petition, the member shall be returned to active status upon payment of active member dues, tender of sufficient MCLE credits to satisfy the requirements for one bar year, satisfaction of any other required membership obligations, and payment of any outstanding financial obligations to the bar. Medical and/or psychological information provided pursuant to this subparagraph (d) is confidential and shall not be disclosed by the bar.

(e) Emeritus Members.—Those persons who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become emeritus members and provide pro bono legal services to the poor and working poor as emeritus members subject to the terms and conditions stated in this subparagraph. They shall pay no dues, may not practice law except in the limited manner specified in this subparagraph, and may not vote or hold office in the Virginia State Bar.

(1) Definitions.

- (A) Active practice of law, for the purposes of this subparagraph, means that an attorney has been engaged in the practice of law, which includes private practice, house counsel, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.
- (B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the active practice of law, and who intends to provide pro bono services under this subparagraph; and
  - (i) Has been engaged in the active practice of law for a minimum of ten out of the fifteen years immediately preceding the application to become an emeritus member; and
  - (ii) Is, at the time of requesting emeritus member status, an active member in good standing of the Virginia State Bar and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and
  - (iii) Signs a statement that he or she has read and will comply with the Virginia Rules of Professional Conduct and as an emeritus member submits to the continuing jurisdiction of the Virginia Supreme Court and the Virginia State Bar for disciplinary purposes; and
  - (iv) Agrees to neither ask for nor receive any compensation of any kind, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.
- (C) Approved legal assistance organization, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not for profit entity organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia and receiving funds for that purpose from an agency or entity of the federal government or the Commonwealth of Virginia, or from the Virginia Law Foundation.
- (D) Supervising attorney, for purposes of this subparagraph, is an attorney who directs and supervises an emeritus member engaged in activities permitted by this subparagraph. The supervising attorney must:
  - (i) Be an active member of the Virginia State Bar in good standing employed by or participating as a volunteer for an approved legal assistance organization; and
  - (ii) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding, or other legal service in which the emeritus member engages; and
  - (iii) Direct and assist the emeritus member in his or her preparation to the extent the supervising attorney considers it necessary.

(2) Activities.

- (A) An emeritus member, in association with an approved legal assistance organization and only under the supervision of a supervising attorney, may perform only the following activities:
  - (i) The emeritus member may appear in any court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus member is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written

consent and approval shall be filed in the record of each case and shall be brought to the attention of the presiding judge or presiding officer in any administrative or arbitration proceeding.

- (ii) The emeritus member may prepare and sign pleadings and other documents to be filed in any court or with any administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.
  - (iii) The emeritus attorney may render legal advice and perform other appropriate legal services, but only with the express approval of the supervising attorney.
  - (iv) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.
- (B) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the emeritus member's participation in any proceeding.
- (3) Supervision and Limitations
- (A) An emeritus member must perform all activities authorized by this subparagraph under the direct supervision of a supervising attorney.
  - (B) Emeritus members permitted to perform services under this subparagraph are not, and shall not represent themselves to be, active members of the Virginia State Bar licensed to practice law generally in the Commonwealth of Virginia.
  - (C) The prohibition against compensation for the emeritus member contained in Section (1)(B)(iv) of this subparagraph shall not prevent the approved legal assistance organization from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor shall it prevent the approved legal assistance organization from charging for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court awarded attorney's fees for any representation rendered by an emeritus member.
- (4) Certification. Permission for an emeritus member to perform services under this subparagraph shall become effective upon filing with and approval by the Virginia State Bar of:
- (A) A determination by the Virginia State Bar that the emeritus member has fulfilled the requirements of such membership and has a clear disciplinary record as required by Section (1)(B) of this subparagraph; and
  - (B) A certification by an approved legal assistance organization stating that the emeritus member is currently associated with that approved legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required under this subparagraph.
- (5) Withdrawal of Certification.
- (A) Permission to perform services under this subparagraph shall cease immediately upon the filing with the Virginia State Bar of a notice either:
    - (i) By the approved legal assistance organization stating that:
      - (a) The emeritus member has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased, or
      - (b) That the certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the Virginia State Bar shall be mailed by the organization to the emeritus member concerned.
    - (ii) By the Virginia State Bar, or the Virginia Supreme Court, at any time, stating that permission to perform service under this subparagraph is revoked. A copy of such notice shall be mailed to the emeritus member involved and to the approved legal assistance organization by which he or she has been certified.

The emeritus member may apply to the Virginia State Bar or the Virginia Supreme Court for review of such revocation.

- (B) If an emeritus member's certification is withdrawn, for any reason, the supervising attorney shall promptly file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus member was involved.
- (6) Discipline. In addition to any appropriate investigation or proceeding instituted, or any discipline that may be imposed by the Virginia Supreme Court or the Virginia State Bar, the emeritus member shall be subject to the following disciplinary measures:
  - (A) The presiding judge or hearing officer for any matter in which the emeritus member has participated may hold the emeritus member in civil contempt for any failure to abide by such tribunal's orders; and
  - (B) The Virginia Supreme Court, the Virginia State Bar, or the approved legal assistance organization may, at any time, with or without cause, withdraw certification under this subparagraph.
- (7) Mandatory Continuing Legal Education. Emeritus members must satisfy the Mandatory Continuing Legal Education (MCLE) obligations required of active members under Part 6, § IV, Paragraph 17 of the Rules of the Supreme Court of Virginia. Failure to satisfy the MCLE requirements shall subject the emeritus members to the fees and sanctions specified in Part 6, Section IV, Paragraph 19 of the Rules the Virginia Supreme Court.
- (8) Change of Membership Status. An emeritus member may petition for reinstatement to active membership under the procedure prescribed in subparagraph (d) of this rule for disabled and retired members.

4. OFFICERS.—The officers of the Virginia State Bar shall be a President, a President-elect, an Immediate Past President and a Secretary-Treasurer. The President-elect shall be elected annually for a term to commence immediately upon the adjournment of the Annual Meeting of the Virginia State Bar and to continue until adjournment of the next Annual Meeting of the Virginia State Bar, at which time he or she shall take office as President. The President shall continue in office until adjournment of the next Annual Meeting, at which time he or she shall become the Immediate Past-President until adjournment of the following Annual Meeting.

To be eligible for nomination as President-elect, the candidate must, at the time of nomination, have been an active member of the Virginia State Bar for a period of seven years and must have served on the Council for a minimum of two years within the five-year period next preceding his or her election.

The method of election of the President-elect shall be in the manner prescribed by the Bylaws of the Council.

Vacancies in the office of President or President-elect shall be filled by the Council.

The President, the President-elect and the Immediate Past President shall be ex officio members of the Council; the President shall preside over the Council. In the absence of the President, the President-elect shall preside.

The Secretary-Treasurer shall also bear the title of Executive Director and Chief Operating Officer. The Council shall recommend its nominee as Secretary-Treasurer to the Supreme Court of Virginia which shall approve or reject the Council's recommendation. If the Supreme Court rejects Council's recommendation, Council shall submit another recommendation to the Court for its consideration. The Secretary-Treasurer shall keep all records of the Council and the Virginia State Bar. Accounts of the Secretary-Treasurer shall be audited annually.

The Secretary-Treasurer may be removed from office by the Council with the approval of the Supreme Court or by the Supreme Court, acting sua sponte.

5. THE COUNCIL.—The powers of the Virginia State Bar shall be exercised by a Council composed of at least thirty-seven members in addition to the President, President-elect and Immediate Past President, as ex officio members, elected and appointed as follows:

At least one active member from each of the thirty-one judicial circuits, elected for a term of three years by the members of the bar of each circuit, and nine members appointed by the Supreme Court of Virginia from the active members of the bar of the state at large. The Court shall appoint the at-large members to serve for a term of three years and, further, shall appoint in such a manner as to ensure that three members are appointed annually. A person who has served two successive full three-year terms as an elected or appointed member of Council shall not be eligible for election or appointment to a third successive term.

For each additional judicial circuit, whenever created, there shall be a member of the Council, who shall be an active member of the bar of that circuit. An election shall be held in such circuit within sixty (60) days after the creation of such circuit or as soon thereafter as may be feasible in the manner provided at Paragraph 6. The Council at its meeting next thereafter shall determine the length of the term of the first member from that circuit so that, as nearly as possible, the terms of one-third of the members of the Council expire each year.

Any circuit having as of the 15th day of March in any year more than 400 active members in good standing who are domiciled or principally practice their profession in such circuit shall be entitled to one additional member of the Council for each additional 400 members or major fraction thereof. In the event that the membership in a circuit as of March 15 is such that it is no longer entitled to one or more additional members, the term of such additional member[s] of the Council shall end at the expiration of the term for which the member[s] was elected. Provided, however, that the number of Council members from each circuit as of July 1, 1992, shall not be reduced unless the active membership in the circuit first increases to the number which will sustain its allocation of Council members as of July 1, 1992, under the above formula, and subsequently falls below that number.

Whenever a judicial circuit shall be abolished, the term of any member of the Council from that circuit shall end forthwith.

The President of the Young Lawyers Conference shall serve as an ex officio member of the Council.

The Chair of the Conference of Local Bar Associations shall serve as an ex officio member of the Council.

The Chair of the Senior Lawyers Conference shall serve as an ex officio member of the Council.

6. ELECTION OF COUNCIL.—Prior to the expiration of a term of a Council member from a circuit, or when it appears that such a position has otherwise become vacant, or the circuit becomes entitled to an additional Council member under other provisions of this section, the executive director shall initiate the election process for the election of a Council member in the manner prescribed by the Bylaws of the Council.
7. MEETINGS OF THE COUNCIL.—The Council shall hold meetings at such regular times and upon such call as it may specify. A quorum at any meeting shall consist of not less than twenty members. Between meetings of the Council its duties and functions may be performed by such Executive Committee of members or officers as the Council may designate.
8. ANNUAL MEETING OF THE VIRGINIA STATE BAR.—Annually, on or before July 1, there shall be held a meeting of the members of the Virginia State Bar at a time and place designated by the Council or Executive Committee and presided over by the President. All officers elected at the annual meeting or by the Council shall take office immediately upon adjournment of the annual meeting except in cases where vacancies are filled for an unexpired term. At such meeting there shall be a report from the officers and from the Council, and there shall be elected the President and President-Elect for the ensuing year.

A quorum at such meeting shall be those members of the Virginia State Bar present and voting.

There may be transacted also such other business as may come before the meeting.

A special meeting of the Virginia State Bar may be called by the Council.

9. POWERS OF THE COUNCIL.—The Council shall have general charge of the administration of the affairs of the Virginia State Bar, and shall have the power:
  - (a) To adopt Bylaws for the Council and the Virginia State Bar not in conflict with these rules.
  - (b) To elect the officers provided for by these rules.
  - (c) To fill vacancies in the Council for unexpired terms if there should be a failure for sixty days to elect as provided in Section (6) and to fill vacancies in any office for unexpired terms.
  - (d) To appoint committees and prescribe their duties.
  - (e) To employ such assistants as it deems necessary and to fix their duties and compensation and the compensation of the Secretary-Treasurer.
  - (f) To make allocations of funds within the amounts available.
  - (g) To conduct such investigations and make such reports as may be directed by the Supreme Court or by the bar.
  - (h) To render advisory opinions as provided in Section (10).

- (i) To establish an Administration and Finance Fund from which expenses related to meetings of the Council, meetings of the Executive Committee, the Annual and Midyear Meetings, and other official functions of the Virginia State Bar may be paid. The Fund shall be composed of funds appropriated to it by Council, or otherwise received. Such funds may be held, managed and invested as authorized or directed by Council. Disbursements from the fund shall be made as authorized by Council to pay the necessary expenses related to official functions of the Virginia State Bar as authorized by these Rules including, but not limited to, those expenses resulting from the exercise of the Council's powers under these Rules.
- (j) The Council may, at its discretion or upon a written request of the majority of the members of the Virginia State Bar or pursuant to a resolution duly adopted at a regular or called meeting, exercise the necessary powers:
  - To promote reforms in judicial procedure and the judicial system that are intended to improve the quality and fairness of the system;
  - To recommend to the Supreme Court procedures for the disciplining, suspending and disbaring of attorneys;
  - To recommend to the Supreme Court the adoption of, modifications to, amendments to or the repeal of any rule of the Rules of the Supreme Court of Virginia;
  - To regulate the legal profession;
  - To improve the quality of the legal services made available to the people of Virginia;
  - To investigate, evaluate or endorse judicial candidates on a nonpartisan, merit basis;
  - To uphold and elevate the standards of honor, of integrity and of courtesy in the legal profession;
  - To encourage higher and better education for membership in the profession; and
  - To perform all duties imposed by law.

10. PROMULGATION OF LEGAL ETHICS, LAWYER ADVERTISING, SOLICITATION AND UNAUTHORIZED PRACTICE OF LAW OPINIONS AND RULES OF COURT.—

- (a) *Definitions.*
  - (i) “*Bar*” shall mean the Virginia State Bar.
  - (ii) “*Committee*” shall mean the Legal Ethics Committee, the Unauthorized Practice of Law Committee, the Committee on Lawyer Advertising and Solicitation, or all of them, as required by the context in which it is used.
  - (iii) “*Council*” shall mean the Council of the Virginia State Bar.
  - (iv) “*Court*” shall mean the Supreme Court of Virginia.
  - (v) “*Member*” shall mean any active member of the Virginia State Bar.
  - (vi) “*Executive Director*” shall mean the Executive Director of the Virginia State Bar.
  - (vii) “*Advisory Opinion*” shall mean a written statement of the subject involved, the question presented, the Rule of Court or other precedents relied upon, the opinion reached and the reasons therefor; if dealing with a subject of general application, an advisory opinion may be stated in the form of a proposed Rule of Court or amendment thereto.
  - (viii) “*Ethics Counsel*” shall mean the Ethics Counsel or an Assistant Ethics Counsel of the Virginia State Bar.
  - (ix) “*Rule*” and “*Rule of Court*” shall mean throughout this paragraph only those rules proposed by either the Standing Committee on Legal Ethics, the Standing Committee on Lawyer Advertising and Solicitation, or the Standing Committee on the Unauthorized Practice of Law.
  - (x) “*Informal Staff Opinion*” shall mean advice and opinions provided to Members requesting same from Ethics Counsel.
- (b) *Requests for Advisory Opinions.*
  - (i) A legal ethics, lawyer advertising, solicitation or unauthorized practice of law advisory opinion of the Bar concerning contemplated or actual conduct may be requested by any member.

- (ii) All requests for advisory opinions shall be in writing, addressed to the appropriate Committee, in the hypothetical, and on a form prepared by the Committee calling for such information as the Committee may request; provided, however, that a request for an opinion as to the propriety of advertising or solicitation may include the specific advertisement or solicitation in question.
- (c) *Advisory Opinions of the Committees.*
  - (i) Upon receipt of a request for an advisory opinion, the Ethics Council shall review such request to determine whether the request should be referred to the Chairman of the appropriate Committee. If the Ethics Council or Committee determines that the request presents a previously resolved issue, the requestor shall be so informed and the request shall be considered terminated unless the requestor states in writing that the requestor has not previously presented the issue and requests that it be reconsidered.
  - (ii) The Committee, upon determining that the request presents a previously unresolved issue, or presents for reconsideration an issue not previously presented by the requestor, shall issue, in response to the request, a proposed advisory opinion, with notice to the requester that the opinion remains pending during the course of the public comment period outlined in subparagraph (iii). Opinions or requests for reconsideration may be by summary affirmance of a prior opinion. The Committee may in its discretion decline to render an opinion regarding any matter which is currently the subject of any disciplinary proceeding or litigation or which presents an issue beyond its purview.
  - (iii) Within 45 days of the issuance of a proposed advisory opinion, the Bar shall cause to be issued a press release that shall state (A) the question presented by the request for an advisory opinion; (B) the conclusion reached by the Committee; (C) a brief synopsis of the rationale for the conclusion; (D) that the advisory opinion may be inspected at the office of the Bar; (E) that at the conclusion of the comment period, the Committee will review the opinion in light of any comments received; (F) that any individual, business, or other entity may submit written comments in support of, or in opposition to, the proposed advisory opinion to the Executive Director, within thirty days of the date on which the press release was issued; and (G) the Committee may choose to adopt, modify, or rescind the opinion in response to the comments received.
  - (iv) In the case of an advisory unauthorized practice of law opinion in which the Committee concludes following the conclusion of the public comment period that the conduct in question constitutes or would constitute the unauthorized practice of law, the advisory opinion shall be sent to Council for approval, modification or disapproval.
  - (v) In the case of any other advisory opinion, the Committee may, by majority vote, publish the opinion as an informal advisory opinion of the Committee or ask Council to review the advisory opinion in accordance with the procedures set out in paragraphs (d), (e) and (f).
  - (vi) Any party requesting an advisory legal ethics, lawyer advertising or solicitation, or unauthorized practice of law opinion who disagrees with the result stated in the Committee's advisory opinion issued following the conclusion of the public comment period, may appeal such opinion, as a matter of right, to Council for approval, modification or disapproval.
  - (vii) Any such opinion expresses the judgment of the Committee and is advisory only. It shall have no legal effect and is not binding on any judicial or administrative tribunal.
  - (viii) Copies of opinions rendered by the Committees will be provided upon request. All such opinions will be provided without any identifying data. However, all Committee deliberations, draft opinions, memoranda, correspondence, and the like shall be confidential and privileged from discovery and/or subpoena and as such will not be provided to anyone absent Court order entered upon a showing of good cause. Without waiving the confidentiality provision stated above, the Committees, in their discretion, may disseminate draft opinions to the Boards of Governors of Virginia State Bar Sections for written comment when those Sections have an interest in the subject matter of the proposed opinion.
- (d) *Notice of Advisory Opinions to Be Considered by Council.*
  - (i) In any case where an advisory opinion is to be considered by Council, and no later than 45 days next preceding the date of such Council meeting at which final action with respect to such advisory opinion is to be taken, the Bar shall cause to be issued a press release which shall state (A) the question presented by the request for an advisory opinion; (B) the conclusion reached by the

Committee; (C) a brief synopsis of the rationale for the conclusion; (D) that the advisory opinion may be inspected at the office of the Bar; (E) that the advisory opinion shall be considered by the Council, which will approve, disapprove or modify the advisory opinion; (F) that any individual, business or other entity may file 10 copies of written comments in support of, or in opposition to, the advisory opinion with the Executive Director, within thirty days of the date on which the press release was issued; and (G) that the decision of Council concerning the advisory opinion may be reviewed by the Court.

- (ii) The press release so issued shall also be printed in that issue of the Virginia Lawyer Register next preceding the Council meeting at which final action with respect to such advisory opinion will be taken.
- (e) *Provisions for Comments.*
- (i) Within thirty days from the date of the press release provided for in (d) (i), any individual, business or other entity may file with the Executive Director 10 copies of written comments in support of, or in opposition to, the advisory opinion.
  - (ii) Within thirty days from the date of the press release provided for in (d) (i), the Attorney General of Virginia shall file with the Executive Director 10 copies of written comments which analyze any restraint on competition which may result from promulgation and implementation of the advisory opinion.
  - (iii) Except as specifically authorized by Council, there shall be no oral argument.
- (f) *Action by Council.*
- (i) Upon due consideration of all materials submitted to it, including an evaluation of the competitive effects of approving or disapproving the advisory opinion, Council shall approve, modify or disapprove the advisory opinion, by a majority vote of those present and voting.
  - (ii) In the case of any advisory opinion which is not transmitted to the Court for review pursuant to (f) (iii) below, if such advisory opinion is disapproved by a majority of Council present and voting, such action shall be recorded in the minutes of the meeting; if such advisory opinion is approved or modified, it shall be published as an advisory opinion of the Bar.
  - (iii) All advisory unauthorized practice of law opinions in which Council concludes that the proposed or actual conduct constitutes the unauthorized practice of law, and all other advisory opinions which Council, by majority vote of those present and voting, desires to transmit, shall be reviewed by the Court pursuant to the notice and review procedures hereinafter set forth.
  - (iv) Any such opinion expresses the judgment of Council and is advisory only. It shall have no legal effect and is not binding on any judicial or administrative tribunal.
- (g) *Review by the Supreme Court of Virginia.*
- (i) Within thirty days after the Council meeting at which final action with respect to such advisory opinion was taken, Bar Counsel shall file with the Clerk of the Court 9 copies of a Notice of Advisory Opinion Review; the request for an advisory opinion; all materials submitted to Council by the Bar, the Attorney General, and the public; and the advisory opinion as approved by Council.
  - (ii) Within ten days after the filing referred to in (g) (i), the Bar shall cause to be issued a press release which shall state (A) an advisory opinion on a stated subject has been filed with the Court; (B) the advisory opinion may be inspected at the office of the Bar; (C) the advisory opinion will be considered by the Court, which shall approve, disapprove or modify the advisory opinion; and (D) any individual, business or other entity may submit written comments in support of, or in opposition to, the advisory opinion by filing 9 copies with the Clerk of the Court and three copies with the Executive Director of the Bar, within 45 days from the date of issuance of the press release.
  - (iii) Except as specifically requested or ordered by the Court, there shall be no oral argument.
  - (iv) Upon due consideration of all material submitted to it, including an evaluation of the competitive effects of approving or disapproving the advisory opinion, the Court shall approve, modify or disapprove the advisory opinion, with or without a written opinion by the Court. Upon modification or approval of the opinion, it shall become a decision of the Court.

- (h) *Complaints of Unauthorized Practice of Law.*
  - (i) Any written complaint of the unauthorized practice of law addressed to the Bar or to the Committee shall be investigated by the Ethics Counsel or his staff.
  - (ii) Upon completion of an investigation, and not later than 180 days after the filing of the complaint, the Ethics Counsel shall report to the Committee the status of the investigation.
  - (iii) Upon review of all materials submitted to it, by a majority vote of those present, the Committee may
    1. Dismiss the complaint due to insufficient evidence or other good cause; or
    2. Dismiss the complaint with cautionary language.
  - (iv) After considering the evidence before it, if a majority of the Committee present finds there exists probable cause to believe the person, firm, or corporation is engaged in the unauthorized practice of law the Committee may
    1. Dismiss the complaint with a letter agreement in which the Respondent agrees to cease the activity which is the subject of the complaint; or
    2. Refer the complaint to the Attorney General of Virginia, a Commonwealth's Attorney or other appropriate agency for such action as authorized by law.
- (i) *Subpoena Power.*
  - (i) Upon receiving a complaint alleging facts indicating that a person, firm or corporation is or may be unlawfully practicing law and provided that the issuance of a summons or subpoena is necessary for the investigation of such alleged practice, the Ethics Counsel may issue a summons or subpoena in the name of the Commonwealth for the attendance of any person and production of books and records at the place and time designated in the summons or subpoena. The Committee or an investigator to whom a complaint is assigned may use a summons to examine witnesses or obtain statements from persons having knowledge of the subject matter of the complaint.
  - (ii) Every circuit court shall have power to enforce any summons or subpoena issued by the Ethics Counsel and to adjudge disobedience thereof as contempt.
- (j) *Committee Hearing.*
  - (i) Within 45 days after receipt of the Ethics Counsel's report, the Committee may meet to consider the matter submitted and hear any evidence or witnesses subpoenaed by the Committee.
  - (ii) After considering the evidence before it, if a majority of the Committee present finds there exists probable cause to believe the person, firm, or corporation is engaged in the unauthorized practice of law, the Committee may direct the Ethics Counsel to forward the results of the Bar's investigation, copies of any records, and a summary of the Committee's findings to the Attorney General of Virginia with a request that the conduct be enjoined and/or that any other remedy available under the Code of Virginia be pursued.
- (k) *Modification, Amendment or Repeal of a Rule.*
  - (i) The Court, upon petition by the Bar, may modify, amend, or repeal any Rule first promulgated pursuant to the procedures of this paragraph.
  - (ii) Such a petition may be filed only pursuant to a majority vote at a Council meeting, by members there present and voting.
- (l) *Informal Staff Opinions of Ethics Counsel.*
  - (i) Ethics Counsel shall provide informal advice and opinion to Members requesting same, based on the specific facts which Members provide to Ethics Counsel.
  - (ii) In no case shall Ethics Counsel be compelled to testify, via subpoena or otherwise, in any judicial or adjudicative proceeding, except on behalf of a respondent in disciplinary proceedings of the Virginia State Bar, regarding any advice and/or opinion provided to that attorney. In no case shall Ethics Counsel be subject to subpoena or otherwise compelled to testify in any judicial or adjudicative proceeding as an expert witness regarding legal ethics and/or the practice of law. Rather, in all such instances, testimony of Ethics Counsel shall be limited to the substance of any

communications by and between Ethics Counsel and the Member, where such communications are an issue in the proceeding.

- (iii) All communications between Ethics Counsel and any Member requesting advice or opinion shall be confidential and Ethics Counsel shall not disclose the content of any such discussion without the express written consent of the Member to whom Ethics Counsel provided such advice or opinion.

11. **DUES.**—Effective July 1, 2000, each active member shall pay to the Treasurer of the Virginia State Bar, annual dues of \$250, and associate members shall pay annual dues of \$125, on or before the 31st day of July of each fiscal year, provided that persons admitted to practice by examination or under Rule 1A:1 of the Supreme Court of Virginia shall not be liable for dues in the year of admission if admitted during the last three months of any fiscal year. Persons admitted to practice under Rule 1A:1 at any other point during any fiscal year shall pay the full amount of dues as specified above at the time they register with the Virginia State Bar. Persons admitted to practice by examination at any other point during any fiscal year shall pay one-half the amount of dues as specified above at the time they register with the Virginia State Bar.

No increase in the annual dues will be authorized by the Court whenever the total combined cash balances of the State Bar Fund and the Virginia State Bar’s Administration and Finance Account shall exceed fifteen (15) percent of the total annual operating expenditures of the Virginia State Bar for the year preceding the year in which the dues increase is sought.

All monies collected hereunder shall be accounted for and paid into the State Treasury of Virginia.

Failure to comply with this Rule shall subject the member to penalties set forth in Paragraph 19 herein.

12. **DISBURSEMENTS.**—Disbursements shall be paid out of the State Treasury in accordance with allocations of the Council and on requisitions signed by the President, President-Elect, or Secretary-Treasurer, and upon the warrant of the State Comptroller. No member of the Council, and no member or officer of the Virginia State Bar except the Secretary-Treasurer, shall receive compensation for his or her services as such, nor shall any member of the Council or of the Virginia State Bar receive compensation for service on any Committee, but such Council member or Committeeman shall be reimbursed for his or her necessary and actual traveling and subsistence expenses incurred in the performance of his or her duties. The Council shall cause proper books of account to be kept, and have them audited annually. At each annual meeting of the Virginia State Bar, the Council shall cause to be presented a financial statement of the receipts and expenditures of the Virginia State Bar, which shall be published in the next volume of reports.

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13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS.

A. Definitions

As used in this Paragraph, the following terms shall have the meaning herein stated unless the context clearly requires otherwise:

“Adjudication of a Crime Proceeding” means the proceeding which follows the summary Suspension of an Attorney after receipt by the Clerk of the Disciplinary System of initial notification from any court of competent jurisdiction stating that an Attorney has been found guilty of a Crime, irrespective of whether sentencing has occurred.

“Admonition” means a private sanction imposed by a Subcommittee *sua sponte*, a private or public sanction based upon an agreed disposition approved by a Subcommittee, or a public sanction imposed by a District Committee or the Board upon a finding that Misconduct has been established, but that no substantial harm to the Complainant or the public has occurred, and that no further disciplinary action is necessary.

“Agreed Disposition” means the disposition of a Complaint or Charge of Misconduct agreed to by Respondent and Bar Counsel and approved by a Subcommittee, District Committee, or the Board.

“Attorney” means a member of the Bar and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia.

“Bar” means the Virginia State Bar.

“Bar Counsel” means the Attorney who is appointed as such by Council and who is approved by the Attorney General pursuant to Va. Code §2.1-122(c) and such deputies, assistants, and Investigators as may be necessary to carry out the duties of the office, except where the duties must specifically be performed by the individual appointed pursuant to Va. Code §2.1-122(c).

“Bar Official” means any Bar officer or any member, employee, or counsel of Council, the Board, a District Committee, or COLD.

“Board” means the Bar Disciplinary Board.

“Certification” means the document issued by a Subcommittee or a District Committee when it has elected to certify allegations of Misconduct to the Board for its consideration, which document shall include sufficient facts to reasonably notify Bar Counsel and Respondent of the basis for such Certification and the Disciplinary Rules alleged to have been violated.

“Certification for Sanction Determination” means the document issued by a District Committee to certify to the Board that a sanction within the power of the Board is in order where the District Committee has found that Respondent failed to fulfill the terms of a Public Reprimand with Terms issued either by a Subcommittee on the basis of an Agreed Disposition or by a District Committee.

“Chair,” unless otherwise specified, means the Chair, Vice Chair, or Acting Chair of a District Committee, or a Section, Panel, or Subcommittee of a District Committee, or of the Board or any Panel of the Board.

“Charge of Misconduct” means the notice given by the Bar to a Respondent, setting forth generally the Misconduct alleged to have been committed by the Respondent, and identifying the specific Disciplinary Rule(s) alleged to have been violated by the Respondent. The Charge of Misconduct shall also include the date, time, and place of the hearing.

“Circuit Court” means a court designated as such by Va. Code §17.1-500.

“Clerk of the Disciplinary System” means the employee of the Bar who, together with such assistants as may be required, provides administrative support to the disciplinary system and serves as official custodian of the Disciplinary Records.

“COLD” means the Standing Committee on Lawyer Discipline.

“Complainant” means the initiator of a Complaint.

“Complaint” means any written communication to the Bar alleging Misconduct or from which allegations of Misconduct reasonably may be inferred.

“Committee Counsel” means an Attorney District Committee member assigned to prosecute a Complaint.

“Costs” means reasonable costs paid by the Bar to outside experts or consultants; reasonable travel and out-of-pocket expenses for witnesses; Court Reporter and transcript fees; copying, mailing, and required publication costs, and an administrative charge determined by Council.

“Council” means the Council of the Bar.

“Court Reporter” means a person who is qualified to transcribe proceedings in a Circuit Court.

“CRESPA” means the Virginia Consumer Real Estate Settlement Protection Act, Va. Code, Title 6.1, Chapter 1.3, and any regulations promulgated thereunder.

“Crime” means:

- a. any offense declared to be a felony by federal or state law;
- b. any other offense, whether federal or state, involving theft, fraud, forgery, extortion, bribery, or perjury; or
- c. an attempt, solicitation or conspiracy to commit any of the foregoing.

“Disbarment” has the same meaning as Revocation.

“Disciplinary Proceeding” means any proceeding governed by this Paragraph.

“Disciplinary Record” means any tangible or electronic record of:

- a. any proceeding in which the Respondent has been found guilty of Misconduct, including those proceedings in which (1) the Board’s or Court’s finding of Misconduct has been appealed to this Court; (2) the Respondent’s License to practice law has been surrendered with charges pending or Respondent has been found guilty of a Crime; or (3) the Respondent has received a sanction pursuant to this Paragraph; and
- b. any proceeding in which a Complaint or Charge of Misconduct has been resolved by (1) a *De Minimis* Dismissal; (2) a Dismissal for Exceptional Circumstances; or (3) an Admonition; and,
- c. any proceeding in which the Respondent has been found guilty of a violation of CRESPA; and
- d. any proceeding which resulted in a sanction which created a disciplinary record at the time it was imposed.

“Disciplinary Rules” means the Virginia Rules of Professional Conduct and Virginia Code of Professional Responsibility, as applicable.

“Dismissal” means the dismissal of a Complaint by Bar Counsel or the dismissal of a Charge of Misconduct by a Subcommittee, a District Committee, the Board or a Circuit Court.

“Dismissal *De Minimis*” means a finding that the Respondent has engaged in Misconduct that is clearly not of sufficient magnitude to warrant disciplinary action, and Respondent has taken reasonable precautions against a recurrence of same.

“Dismissal for Exceptional Circumstances” means a finding that the Respondent has engaged in Misconduct but there exist exceptional circumstances mitigating against further proceedings, which circumstances shall be set forth in writing.

“District Committee” means one of the District Committees appointed as hereinafter provided or, where the context requires, a Panel, a Section, or a Subcommittee thereof.

“District Committee Determination” means the written decision of a District Committee or a Subcommittee of a District Committee, relating to a Complaint or Charge of Misconduct.

“Executive Committee” means the Executive Committee of the Bar.

“Executive Director” means the Executive Director of the Bar and any deputy or assistant designated by Council to act as Executive Director.

“Files” means those files maintained by the Clerk of the Disciplinary System, and office of Bar Counsel with respect to each Complaint.

“Impairment” means any physical or mental condition that materially impairs the fitness of an Attorney to practice law.

“Impairment Proceeding” means the proceeding:

- a. initiated by Bar Counsel to petition the Board to order the Respondent to undergo examination(s) and provide releases for records;
- b. initiated by Bar Counsel to determine whether an Attorney has an Impairment;
- c. that follows the summary Suspension of an Attorney who may have an Impairment; or
- d. that follows a request by Respondent to terminate an Impairment Suspension.

“Investigation” means any inquiry by Bar Counsel, Committee Counsel, or the Bar’s designee concerning any alleged Misconduct or Crime committed by an Attorney or any Impairment of an Attorney.

“Investigative Report” means the report prepared as a result of an Investigation.

“Investigator” means a person designated by the Bar to conduct an Investigation.

“Judge” means a judge within the meaning of Va. Code §2.1-37.1, and any judge appointed or elected under the laws of any other jurisdiction.

“License” means the license to practice law granted by this Court.

“Memorandum Order” means the opinion and order of the Board entered following a Disciplinary Proceeding that shall contain a brief statement of the findings of fact; the nature of the Misconduct shown by such finding of facts; the Disciplinary Rules found to have been violated by clear and convincing evidence; the sanction imposed; the notice requirements, if any, imposed upon Respondent; the time in which Terms are required to be satisfied by Respondent, if Terms are imposed; the alternative sanction, if Respondent fails to comply with any Terms that are imposed; the name and address of the Court Reporter who served at the hearing; the names of the members of the Board that constituted the Panel; and that Costs shall be reimbursed by Respondent.

“Misconduct” means any:

- a. unlawful conduct described in Va. Code § 54.1-3935;
- b. violation of the Disciplinary Rules;
- c. conviction of a Crime;
- d. conviction of any other criminal offense or commission of a deliberately wrongful act that reflects adversely on the Attorney’s honesty, trustworthiness, or fitness as an Attorney; or
- e. violation of CRESPA or any regulations adopted pursuant thereto.

“Panel” means a group of members of a Section, District Committee, or the Board hearing a Disciplinary Matter that constitutes the quorum required by this Paragraph.

“Paragraph” means Paragraph 13 of the Rules of this Court, Part Six, Section IV.

“Petitioner” means:

- a. an Attorney seeking Reinstatement after a Revocation; or
- b. an Attorney seeking termination of an Impairment Suspension; or
- c. Bar Counsel or District Committee Chair seeking an expedited hearing before the Board and alleging that an Attorney is engaging in Misconduct likely to result in injury to or loss of property of a client or other entity, or alleging an Attorney poses imminent danger to the public.

“Private Discipline” means an Admonition without Terms issued by a Subcommittee *sua sponte*, a Private Reprimand or any form of discipline which is not public.

“Private Reprimand” means a form of non-public discipline that declares privately the conduct of the Respondent improper but does not limit the Respondent’s right to practice law.

“Proceeding” means the same as Disciplinary Proceeding.

“Public Reprimand” means a form of public discipline that declares publicly the conduct of the Respondent improper, but does not limit the Respondent’s right to practice law.

“Receivership” means a receivership created pursuant to Va. Code § 54.1-3900.01 or § 54.1-3936.

“Reinstatement” means the restoration by this Court of an Attorney’s License to practice law in the manner provided in this Paragraph.

“Reinstatement Proceeding” means the proceeding which takes place upon referral from this Court of a Petition for Reinstatement by an Attorney whose License was previously revoked.

“Respondent” means any Attorney:

- a. who is the subject of a Complaint;
- b. who is the subject of any proceeding under this Paragraph, Va. Code §§ 54.1-3900.01, 54.1-3935, 54.1-3936, or CRESPA; or,
- c. who is the subject of an Adjudication of a Crime Proceeding, Proceedings upon Disbarment, Revocation or Suspension in another jurisdiction, Impairment Proceeding, or Reinstatement Proceeding.

“Revocation” means any revocation of an Attorney’s License to practice law and includes a revocation of such License as the result of a voluntary surrender by an Attorney of the Attorney’s License to practice law as provided in this Paragraph.

“Section” means a subgroup of a District Committee that has the same powers, authority, and duties as the District Committee.

“Subcommittee” means a subgroup of a District Committee or any Section thereof, convened for the purpose of performing the functions of a Subcommittee as described in this Paragraph.

“Summary Order” means a bench order entered by the Board Chair following a Disciplinary Proceeding that outlines in summary form the Board’s findings as to the Charge of Misconduct, the sanctions to be imposed, the effective date of any sanctions imposed, and any notice requirements.

“Suspension” means the temporary suspension of an Attorney’s License to practice law for either a fixed or indefinite period of time.

“Terms” shall mean those conditions imposed on the Respondent by a Subcommittee, District Committee, Board, or Circuit Court, that require the Respondent to perform certain remedial actions as a necessary condition for the Dismissal of a Complaint or Charge of Misconduct, or the imposition of an Admonition, or a Private or Public Reprimand.

“Va. Code” means the 1950 Code of Virginia, as amended.

B. Authority of the Courts, Council, COLD, the Board, District Committees, Bar Counsel and the Clerk of the Disciplinary System

1. Authority of the Courts

- a. Nothing in this Paragraph shall be interpreted so as to eliminate, restrict or impair the jurisdiction of the courts of this Commonwealth to deal with the disciplining of Attorneys as provided by law.
- b. Every Judge shall have authority to take such action as may be necessary or appropriate to protect the interests of clients of any Attorney whose License is subject to a Suspension or Revocation.
- c. Every Circuit Court shall have power to enforce any order, summons or subpoena issued by the Board, a District Committee or Bar Counsel and to adjudge disobedience thereof as contempt.

2. Authority and Duties of Council

a. Administrative Authority

Council shall have general administrative authority over and responsibility for the disciplinary system created pursuant to this Paragraph.

b. Establishment of District Committees

(1) Creation of District Committees

Council shall appoint a sufficient number of District Committees to carry out the purposes of this Paragraph. District Committees shall be established in geographical areas consisting of one or more judicial circuits. In creating the District Committee areas, Council shall give due consideration to Attorney population and the community of interest among different judicial circuits within a District Committee area.

(2) Selection of District Committee Members

- (a) Each District Committee shall consist of ten, or in the discretion of Council, 20, 30 or 40 members.
- (b) Three members of a ten-member District Committee, six members of a 20-member District Committee, nine members of a 30-member District Committee, and 12 members of a 40-member District Committee shall be nonlawyers.
- (c) Former members of a District Committee may serve on a District Committee Subcommittee or participate in a District Committee hearing whenever the District Committee Chair determines that such

service is necessary for the orderly administration of the District Committee's work.

(3) Quorum

A Panel quorum shall consist of five or more persons. One person assigned to a District Committee Panel shall be a present or former nonlawyer member of a District Committee. If the scheduled nonlawyer is unable to attend, and if an alternate nonlawyer is not reasonably available, participation by a nonlawyer member shall not be required in a proceeding if a quorum is otherwise present. The action of a majority of a quorum shall be the action of the District Committee Panel.

(4) Geographic Criteria

Each member of a District Committee shall be a resident of or have his or her office in the District Committee area for which such member is appointed. Members shall, to the extent practicable, be appointed from different geographical sections of their districts.

(5) Term of Office

Council shall appoint members of each District Committee for such terms of service as will allow for the retirement from the District Committee, or completion of the existing terms, of one-third of the District Committee membership at the end of each fiscal year. A District Committee member's term shall be for three years, and, upon completion of such term, such member is eligible for appointment to a second successive three-year term. A member who has served two full successive terms of three years each on a District Committee shall not be eligible to serve again until one year after the expiration of the second term.

(6) Qualifications of Members

(a) Before nominating any individual for membership on a District Committee, the Council members making such recommendation shall first determine that the nominee is willing to serve on the District Committee and will conscientiously discharge the responsibility as a member of the District Committee. Council members making the nominations shall also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the District Committee, if elected.

(b) Effect of a Disciplinary Record or criminal record on eligibility for appointment.

(i) In order to be considered as a potential appointee to a District Committee, each potential appointee shall execute the following:

(A) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and any pending Complaints from any jurisdiction for purposes of the appointment process; and

(B) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process.

- (ii) Any potential appointee who has ever been convicted in any jurisdiction of a Crime shall be ineligible for appointment to a District Committee
- (iii) Any potential appointee who has ever committed any criminal act that reflects adversely on the potential appointee's honesty, trustworthiness or fitness as a member of a District Committee, shall be ineligible for appointment to a District Committee.
- (iv) Any potential appointee who has a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, Suspension imposed at any time or Public Reprimand imposed within the ten years immediately preceding the proposed appointment date, shall be ineligible for appointment to a District Committee.
- (v) Any potential appointee who has a Disciplinary Record in any jurisdiction consisting of Private Discipline, except for a *de minimis* dismissal or a dismissal for exceptional circumstances, or an Admonition imposed within the five years immediately preceding the proposed appointment date, shall be ineligible for appointment to a District Committee. The Standing Committee on Lawyer Discipline shall have the sole discretion to determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances shall disqualify a potential appointee.

(7) Interim Vacancies

Whenever a vacancy occurs on a District Committee, the Executive Committee may fill the vacancy.

Bar Counsel or a majority of the members of a District Committee may request the Executive Committee to declare that a District Committee position held by any particular District Committee member has become vacant when, in the judgment of Bar Counsel or the Committee majority, such member has become, or has been for any reason, unavailable for or delinquent in the conduct of the District Committee's business. Similarly, upon request of Bar Counsel, the Executive Committee shall have the power to declare such vacancy. Before such vacancy is declared, the particular District Committee member shall be afforded notice and a reasonable opportunity to be heard.

3. Authority and Duties of COLD

- a. All powers and duties of Council, with respect to the Disciplinary System, except the power to appoint District Committee members, may be exercised by COLD, subject to the direction and control of Council.
- b. Notwithstanding any rule to the contrary, any member of COLD may attend proceedings of the Subcommittees, District Committees or the Disciplinary Board.
- c. Service by an Attorney on COLD shall be deemed to be a professional relationship within the meaning of Disciplinary Rules 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Disciplinary Rules 1.11 and 1.12. Consent under Disciplinary Rules 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar.

4. Creation of the Board and Appointment of Members

- a. This Court shall appoint, upon recommendation of Council, 20 members of the Board, 16 of whom shall be members of the Bar and four of whom shall be nonlawyers. One Attorney member shall be designated by the Court as Chair and two Attorney members as Vice Chairs, upon recommendations of Council.

- b. Before nominating any individual for membership on the Board, the Bar's nominating committee shall first determine that the nominee is willing to serve on the Board and will conscientiously discharge the responsibilities as a member of the Board. The Bar nominating committee shall also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the Board, if elected and appointed.
- c. In order to be considered as a potential appointee to the Board, each potential appointee shall execute the following:
  - (1) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and pending Complaints from any jurisdiction for purposes of the appointment process; and
  - (2) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process.
- d. Any potential appointee who has ever been convicted in any jurisdiction of a Crime shall be ineligible for appointment to the Board.
- e. Any potential appointee who has ever committed any criminal act that reflects adversely on the potential appointee's honesty, trustworthiness, or fitness as a Board member shall be ineligible for appointment to the Board.
- f. Any potential appointee who has a Disciplinary Record in any jurisdiction of a Disbarment, Revocation, Suspension or Public Reprimand imposed within the ten years immediately preceding the proposed appointment date, shall be ineligible for appointment to the Board.
- g. Any potential appointee who has a Disciplinary Record in any jurisdiction consisting of Private Discipline, except for a *de minimis* dismissal or a dismissal for exceptional circumstances, or an Admonition within the five years immediately preceding the proposed appointment date shall be ineligible for appointment to the Board. The Standing Committee on Lawyer Discipline shall have the sole discretion to determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances shall disqualify a potential appointee.
- h. Members shall serve staggered terms of three years each. No member shall serve more than two consecutive three-year terms but shall be eligible for reappointment after the lapse of one or more years following expiration of the previous three-year term. At the expiration of the initial term of any member so appointed for less than a three-year term, such member shall be eligible for immediate reappointment to the Board for two additional consecutive three-year terms.
- i. The Board shall meet on reasonable notice by the Chair or a Vice Chair. A Panel of five members shall constitute a quorum, and the action of a majority of a Panel shall constitute action of the Board. One of the five persons assigned to any Panel shall be a present or former nonlawyer member. If the scheduled nonlawyer is unable to attend and an alternate nonlawyer member or former member is not reasonably available, participation by a nonlawyer shall not be required in any Proceeding if a quorum is otherwise present.
 

The Clerk of the Disciplinary System shall establish a roster of Board members sufficient to constitute a quorum for action on the matter to which they are being assigned. Former members of the Board may serve on a Panel of the Board or participate in Board matters whenever the Chair, Vice Chair or Clerk of the Disciplinary System determines that such service is necessary for the orderly administration of the Board's work.

5. Authority and Duties of the Board

- a. The Board shall have jurisdiction to consider:

- (1) Appeals from Public or Private Reprimands, with or without Terms, or Admonitions, with or without Terms, imposed by District Committees or Dismissals that otherwise create a Disciplinary Record;
  - (2) Complaints and Charges of Misconduct certified to it by a Subcommittee or a District Committee;
  - (3) Misconduct by reason of conviction of a Crime;
  - (4) Impairment Proceedings;
  - (5) Revocation or Suspension in another jurisdiction;
  - (6) Petitions from Bar Counsel or the Chair of a District Committee seeking summary Suspension upon a belief that an Attorney is engaging in Misconduct likely to result in injury to or loss of property of a client or other entity or alleging an Attorney poses imminent danger to the public;
  - (7) Petitions for Reinstatement referred to the Board for its recommendation to this Court;
  - (8) Violations of CRESPA or any regulations adopted pursuant thereto; and
  - (9) Failure of Respondent to make a complete transcript part of the Record, as provided in this Paragraph.
  - (10) Failure of an Attorney to comply with an order, summons or subpoena issued in connection with a Disciplinary Proceeding.
  - (11) Failure of Respondent to fulfill the terms of a Public Reprimand with Terms certified to it by a District Committee for sanction determination.
- b. The Board shall have the following powers in addition to all other powers granted to the Board:
- (1) to sanction a Respondent for failing to comply with an order, issued by the Board. This sanction can include an interim Suspension. Before imposing an interim Suspension, the Board shall issue a notice to the Respondent advising the Respondent that he or she may petition the Board within ten days after service of the notice to withhold entry of an interim Suspension order and to hold an evidentiary hearing. If ten days after service of the notice the Respondent has not petitioned the Board to withhold entry of an interim Suspension order, the Board shall enter an Order suspending the Attorney's license until such time as the Attorney remedies the failure to comply or a determination is made as to whether the Attorney has violated any Disciplinary Rules. An Attorney suspended pursuant to this subparagraph is subject to the provisions of subparagraph M.
  - (2) on its own motion or upon request by Bar Counsel or the Respondent, to summon and examine witnesses under oath or affirmation administered by any member of the Board and to compel the attendance of witnesses and the production of documents necessary or material to any proceeding. Any summons or subpoena may be issued by any Board member or the Clerk of the Disciplinary System and shall have the force of and may be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar in the same manner as other notices served upon Respondents under this Paragraph.
  - (3) to impose an interim Suspension if an Attorney fails to comply with a summons or subpoena issued by any member of the Board, the Clerk of the Disciplinary System, Bar Counsel or any lawyer member of a District Committee for trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law

firm. In the event of alleged noncompliance, Bar Counsel may file with the Board and serve on the Attorney a notice of noncompliance requesting the Board to suspend the Attorney's license. The noncompliance notice must advise the Attorney that he or she may petition the Board within 10 days of service of the notice to withhold entry of a Suspension order and to hold a hearing, at which time the Attorney shall have the burden of proving good cause for the alleged noncompliance. If 10 days after service of the notice of noncompliance the Attorney has not petitioned the Board to withhold entry of an interim Suspension order, the Board shall enter an Order suspending the Attorney's license until such time as the Attorney fully complies with the summons or subpoena or a determination is made as to whether the Attorney's noncompliance violated the Disciplinary Rules. An Attorney suspended pursuant to this subparagraph is subject to the provisions of subparagraph M.

- (4) to rule on the admissibility of evidence, through a panel Chair, which rulings may be overruled by a majority of the Panel; and
- (5) to act through its Chair or one of the Vice Chairs (an officer) on any non-dispositive pre-hearing matters and on any dispositive matters where all parties are in agreement, subject to the following qualification and exception: (1) any pre-hearing ruling on a non-dispositive matter made by an officer of the Board shall be subject to being overruled by a majority vote of the Panel which actually hears the matter; and (2) Agreed Dispositions must be approved by a Panel.

c. **Agreed Disposition**

Whenever Bar Counsel and Respondent are in agreement as to a Charge of Misconduct or a Certification for Sanction Determination and desire to enter into an Agreed Disposition of the Charge of Misconduct or Certification for Sanction Determination, the parties may submit a proposed Agreed Disposition to five members of the Board selected by the Chair. The five members so selected will constitute a Panel. If the proposed Agreed Disposition is accepted by a majority of the Panel so selected, the Agreed Disposition will be adopted by order of the Board. If the Agreed Disposition is not accepted by the Panel, the Charge of Misconduct or Certification for Sanction Determination will then be set for hearing before another Panel of the Board at the earliest possible date. No member of the Panel which considered the proposed Agreed Disposition shall be assigned to the Panel which hears the Charge of Misconduct or Certification for Sanction Determination.

6. **Authority and Duties of District Committee**

a. Each District Committee and Section thereof shall have the power:

- (1) to elect a Chair, Vice Chair and Secretary, and such other officers as it considers appropriate;
- (2) to conduct hearings and adjudicate Charges of Misconduct as provided in this Paragraph;
- (3) to summon and examine witnesses under oath to be administered by any member of the District Committee;
- (4) to issue, through any of its Attorney members or through Bar Counsel, any summons or subpoena necessary to compel the attendance of witnesses and the production of documents or evidence necessary or material to any Investigation or Disciplinary Proceeding. Any such summons or subpoena issued to a non-Attorney shall have the force of and be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar in the same manner as other notices served upon Respondents under this Paragraph.

- (5) to direct Bar Counsel to file a notice of noncompliance requesting the Board to suspend an Attorney's license until such time as the Attorney fully complies with a subpoena requiring production of trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm.
- (6) to rule on the admissibility of evidence and other matters relating to the conduct of a Disciplinary Proceeding;
- (7) to rule on motions to limit or quash any summons or subpoena;
- (8) to maintain order in all its proceedings through its Chair; and
- (9) to approve, through a Subcommittee acting by a unanimous vote, an Agreed Disposition of a Complaint or Charge of Misconduct submitted by Bar Counsel and the Respondent.

b. Creation of Subcommittees and Subcommittee Quorums

The Chair shall appoint one or more Subcommittees of each District Committee. Where a District Committee is divided into two or more Sections, there shall be one or more Subcommittees of each Section, as determined by the respective District Committee Section Chair.

Each Subcommittee shall consist of three members of that District Committee or that Section of the District Committee. Two members of a Subcommittee shall be Attorneys, one of whom shall be appointed by the District Committee or Section Chair to act as Chair of that Subcommittee, and one member of the Subcommittee shall be a non-attorney member.

A quorum of a Subcommittee shall consist of three members, who may act in a meeting in person or through any means of communication by which all three members participating may simultaneously hear each other during the meeting.

c. A District Committee shall have jurisdiction over all Complaints referred to it.

d. Limitation on Private Discipline

Private Discipline shall be imposed only in cases of minor Misconduct, when there is little or no injury to any of the following: a client, the public, the legal system or the profession, and when there is little likelihood of repetition by the Respondent. When any Respondent has received two determinations of Private Discipline, excepting only *de minimis* Dismissals, during any ten-year period, it shall be presumed that further Private Discipline is not an appropriate disposition. Any Respondent who has received two determinations of Private Discipline within the ten-year period immediately preceding the Bar's receipt of the oldest Complaint that the subcommittee is considering, shall receive Public Discipline for any violation of the Disciplinary Rules, unless there are sufficient facts and circumstances to rebut such presumption.

e. Venue

Venue shall not be jurisdictional, but venue shall lie with the District Committee, in the following order of preference, where:

- (1) any portion of the alleged Misconduct occurred;
- (2) the Respondent resides;
- (3) the Respondent maintains an office;
- (4) the Respondent has an address on record with the Bar as the Respondent's address for membership purposes; or
- (5) the Complainant resides.

If preferred venue does not lie with any District Committee able to adjudicate the Complaint against a Respondent, such Complaint may be filed with and adjudicated by a District Committee designated by the Clerk of the Disciplinary System. In determin-

ing to which District Committee a Complaint should be referred, the Clerk of the Disciplinary System shall consider the volume of Complaints pending before the District Committee and the inconvenience imposed upon the Respondent and the witnesses by the location of the District Committee.

Either the Respondent or Bar Counsel may object to venue by filing a notice of objection with the Clerk of the Disciplinary System within ten days of notification of the referral of the Complaint to a District Committee. Objections to venue shall be deemed waived unless made within this ten-day time period. Upon receipt of a timely filed notice of objection, the Clerk of the Disciplinary System shall forward the notice of objection to the Chair of the Board for decision.

f. Complaints Referred to District Committee or Subcommittee

A District Committee or Subcommittee shall consider, adjudicate and dispose of Complaints referred to the District Committee pursuant to this Paragraph. Where appropriate, the District Committee or Subcommittee shall also counsel Respondents concerning their conduct. In addition, members of a District Committee, other than nonlawyer members, may participate in the Investigation of Complaints, provided that a member participating in such Investigation shall not participate in a District Committee's consideration, adjudication and disposition of such Complaint or Charge of Misconduct.

g. Service by an Attorney and Professional Relationship

Service by an Attorney on a District Committee shall be deemed to be a professional relationship within the meaning of Disciplinary Rules 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Disciplinary Rules 1.11 and 1.12. Consent under Disciplinary Rules 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar.

h. Recusal or Disqualification

In the event of recusal or disqualification of so many District Committee Members that the District Committee is unable to discharge its responsibilities under this Rule, the District Committee may supplement its membership with members from other District Committees to achieve a quorum. If every member of a District Committee is recused or is disqualified from considering Charges of Misconduct, the Clerk of the Disciplinary System shall assign the Charges of Misconduct to another District Committee.

7. Authority and Duties of Bar Counsel

a. Bar Counsel shall have the authority, to the extent provided in this Paragraph and subject to the general supervision of COLD:

- (1) to initiate, investigate, present or prosecute Complaints or other Proceedings before Subcommittees, District Committees, the Board and Circuit Courts. Bar Counsel may represent the Bar in matters pending in this Court. In the course of performing such functions, Bar Counsel shall act independently and exercise prosecutorial autonomy and discretion.
- (2) to examine criminal history record information relating to any Attorney or former Attorney from any state or federal law enforcement agency.
- (3) to examine financial books and records, once a Complaint has been filed, including, without limitation, any and all escrow accounts, trust accounts, estate accounts, fiduciary accounts and operating or other accounts, maintained by the Attorney, the Attorney's law firm or any other third party organization by whom the Attorney is employed or with whom the Attorney is associated;
- (4) to examine the accounts described in the preceding subparagraph at any time when Bar Counsel reasonably believes that such accounts may not be in compliance with the Disciplinary Rules. In every instance in which Bar Counsel initiates examination of accounts or issues any summons or subpoena in the conduct of an examination or an Investigation concerning accounts, other

than on the basis of a Complaint against the Attorney, Bar Counsel shall file a written statement as part of the record setting forth the reasons supporting the belief that the accounts may not comply with the Disciplinary Rules. A copy of this written statement shall be delivered to the Attorney who is the subject of the Investigation when an examination has begun or any summons or subpoena has been issued.

- (5) to issue such summons for the attendance of witnesses and subpoenae for the production of documents necessary or material to any Investigation, District Committee or Disciplinary Board proceeding.
- (6) to file a notice of noncompliance requesting the Board to suspend the Attorney's license until such time as the Attorney fully complies with a subpoena issued by the Bar Counsel, a District Committee or the Board, for the production of trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm.

b. Acting Bar Counsel

In the event of disqualification or recusal of Bar Counsel in any Proceeding, the Charge of Misconduct shall be prosecuted by a District Committee Member designated by the District Committee Chair if the Proceeding is before a District Committee, or by the Attorney General or his designee if the proceeding is before the Board or a three-judge Circuit Court.

8. Authority and Duties of the Clerk of the Disciplinary System:

a. Maintain Current Dockets

The Clerk of the Disciplinary System shall maintain a docket of current Attorney discipline and CRESPA matters pending before the District Committees, the Board or courts of this Commonwealth.

b. Records Retention

- (1) The Clerk of the Disciplinary System shall retain all Files with respect to any Disciplinary Record for a period of at least five years from the date of the final Order in the Disciplinary Proceeding that created that Disciplinary Record. The Clerk may destroy all other Files upon the expiration of one year after the Dismissal.
- (2) Whenever a File is destroyed, the following information shall be preserved:
  - (a) the name and Bar identification number of Respondent;
  - (b) the name and last known address of the Complainant;
  - (c) the date the matter was initially received by the Bar;
  - (d) a summary of the Complaint or Charge of Misconduct;
  - (e) the date of the Dismissal or any sanction(s) imposed; and
  - (f) the disposition of the matter, including the basis for Dismissal or the sanction(s) imposed.

Such summary information shall be retained for at least five years whenever the Complaint or Charge of Misconduct is dismissed with no Disciplinary Record having been created, and for at least ten years whenever a Disciplinary Record has been created, an Impairment determined, a Reinstatement Proceeding held or a finding of Misconduct involving a CRESPA violation made.

- (3) The Clerk of the Disciplinary System shall preserve a copy of all District Committee Determinations and Board or court orders in which an Attorney has been found to have engaged in Misconduct, to be disabled, to have committed a violation of CRESPA or requested Reinstatement.

c. Costs

The Clerk of the Disciplinary System shall assess Costs against the Respondent in the following cases.

- (1) All cases in which a final determination of Misconduct is made by a Subcommittee, District Committee, three-judge Circuit Court, the Disciplinary Board or this Court.
- (2) All cases against a Respondent who surrenders his or her License to practice law at a time when charges are pending.
- (3) All proceedings under this Paragraph in which there is a finding that a Respondent has been found guilty of a Crime.
- (4) All reciprocal cases under this Paragraph in which a final determination imposing discipline is made.
- (5) All Reinstatement cases under this Paragraph.
- (6) All cases before the Disciplinary Board in which sanctions were imposed for violations of CRESPA and/or the bar's CRESPA regulations.

If the Respondent disagrees with the amount of Costs as calculated by the Clerk, or if the Respondent asserts that the immediate payment thereof would constitute a hardship, the Respondent may petition the Board for review within ten days of the notice assessing Costs. The Chair, upon written request of Respondent, included with his petition, may grant Respondent a hearing on the Costs issue. The decision of the Chair shall be final and non-appealable. Interest at the judgment rate shall commence on the Costs assessed 30 days after the issuance of the notice of assessment, unless otherwise prescribed by the Board. If the Respondent fails to pay the Costs and interest so assessed within 30 days of the notice of assessment or within such other time as the Board may order, then the Costs assessed and interest shall be a debt subject to collection by the Bar, and the Board shall issue an order of Suspension against the Respondent until such time as Respondent shall pay all of the Costs and accrued interest.

d. Public Notification of Disciplinary Sanctions:

- (1) The Clerk shall issue a statement to the communications media summarizing each public Admonition, Public Reprimand, Suspension or Revocation.
- (2) The Clerk shall notify the following individuals and entities of each public Admonition, Public Reprimand, Suspension or Revocation.
  - (a) The Clerk of the Supreme Court;
  - (b) Clerks of the Circuit and District Courts in each judicial circuit in the commonwealth where the Attorney resides or maintains an office; and
  - (c) Disciplinary authorities for jurisdictions, federal or state, wherein it is reasonable to expect that the Attorney may be licensed.

C. Initial Processing of Complaints by Bar Counsel

1. Bar Counsel shall review all Complaints. If, following review of a Complaint, Bar Counsel determines that the conduct questioned or alleged does not present an issue under the Disciplinary Rules, Bar Counsel shall not open an Investigation, and the Complaint shall be dismissed.
2. No Complaint or Charge of Misconduct shall be dismissed at any stage of the process solely upon a request by a Complainant to withdraw his or her Complaint.
3. Summary Resolution

Bar Counsel shall decide whether a Complaint is appropriate for an informal or abbreviated Investigation. When a Complaint involves minor allegations of Misconduct susceptible to early resolution, Bar Counsel may assign the Complaint to a staff member, a District Committee member, or use any other means practicable to speedily investigate and resolve the allegations of Misconduct. If the Complaint is resolved through this process to the satisfaction of the

Complainant, the Respondent and the Bar, Bar Counsel shall then dismiss the Complaint. Such dismissal shall not become a part of the Respondent's Disciplinary Record. If Bar Counsel chooses not to proceed under this subsection, or, having elected to proceed under this subsection, the Complaint is not resolved within 90 days from the date of filing, Bar Counsel shall proceed pursuant to the following subsections.

4. Preliminary Investigation

A preliminary Investigation may consist of obtaining a response, in writing, from the Respondent to the Complaint and sharing the response, if any, with the Complainant, so the Complainant may have an opportunity to provide additional information.

5. Disposition by Bar Counsel after Preliminary Investigation

Bar Counsel may conduct a preliminary Investigation of any Complaint to determine whether it should be referred to the District Committee. Bar Counsel shall not file a Complaint with a District Committee following a preliminary Investigation when, in Bar Counsel's judgment:

- a. as a matter of law, the conduct questioned or alleged does not constitute Misconduct;
- b. the evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged;
- c. there is no credible evidence to support any allegation of Misconduct by the Respondent; or
- d. the evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard.

6. Referral to District Committee

Bar Counsel shall notify the District Committee Chair that a Complaint has been referred to a District Committee for investigation. Thereafter, the Complaint shall be investigated and a report thereof made to a Subcommittee.

7. Report to Subcommittee

When submitting an Investigative Report to the Subcommittee, Bar Counsel or Committee Counsel may also send a recommendation as to the appropriate disposition of the Complaint.

D. Limited Right to Discovery

1. There shall be no right to discovery in connection with disciplinary matters, including matters before three-judge Circuit Courts, except:

- a. issuance of such summons and subpoenas as are authorized; and
- b. Bar Counsel shall furnish to Respondent a copy of the Investigative Report considered by the Subcommittee when the Subcommittee set the Complaint for hearing before the District Committee or to certify the Complaint to the Disciplinary Board, with the following limitations:
  - (1) Bar Counsel shall not be required to produce any information or document obtained in confidence from any law enforcement or disciplinary agency, or any documents that are protected by the attorney-client privilege or work product doctrine, unless attached to or referenced in the Investigative Report;
  - (2) Bar Counsel shall not be required to reveal other communications between the Investigator and Bar Counsel, or between Bar Counsel and the Subcommittee; and
  - (3) Bar Counsel shall make a timely disclosure to the Respondent of all known evidence that tends to negate the Misconduct of the Respondent or mitigate its severity or which, upon a finding of misconduct, would tend to support imposition of a lesser sanction than might be otherwise imposed.

E. Substantial Compliance, Notice, and Evidentiary Rulings

1. Except where this paragraph provides specific time deadlines, substantial compliance with the provisions hereof shall be sufficient, and no Charge of Misconduct shall be dismissed on the sole ground that any such provision has not been strictly complied with.

Where specific time deadlines are provided, such deadlines shall be jurisdictional, except when the Clerk of the Disciplinary System, Bar Counsel, a District Committee or the Board is granted specific authority herein to extend or otherwise modify any such deadline.

2. Whenever any notice or other writing directed to the Respondent is required or permitted under this Rule, such notice or other writing shall be deemed effective and served when mailed by certified mail, return receipt requested, to the Respondent at the Respondent's last address on record for membership purposes with the Bar.
3. In any Disciplinary Proceeding, evidentiary rulings shall be made favoring receipt into evidence of all reasonably probative evidence to satisfy the ends of justice. The weight given such evidence received shall be commensurate with its evidentiary foundation and likely reliability.
4. Neither counsel for the Complainant, if there is one, nor counsel for any witnesses, may examine or cross-examine any witness, introduce any evidence or present any argument.
5. A Respondent who intends to rely upon evidence of an Impairment in mitigation of Misconduct shall, absent good cause excusing his or her failure to do so, provide notice not less than 14 days prior to the hearing to Bar Counsel and the District Committee or Board of his or her intention to do so.

F. Participation and Disqualification of Counsel in Disciplinary Proceedings

1. Attorney for Respondent

- a. A Respondent may be represented by an Attorney at any time with respect to a complaint.
- b. A Respondent must sign his or her written response to any (i) Complaint, (ii) Charge of Misconduct or (iii) Certification.

2. Disqualification

An Attorney shall not represent a Respondent at any time with respect to a Complaint or Charge of Misconduct:

- a. while such Attorney is a current employee or current officer of the Bar or is a member of Council, COLD, the Board, or a District Committee;
- b. for 90 days after such Attorney ceases to be an employee or officer of the Bar or a member of Council, COLD, the Board, or a District Committee;
- c. at any time, after such Attorney ceases to be an employee or officer of the Bar or a member of Council, COLD, the Board or a District Committee, if such Attorney was personally involved in the subject matter of the Complaint, Charge of Misconduct or any related matter while acting as such employee, officer or member;
- d. at any time after such Attorney ceased to be a liaison from COLD to a District Committee before which the Disciplinary Proceeding involving such Complaint or Charge of Misconduct was pending during the time such Attorney was such liaison; or
- e. if such Attorney is a partner or an associate of, or is a member, shareholder or has a similar relation with any Attorney described in subparagraphs a. through d. of this subparagraph.

3. Disqualification of Counsel, District Committee or Board Members, in Disciplinary Proceedings.

- a. A member or former member of a District Committee or the Board shall be disqualified from adjudicating any matter with respect to which the member has any personal or financial interest that might affect or reasonably be perceived to affect the member's ability to be impartial. The Chair shall rule on the issue of disqualification, subject to being overruled by a majority of the Panel or Subcommittee.
- b. Upon the referral of any Complaint against a member or former member of a District Committee or the Board to a District Committee for Investigation, the member shall

be recused from any service on the District Committee or the Board until the Dismissal of the Complaint without the imposition of any form of discipline.

- c. Upon the final imposition of a Private Reprimand, a Public Reprimand, an Admonition, a Suspension or a Revocation against a member or former member of a District Committee or the Board, the member shall automatically be terminated from membership or further service on the District Committee or Board. Upon the final imposition of any other form of Attorney discipline, COLD shall have sole discretion to determine whether the member shall be terminated from membership or further service on the District Committee or the Board.
- d. Unless otherwise stated, all questions of interpretation under this Paragraph 13.F shall be decided by the tribunal before which the proceeding is pending, except that COLD shall determine discretionary termination of membership or further service.
- e. Any member or former member of a District Committee or the Board shall be ineligible to serve in a Disciplinary Proceeding in which:
  - (1) the District Committee or Board member or any member of his or her firm is involved in any significant way with the matter on which the Board would act;
  - (2) the Board member or any member of the Board member's firm was serving on the District Committee that certified the matter to the Board or has otherwise acted on the matter;
  - (3) a Judge would be required to withdraw from consideration of, or presiding over, the matter under the Canons of Judicial Conduct adopted by this Court; or
  - (4) the District Committee or Board member previously represented the Respondent; or
  - (5) the District Committee or Board member, upon reasonable notice to the Clerk of the Disciplinary System or to the Chair presiding over a matter, disqualifies himself or herself from participation in the matter, because such member believes that he or she is unable to participate objectively in consideration of the matter or for any other reason.

G. Subcommittee Action

- 1. Following receipt of the report of Investigation and Bar Counsel's recommendation, the Subcommittee may refer the matter to Bar Counsel for further Investigation. Once the Investigation is complete to the Subcommittee's satisfaction, it shall take one of the following actions.
  - a. Dismiss the Complaint when:
    - (1) as a matter of law the conduct questioned or alleged does not constitute Misconduct; or
    - (2) the evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged, or there is no credible evidence to support any allegation of Misconduct by Respondent, or the evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard; or
    - (3) the Subcommittee concludes that a Dismissal *De Minimis* should be imposed; or
    - (4) the Subcommittee concludes that a Dismissal for Exceptional Circumstances should be imposed; or
    - (5) the action alleged to be Misconduct is protected by superseding law.

In making the determination in subparagraphs (3) and (4), the Subcommittee shall have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of a dismissal which creates a Disciplinary Record, may request a hearing before the District Committee.

- b. Impose an Admonition without Terms. In making this determination, the Subcommittee shall have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of an Admonition Without Terms, may request a hearing before the District Committee.
  - c. Certify the Complaint to the Disciplinary Board pursuant to this Paragraph or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935. Certification shall be based on a reasonable belief that the Respondent has engaged or is engaging in Misconduct that, if proved, would justify a Suspension or Revocation. In making this determination, the Subcommittee shall have access to Respondent's prior Disciplinary Record.
  - d. Approve an Agreed Disposition imposing one of the following conditions or sanctions:
    - (1) Admonition, with or without Terms; or
    - (2) Private Reprimand, with or without Terms; or
    - (3) Public Reprimand, with or without Terms.
  - e. Set the Complaint for hearing before the District Committee. In making this determination, the Subcommittee shall have access to Respondent's prior disciplinary record.
2. All actions taken by Subcommittees, except for approval of Agreed Dispositions, shall be by majority vote.
3. Report of Subcommittee
- All decisions of the Subcommittee shall be reported to the District Committee in a timely fashion.
4. Notice of Action of Subcommittee
- If a Subcommittee has dismissed the Complaint, the Chair shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor.
- If a Subcommittee determines to issue an Admonition with or without Terms, or a Private or Public Reprimand with or without Terms, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the Subcommittee's determination.
- If a Subcommittee elects to certify a Complaint to the Board, the Subcommittee Chair shall promptly mail a copy of the Certification to the Clerk of the Disciplinary System, Bar Counsel, the Respondent and the Complainant.
5. Enforcement of Terms
- a. Procedure in All Terms Cases
 

If a Subcommittee imposes Terms, the Subcommittee shall specify the time period within which compliance with the Terms shall be completed. If Terms have been imposed against a Respondent, that Respondent shall deliver a Certification of compliance with such Terms to Bar Counsel within the time period specified by the Subcommittee.

If a Subcommittee issues an Admonition with Terms, a Private Reprimand with Terms, or a Public Reprimand with Terms based on an Agreed Disposition, the Agreed Disposition shall specify the alternative disposition to be imposed if the Terms are not complied with or if the Respondent does not certify compliance with Terms to Bar Counsel. If the Respondent does not comply with the Terms imposed or does not certify compliance with Terms to Bar Counsel within the time period specified, Bar Counsel shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee chair. The burden of proof shall be on the Respondent to show timely compliance and timely Certification by clear and convincing evidence. If the District Committee determines that the Respondent failed to comply with the Terms or failed to certify compliance within the stated time period, the alternative dis

position shall be imposed. Bar Counsel shall be responsible for monitoring compliance with Terms and reporting any noncompliance to the District Committee.

b. Alternative Disposition for Public Reprimand with Terms:

The alternative disposition for a Public Reprimand with Terms shall be a Certification For Sanction Determination unless the Respondent has entered into an Agreed Disposition for the imposition of an alternative disposition of a specific period of Suspension of license.

H. District Committee Proceedings

1. Pre-Hearing Matters

a. Charge of Misconduct

(1) If the Subcommittee determines that a hearing should be held before a District Committee, Bar Counsel shall, at least 42 days prior to the date fixed for the hearing, serve upon the Respondent by certified mail the Charge of Misconduct, a copy of the Investigative Report considered by the Subcommittee and any exculpatory materials in the possession of Bar Counsel.

(2) After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct:

- (a) file an answer to the Charge of Misconduct, which answer shall be deemed consent to the jurisdiction of the District Committee; or
- (b) file an answer to the Charge of Misconduct and a demand with the Clerk of the Disciplinary System that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the District Committee shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a deadline for the hearing to be held.

(3) If the Respondent fails to file an answer, or an answer and a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the District Committee.

b. Pre-Hearing Orders

The Chair may, *sua sponte* or upon motion of the Respondent or Bar Counsel, enter such pre-hearing order as is necessary for the orderly conduct of the hearing before the Committee. Such order may establish time limits and:

- (1) direct Bar Counsel and Respondent to provide to each other, with a copy to the Chair, a list of and copies of all exhibits proposed to be introduced at the Misconduct stage of the hearing;
- (2) encourage Bar Counsel and Respondent to confer and discuss stipulations; and
- (3) direct Bar Counsel and Respondent to serve on each other, with a copy to the Chair, lists setting forth the name of each witness the party intends to call.

c. Subpoenae, Summonses and Counsel

The Respondent may be represented by counsel. The Respondent may request Bar Counsel or the Chair of the District Committee to issue summonses or subpoenae for witnesses and documents. Requests for summonses and subpoenae shall be granted, unless, in the judgment of the Chair of the District Committee, such request is

unreasonable. Either Bar Counsel or Respondent may move the District Committee to quash such summonses or subpoenas.

d. Continuances

Once a District Committee has scheduled a hearing, no continuance shall be granted unless in the judgment of the Chair the continuance is necessary to prevent injustice.

2. Hearing Procedure

a. Attendance at Hearing

District Committee Hearings, except deliberations, shall be open to the public.

b. Public Docket

The Clerk's Office shall maintain a public docket of all matters set for hearing before a District Committee or certified to the Board. For every matter before a District Committee for which a Charge of Misconduct has been mailed by the Office of the Bar Counsel, the Clerk shall place it on the docket 21 days after the date of the Charge of Misconduct. For every Complaint certified to the Board by a Subcommittee, the Clerk shall place it on the docket on receipt of the statement of the certified charges from the Subcommittee.

c. Oral Testimony and Exhibits

Oral testimony shall be taken and preserved by a Court Reporter. All exhibits or copies thereof received in evidence or marked refused by the District Committee shall be preserved in the District Committee file on the matter.

d. Preliminary Explanation

After swearing the Court Reporter, who thereafter shall administer oaths or affirmations to witnesses, the Chair shall make opening remarks in the presence of the Respondent and the Complainant, if present. The Chair shall also inquire of the members present whether any member has any personal or financial interest that may affect, or be reasonably perceived to affect, his or her ability to be impartial. Any member answering in the affirmative shall be excused from participation in the matter.

e. Motion to Exclude

Witnesses other than the Complainant and the Respondent shall be excluded until excused from a public hearing on motion of Bar Counsel, the Respondent or the District Committee.

f. Presentation of Evidence

(1) Bar's Evidence

Bar Counsel or Committee Counsel shall present witnesses and other evidence supporting the Charge of Misconduct. Respondent shall be afforded the opportunity to cross-examine the Bar's witnesses and to challenge any evidence introduced on behalf of the Bar. District Committee members may also examine witnesses offered by Bar Counsel or Committee Counsel.

(2) Respondent's Evidence

Respondent shall be afforded the opportunity to present witnesses and other evidence on behalf of Respondent. Bar Counsel or Committee's Counsel shall be afforded the opportunity to cross-examine Respondent's witnesses and to challenge any evidence introduced on behalf of Respondent. District Committee members may also examine witnesses offered on behalf of Respondent.

(3) Other Counsel

Neither counsel for the Complainant, if there be one, nor counsel for any witness, may examine or cross-examine any witness, introduce any other evidence, or present any argument.

(4) Depositions

Depositions may be taken only when witnesses are unavailable, in accordance with Rule 4:7(a)(4) of the Rules of this Court.

(5) Testimony by Videoconferencing and Telephone

Testimony by videoconferencing and/or telephonic means may be utilized, if in compliance with the Rules of this Court.

g. Admissibility of Evidence

The Chair shall rule on the admissibility of evidence, which rulings may be overruled by a majority of the remaining District Committee members participating in the hearing.

h. Motion to Strike

At the conclusion of the Bar's evidence or at the conclusion of all of the evidence, the District Committee on its own motion, or the Respondent or the Respondent's counsel may move to strike the Bar's evidence as to one or more allegations of Misconduct contained in the Charge of Misconduct. A motion to strike an allegation of Misconduct shall be sustained if the Bar has failed to introduce sufficient evidence that would under any set of circumstances support the conclusion that the Respondent engaged in the alleged Misconduct that is the subject of the motion to strike. If the Chair sustains the motion to strike an allegation of Misconduct, subject to being overruled by a majority of the remaining members of the Committee, that allegation of Misconduct shall be dismissed.

i. Argument

The District Committee shall afford a reasonable opportunity for argument on behalf of the Respondent and Bar Counsel on the allegations of Misconduct.

j. Deliberations

The District Committee members shall deliberate in private on the allegations of Misconduct. After due deliberation and consideration, the District Committee shall vote on the allegations of Misconduct.

k. Change in District Committee Composition

When a hearing has been adjourned for any reason and any of the members initially constituting the quorum for the hearing cannot be present, the hearing of the matter may be completed by:

- (1) furnishing a transcript of the subsequent proceedings conducted in one or more member's absence to any such absent member or members; or
- (2) substituting another District Committee member for any absent member or members and furnishing a transcript of the prior proceedings in the matter to such substituted member or members.

Any show cause proceeding involving the question of compliance with Terms shall be deemed a new hearing and not a continuation of the hearing that resulted in the imposition of Terms.

l. Disposition

(1) Dismissal

After due deliberation and consideration, the District Committee may dismiss the Charge of Misconduct, or any allegation thereof, as not warranting further action when in the judgment of the District Committee:

- (a) as a matter of law the conduct questioned or alleged does not constitute Misconduct;
- (b) the evidence presented shows that the Respondent did not engage in the Misconduct alleged, or there is no credible evidence to support

any allegation of Misconduct by Respondent, or the evidence does not reasonably support any allegation of Misconduct under a clear and convincing evidentiary standard; or

- (c) the action alleged to be Misconduct is protected by superseding law.

If a District Committee is unable to reach a decision by a majority vote of those constituting the hearing panel, the Charge of Misconduct, or any allegation thereof, shall be dismissed on the basis that the evidence does not reasonably support the Charge of Misconduct, or one or more allegations thereof, under a clear and convincing evidentiary standard.

(2) Sanctions

If the District Committee finds that Misconduct has been shown by clear and convincing evidence, then the District Committee shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has been the subject of any Disciplinary Proceedings in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence in aggravation or mitigation, as well as argument. In determining what disposition of the Charge of Misconduct is warranted, the District Committee shall consider the Respondent's Disciplinary Record. A District Committee may:

- (a) conclude that a Dismissal *De Minimis* should be imposed; or
- (b) conclude that a Dismissal for Exceptional Circumstances should be imposed; or
- (c) conclude that an Admonition, with or without Terms should be imposed; or
- (d) issue a Public Reprimand, with or without Terms; or
- (e) certify the Charges of Misconduct to the Board or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935.

m. District Committee's Determination

If the District Committee finds that the evidence shows the Respondent engaged in Misconduct by clear and convincing evidence, then the Chair shall issue the District Committee's Determination, in writing, setting forth the following:

- (1) brief findings of the facts established by the evidence;
- (2) the nature of the Misconduct shown by the facts so established, including the Disciplinary Rules violated by the Respondent; and
- (3) the sanctions imposed, if any, by the District Committee.

n. Notice to the Respondent and Bar Counsel of District Committee Decision

If the District Committee issues a Dismissal, the Chair shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor.

If the District Committee issues a Public Reprimand, with or without Terms; an Admonition, with or without Terms; a Dismissal *De Minimis*; or a Dismissal for Exceptional Circumstances, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the District Committee's Determination.

If the District Committee finds that the Respondent failed to comply with the Terms imposed by the District Committee, the Chair shall notify the Complainant, the Respondent and Bar Counsel of the imposition of the alternative disposition.

If the District Committee has elected to certify the Complaint, the Chair of the District Committee shall promptly mail to the Clerk of the Disciplinary System a copy of the Certification. A copy of the Certification shall be sent to Bar Counsel, Respondent and the Complainant.

o. District Committee Determination Finality and Public Statement

Upon the expiration of the ten-day period after service on the Respondent of a District Committee Determination, if either a notice of appeal or a notice of appeal and a written demand that further Proceedings be conducted before a three-judge Circuit Court pursuant to Va. Code § 54.1-3935 has not been filed by the Respondent, the District Committee Determination shall become final, and the Clerk of the Disciplinary System shall issue a public statement as provided for in this Paragraph for the dissemination of public disciplinary information.

p. Enforcement of Terms

(1) Procedure in All Terms Cases

In all cases where Terms are included in the disposition, the District Committee shall specify the time period within which compliance shall be completed and, if required, the time period within which the Respondent shall deliver a written certification of compliance to Bar Counsel. The District Committee shall specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel shall be responsible for monitoring compliance and reporting any noncompliance to the District Committee. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee chair. The burden of proof shall be on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period as determined by the District Committee, the alternative disposition shall be imposed. Any show cause proceeding involving the question of compliance shall be deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.

(2) Alternative Disposition and Procedure for Public Reprimand with Terms:

(a) The alternative disposition for a Public Reprimand with Terms shall be a Certification for Sanction Determination.

(b) Upon a decision to issue a Certification for Sanction Determination, Bar Counsel shall order the transcript of the show cause hearing and file it and a true copy of the Public Reprimand with Terms determination with the Clerk of the Disciplinary System.

3. Reconsideration of Action by District Committees

a. A Charge of Misconduct dismissed by a District Committee may be considered only upon:

(1) a finding by a majority vote of the Panel that heard the matter originally that material evidence not known or available when the matter was originally presented has been discovered; or

(2) a unanimous vote of the Panel that heard the matter originally.

b. No action by a District Committee imposing a sanction or certifying a matter to the Board shall be reconsidered unless a majority of the Panel that heard the matter votes to reconsider the sanction.

c. No member shall vote to reconsider a District Committee action unless it appears to such member that reconsideration is necessary to prevent an injustice or warranted by specific exceptional circumstances militating against adherence to the initial action of the District Committee.

d. District Committee members may be polled on the issue of whether to reconsider an earlier District Committee action.

- e. Any reconsideration of an earlier District Committee action must occur at a District Committee meeting, whether in person or by any means of communication which allows all members participating to simultaneously hear each other.
4. Perfecting an Appeal from District Committee’s Determination
- a. By the Respondent
    - (1) Notice of Appeal; Demand. Within ten days after service on the Respondent of the District Committee Determination, the Respondent may file with the Clerk of the Disciplinary System either a notice of appeal to the Board or a notice of appeal and a written demand that further Proceedings be conducted pursuant to Va. Code § 54.1-3935. In either case, the Respondent shall send copies to the District Committee Chair and to Bar Counsel.
 

Upon such demand, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable.

If the Respondent fails to file a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.
    - (2) Staying of Discipline. If the Clerk of the Disciplinary System receives a timely notice of appeal from a Public Reprimand, with or without Terms, or an Admonition, with or without Terms, the sanction shall be stayed during the pendency of the appeal.
    - (3) Filing the Transcript and Record on Appeal. The Respondent shall certify in the notice of appeal or written demand that he or she has ordered from the Court Reporter a complete transcript of the proceedings before the District Committee, at the Respondent’s cost. Upon receipt of the notice of appeal or written demand, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System. The transcript is a part of the record when it is received in the office of the Clerk of the Disciplinary System within 40 days after filing of the notice of appeal or written demand. The Clerk of the Disciplinary System shall retain the records until the transcript has been received or for 40 days after the notice of appeal or written demand has been received, whichever occurs first, and shall then dispose of the record as prescribed in the records retention policy set forth in this Paragraph. Failure of the Respondent to make the complete transcript a part of the Record as specified herein shall result in Dismissal of the appeal by the Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed by the District Committee. Bar Counsel shall initiate the three-judge Circuit Court process for the appeal only after receipt of the transcript by the Clerk of the Disciplinary System.
    - (4) Appeal to a Circuit Court. An appeal to a Circuit Court pursuant to Va. Code § 54.1-3935 shall be conducted before a duly convened three-judge Circuit Court as an appeal on the record using the same procedure prescribed for an appeal of a District Committee Determination before the Board under this Paragraph. The Clerk of the Disciplinary System shall forward the record to the clerk of the designated Circuit Court only upon receipt of the transcript as provided in the preceding subparagraph.
    - (5) Appeal from Agreed Sanction Prohibited. No appeal shall lie from any sanction to which the Respondent has agreed.
- I. Board Proceedings
- 1. Pre-Hearing Matters
    - a. Procedure on Certification to the Board
      - (1) After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent shall, within 21 days after service of the Certification:

- (a) file an answer to the Certification with the Clerk of the Disciplinary System, which answer shall be deemed consent to the jurisdiction of the Board; or
- (b) file an answer to the Certification and a demand with the Clerk of the Disciplinary System that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a deadline for the hearing to be held.

- (2) If the Respondent fails to file an answer, or an answer and a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.
- (3) The Board shall set a date, time, and place for the hearing, and shall serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing.

b. Expedited Hearings

- (1) If Bar Counsel or a District Committee Chair has reasonable cause to believe that an Attorney is engaging in Misconduct which is likely to result in injury to, or loss of property of, one or more of the Attorney's clients or any other person, and that the continued practice of law by the Attorney poses an imminent danger to the public, Bar Counsel or the District Committee Chair may petition the Board to issue an order requiring the Attorney to appear before the Board for a hearing in accordance with the procedures set forth below.
- (2) The petition shall be under oath and shall set forth the nature of the alleged Misconduct, the factual basis for the belief that immediate action by the Board is reasonable and necessary and any other facts which may be relevant to the Board's consideration of the matter, including any prior disciplinary record of the Attorney.
- (3) Upon receipt of the petition, the Chair or Vice-Chair of the Board shall issue an order requiring the Respondent to appear before the Board not less than 14 nor more than 30 days from the date of the order for a hearing to determine whether the Misconduct has occurred and the imposition of sanctions is appropriate. The Board's order shall be served on the Respondent no fewer than ten days prior to the date set for hearing.
- (4) If the Respondent, at the time the petition is received by the Board, is the subject of an order then in effect by a Circuit Court pursuant to Va. Code § 54.1-3936 appointing a receiver for his accounts, the Board shall issue a further order summarily suspending the license of the Respondent until the Board enters its order following the expedited hearing.
- (5) At least five days prior to the date set for hearing, the Respondent shall either:
  - (a) file an answer to the petition with the Clerk of the Disciplinary System, which answer shall be conclusively deemed consent to the jurisdiction of the Board; or
  - (b) file an answer and a demand with the Clerk of the Disciplinary System that proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 days nor more than 120 days from the date of the Board order.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a deadline for the hearing to be held. If any order of summary Suspension has been entered, such Suspension shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it.

If the Respondent fails to file an answer, or an answer and a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

c. Pre-Hearing Orders

The Chair may, *sua sponte* or upon motion of the Respondent or Bar Counsel, enter such pre-hearing order as is necessary for the orderly conduct of the hearing before the Board in Misconduct cases. Such order may establish time limits and:

- (1) direct Bar Counsel and the Respondent to provide to each other, with a copy to the Clerk of the Disciplinary System, a list of and copies of all exhibits proposed to be introduced at the Misconduct stage of the hearing;
- (2) encourage Bar Counsel and the Respondent to confer and discuss stipulations; and
- (3) direct Bar Counsel and the Respondent to provide to each other, with a copy to the Clerk of the Disciplinary System, lists setting forth the name of each witness the party intends to call.

d. Continuance of a Hearing

Absent exceptional circumstances, once the Board has scheduled a hearing, no continuance shall be granted unless, in the judgment of the Chair, the continuance is necessary to prevent injustice. No continuance will be granted because of a conflict with the schedule of the Respondent or the Respondent's counsel unless such continuance is requested in writing by the Respondent or the Respondent's counsel within 14 days after mailing of a notice of hearing. Any request for a continuance shall be filed with the Clerk of the Disciplinary System.

2. Hearing Procedures

a. Preliminary Explanation

The Chair shall state in the presence of the Respondent and the Complainant, if present, a summary of the alleged Misconduct, the nature and purpose of the hearing, the procedures to be followed during the hearing, and the dispositions available to the Board following the hearing. The Chair shall also inquire of the members present whether any member has any personal or financial interest that may affect, or be reasonably perceived to affect, his or her ability to be impartial. Any member answering in the affirmative shall be excused from participation in the matter.

b. Attendance at Hearing

Witnesses other than the Complainant and the Respondent shall be excluded until excused from a public hearing on motion of Bar Counsel, the Respondent or the Board.

c. Order of Hearing

- (1) Brief opening statements by Bar Counsel and by the Respondent or the Respondent's counsel, shall be permitted but are not required.
- (2) Bar Counsel shall present witnesses and other evidence supporting the Charge of Misconduct. The Respondent shall be afforded the opportunity to cross-examine the Bar's witnesses and to challenge any evidence introduced on behalf of the Bar. Board members may also examine witnesses offered by Bar Counsel.

- (3) Respondent shall be afforded the opportunity to present witnesses and other evidence. Bar Counsel shall be afforded the opportunity to cross-examine Respondent's witnesses and to challenge any evidence introduced on behalf of Respondent. Board members may also examine witnesses offered on behalf of a Respondent.
- (4) Bar Counsel may rebut the Respondent's evidence.
- (5) Bar Counsel may make the initial closing argument.
- (6) The Respondent or the Respondent's counsel may then make closing argument.
- (7) Bar Counsel may then make a rebuttal closing argument.

d. Motion to Strike

At the conclusion of the Bar's evidence or at the conclusion of all the evidence, the Board on its own Motion, or the Respondent or the Respondent's counsel may move to strike the Bar's evidence as to one or more allegations of Misconduct contained in the Charge of Misconduct. A motion to strike an allegation of Misconduct shall be sustained if the Bar has failed to introduce sufficient evidence that would under any set of circumstances support the conclusion that the Respondent engaged in the alleged Misconduct that is the subject of the motion to strike. If the Chair sustains the motion to strike an allegation of Misconduct, subject to being overruled by a majority of the remaining members of the Board, that allegation of Misconduct shall be dismissed from the Charge of Misconduct.

e. Deliberations

- (1) As soon as practicable after the conclusion of the evidence and arguments as to the issue of Misconduct, the Board shall deliberate in private.
- (2) If the Board finds by clear and convincing evidence that the Respondent has engaged in Misconduct, the Board shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has been the subject of any Disciplinary Proceeding in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence and arguments in aggravation or mitigation.
- (3) The Board shall deliberate in private on the issue of sanctions.
- (4) The Board may address any legal questions to the Office of the Attorney General.

f. Disposition

- (1) If the Board concludes that the evidence fails to show under a clear and convincing evidentiary standard that the Respondent engaged in the Misconduct, the Board shall dismiss any Charge of Misconduct not so proven.
- (2) If the Board concludes that there has been presented clear and convincing evidence that the Respondent has engaged in Misconduct, after considering evidence and arguments in aggravation and mitigation, the Board shall impose one of the following sanctions and state the effective date of the sanction imposed:
  - (a) Admonition, with or without Terms;
  - (b) Public Reprimand, with or without Terms;
  - (c) Suspension of the License of the Respondent for a stated period not exceeding five years; provided, however, if the Suspension is for more than one year, the Respondent must apply for Reinstatement as provided in this Paragraph; or
  - (d) Revocation of the Respondent's License.
- (3) If the Board is unable to reach a decision by a majority vote of those constituting the hearing panel, the Charge of Misconduct, or any allegation thereof,

shall be dismissed on the basis that the evidence does not reasonably support the Charge of Misconduct, or one or more allegations thereof, under a clear and convincing evidentiary standard.

g. Enforcement of Terms

In all cases where Terms are included in the disposition, the Board shall specify the time period within which compliance shall be completed and, if required, the time period within which the Respondent shall deliver a written certification of compliance to Bar Counsel. The Board shall specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel shall be responsible for monitoring compliance and reporting any noncompliance to the Board. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the Board at its next available hearing date. The burden of proof shall be on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period, as determined by the Board, the alternative disposition shall be imposed. Any show cause proceeding involving the question of compliance shall be deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.

h. Orders, Findings, and Opinions

Upon disposition of a matter, the Board shall issue the Summary Order. Thereafter, the Board shall issue the Memorandum Order. A Board member shall prepare the Summary Order and Memorandum Order for the signature of the Chair or the Chair's designee.

Dissenting opinions may be filed.

i. Change in Composition of Board Hearing Panel

Whenever a hearing has been adjourned for any reason and one or more of the members initially constituting the quorum for the hearing are unable to be present, the hearing of the matter may be completed by:

- (1) furnishing a transcript of the subsequent proceedings conducted in one or more member's absence to such absent member, or
- (2) substituting another Board member for any absent member and furnishing a transcript of the prior proceedings in the matter to such substituted member(s).

j. Reconsideration of Action by the Board

- (1) No motion for reconsideration or modification of the Board's decision shall be considered unless it is filed with the Clerk of the Disciplinary System within 10 days after the hearing before the Board. The moving party shall file an original and six copies of both the motion and all supporting exhibits with the Clerk of the Disciplinary System. Such motion shall be granted only to prevent manifest injustice upon the ground of
  - (a) illness, injury or accident which prevented the Respondent or a witness from attending the hearing and which could not have been made known to the Board within a reasonable time prior to the hearing, or
  - (b) evidence which
    - (i) was not known to the Respondent at the time of the hearing and could not have been discovered prior to, or produced at, the hearing in the exercise of due diligence and
    - (ii) would have clearly produced a different result if the evidence had been introduced at the hearing.

- (2) If such a motion is timely filed, the Clerk of the Disciplinary System shall promptly forward copies to each member of the hearing panel. The panel may deny the motion without response from Bar Counsel.
- (3) No relief shall be granted without allowing Bar Counsel an opportunity to oppose the motion in writing. If no relief is granted, the Board shall enter its order disposing of the case.

3. Procedure Upon Appeal of a District Committee Determination

a. Procedure

Upon receipt of notice from the Clerk of the Disciplinary System that a Respondent has filed an appeal from a District Committee Determination or that the Board has granted a petition for appeal, the Board shall place such matter on its docket for review. The Clerk of the Disciplinary System shall notify the appellant when the entire record of the Proceeding before the District Committee has been received or when the time for appeal has expired. The record shall consist of the Charge of Misconduct, the complete transcript of the Proceeding, any exhibits received or refused by the District Committee, the District Committee Determination, and all briefs, memoranda or other papers filed with the District Committee by the Respondent or the Bar. Upon petition of the Respondent, for good cause shown, the Board may permit the record to be supplemented to prevent injustice, such supplement to be in such form as the Board may deem appropriate. Thereafter, briefs shall be filed in the office of the Clerk of the Disciplinary System, as follows.

- (1) The appellant shall file an opening brief within 40 days after the mailing of the notice to the appellant regarding the record by the Clerk of the Disciplinary System.
- (2) The appellee shall file its brief within 25 days after filing of the opening brief.
- (3) The appellant may file a reply brief within 14 days after filing of the appellee's brief.

Failure of the appellant to file an opening brief within the time specified herein shall result in the Dismissal of the appeal and affirmance of the decision by the District Committee.

b. Standard of Review

In reviewing a District Committee Determination, the Board shall ascertain whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did.

c. Oral Argument

Oral argument shall be granted, unless waived by the appellant.

d. Imposition of Sanctions

Upon review of the record in its entirety, the Board may:

- (1) dismiss the Charges of Misconduct upon a finding that the District Committee Determination is contrary to the law or is not supported by substantial evidence; or
- (2) affirm the District Committee Determination, in which instance the Board may impose the same or any lesser sanction as that imposed by the District Committee. In no case shall it increase the severity of the sanction imposed by the District Committee; or
- (3) reverse the decision of the District Committee and remand the Charges of Misconduct to the District Committee for further proceedings.

4. Proceedings Upon Certification for Sanction Determination:

a. Initiation of Proceeding:

Upon receipt of the Certification for Sanction Determination from a District Committee, the Clerk of the Disciplinary System shall issue a notice of hearing on the

Certification for Sanction Determination giving Respondent the date, time and place of the Proceeding and a copy of the Certification for Sanction Determination.

b. Proceeding upon the Record:

The proceeding shall be conducted upon the record which shall consist of the Public Reprimand with Terms determination issued by either a Subcommittee or a District Committee, the transcript of the District Committee show cause hearing, and the Certification for Sanction Determination.

c. Evidence and Argument:

(1) Evidence only of mitigation and aggravation with respect to compliance or certification shall be permitted in the proceeding.

(2) Argument shall be conducted as in the sanction phase of a Misconduct case.

d. Sanction:

The Board may impose a sanction of Suspension or Revocation of license.

5. Proceedings upon First Offender Plea, Guilty Plea or Adjudication of a Crime

a. Plea under First Offender Statute

(1) Whenever the Clerk of the Disciplinary System receives written notification from any court of competent jurisdiction stating that an Attorney has entered a plea to a Crime under a first offender statute, and that the court has found facts that would justify a finding of guilt and ordered that the Attorney be put on probation, the Board shall forthwith enter an order requiring the Attorney to appear at a specified time and place for a hearing before the Board to determine whether the Attorney's license to practice law should be revoked or suspended or, if not, whether the Attorney should be required to give notice, by certified mail, of the plea and probation ordered by the court, including the terms and duration of the probation, to all clients for whom the Attorney is currently handling matters, and to all opposing attorneys and the presiding judges in pending litigation.

(2) A copy of the written notification from the court shall be served with the order fixing the time and place of the hearing. The hearing shall be set not less than 14 or more than 30 days after the date of the Board's order. At the hearing, the Attorney shall have the burden of proving why his or her license should not be suspended or revoked and why he or she should not be required to give notice of the plea and probation ordered by the court.

(3) If the Attorney elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Attorney shall file a demand with the Clerk of the Disciplinary System not later than ten days prior to the date set for the Board hearing, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a deadline for the hearing to be held.

If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

(4) If the Board or court suspends or revokes the Attorney's license to practice law, the Attorney must comply with the notice requirements set out in Paragraph M., *infra*. If the Board or court orders the Attorney to give notice of the plea and court ordered probation, the Attorney shall give such notice within 14 days after the effective date of the Board's order and furnish proof to the bar within 60 days of the effective date of the order that such notices have been timely given.

- (5) Issues concerning the adequacy of the notice shall be determined by the Board, which may suspend or revoke the Attorney for failure to comply with the above notice requirements.

b. Guilty Plea or Adjudication of a Crime

- (1) Whenever the Clerk of the Disciplinary System receives written notification from any court of competent jurisdiction stating that an Attorney (the “Respondent”) has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily issue an order of Suspension on behalf of the Board against the Respondent and shall forthwith cause to be served upon the Respondent: a copy of the written notification from the court; a copy of the Board member’s order; and a notice fixing the time and place of a hearing to determine whether Revocation or further Suspension is appropriate.

The hearing shall be set not less than 14 or more than 30 days after the date of the Board’s order. Upon written request of the Respondent, the hearing may be continued until any probation ordered by a court has ended or after sentencing has occurred. Upon receipt by the Board of a certified copy of a notice of appeal from the conviction, proceedings before the Board shall, upon request of the Respondent, be continued pending disposition of such appeal. The Board shall, upon request of the Respondent, hold an interim hearing and shall terminate such Suspension while the probation, sentencing, or appeal is pending, if the Board finds that such Suspension, if not terminated, would be likely to exceed the discipline imposed by the Board upon a hearing on the merits of the case.

Upon presentation to the Board of a certified copy of an order setting aside the verdict or reversing the conviction on appeal, any Suspension shall be automatically terminated and any Revocation shall be vacated, and the License shall be deemed automatically reinstated. Discharge or Dismissal of a guilty plea or termination of probation shall not result in the automatic termination of the Suspension or vacation of the Revocation. Nothing herein shall preclude further proceedings against the Respondent upon Charges of Misconduct arising from the facts leading to such conviction.

- (2) Procedure

The procedure applicable to Proceedings related to Misconduct shall apply to Proceedings relating to guilty pleas or Adjudication of a Crime. If the Respondent elects to have further Proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent shall file a demand with the Clerk of the Disciplinary System not later than ten days prior to the date set for the hearing before the Board, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a deadline for the hearing to be held. The order of Suspension issued by the Board shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it.

If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

- (3) Action by the Board at the Hearing

If the Board finds at the hearing that the Respondent has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a

plea wherein the facts found by a court would justify a finding of guilt, an order shall be issued, and a copy thereof served upon the Respondent in which the Board shall:

- (a) continue the Suspension or issue an order of Suspension against the Respondent for a stated period not in excess of five years; or
- (b) issue an order of Revocation against the Respondent.

6. Proceedings upon Impairment

a. Suspension for Impairment

The Board shall have the power to issue an order of Suspension to a Respondent who has an Impairment. The term of such Suspension shall be indefinite, and, except as provided below, shall be terminated only upon determination by the Board that Respondent no longer has the Impairment. A Respondent who intends to rely upon evidence of an Impairment in mitigation of Misconduct shall, absent good cause excusing his or her failure to do so, provide notice not less than 14 days prior to the hearing to Bar Counsel and the District Committee or Board of his or her intention to do so. A finding of Impairment may be utilized by Bar Counsel to dismiss any pending Complaints or Charges of Misconduct on the basis of the existence of exceptional circumstances militating against further proceedings, which circumstances of Impairment shall be set forth in the Dismissal.

b. Burden of Proof

Whenever the existence of an Impairment is alleged in a Proceeding under this Rule or in mitigation of Charges of Misconduct, the burden of proving such an Impairment shall rest with the party asserting its existence. The issue of the existence of an Attorney's Impairment may be raised by any person at any time, and if a District Committee or the Disciplinary Board, during the course of a hearing on Charges of Misconduct against a Respondent, believes that the Respondent may then have an Impairment, the District Committee or the Disciplinary Board may postpone the hearing and initiate an Impairment Proceeding under this Rule. In Proceedings to terminate a Suspension for Impairment, the burden of proving the termination of an Impairment shall be on the Respondent.

c. Investigation

(1) Upon receipt of notice or evidence that an Attorney has or may have an Impairment, Bar Counsel shall cause an Investigation to be made to determine whether there is reason to believe that the Respondent has the Impairment.

(2) As a part of the Investigation of whether an Impairment exists, and for good cause shown in the interest of public protection:

(a) Bar Counsel may petition the Board to order the Respondent:

- (i) to undergo a psychiatric, physical or other medical examination by qualified physicians or other health care provider selected by the Board; and
- (ii) to provide appropriate releases to health care providers authorizing the release of Respondent's psychiatric, physical or other medical records to Bar Counsel and the Board for purposes of the Investigation and any subsequent Impairment proceedings

(b) Upon notice to the Respondent, the Board shall hold a hearing to determine whether any such examination or release is appropriate.

d. Summary Suspension

Upon receipt of a notice from the Clerk of the Disciplinary System with supporting documentary evidence that an Attorney has been adjudicated by a court of competent

jurisdiction to have an Impairment, or that an Attorney has been involuntarily admitted to a hospital (as defined in Va. Code §37.1-1) for treatment of any addiction, inebriety, insanity or mental illness, any member of the Board shall summarily issue on behalf of the Board an order of Suspension against the Respondent and cause the order to be served on such Respondent.

e. Action by Board after a Hearing

- (1) If Bar Counsel determines that there is reason to believe that an Attorney has an Impairment, Bar Counsel shall file a petition with the Board, and the Board shall promptly hold a hearing to determine whether such Impairment exists. A copy of the petition shall be served on the Respondent. If the Board determines that an Impairment exists, it shall enter an order of Suspension.
- (2) The Board shall hold a hearing upon petition of a Respondent who is subject to a Suspension for Impairment that alleges that the Impairment no longer exists. Evidence that the Respondent is no longer hospitalized shall not be conclusive to the Board's determination of the Respondent's ability to resume the practice of law.

f. Procedure

- (1) Such hearing shall be conducted substantially in accordance with the procedures established in proceedings related to Misconduct, except that the public and witnesses, other than the Complainant and the Respondent, shall be excluded throughout an Impairment Proceeding when not testifying.

(2) Guardian *Ad Litem*

The notice of any hearing to determine whether the Respondent has an Impairment shall order Respondent to advise the Board whether Respondent has retained counsel for the hearing. Unless counsel for such Respondent enters an appearance with the Board within ten days of the date of the notice, the Board shall appoint a guardian *ad litem* to represent such Respondent at the hearing.

g. Examination

Following a psychiatric, physical or other medical examination, written reports of the results of such examination, along with written reports from other qualified physicians or other health care providers who have examined Respondent, may be considered as evidence by the Board. Such reports shall be filed with the Clerk of the Disciplinary System.

h. Termination of Suspension

In cases where a Suspension is based upon an adjudication of an Impairment by a court, upon receipt of documentary evidence of adjudication by a court of competent jurisdiction that the Respondent's Impairment has terminated, the Board shall promptly enter an order terminating such Suspension.

i. Enforcement

The Board shall have the power to sanction an Attorney for failure to comply with its orders and subpoenae issued in connection with an Impairment Proceeding. The sanction can include a Summary Suspension in a case where it is determined that the public and/or the clients of the Attorney are in jeopardy; such action can be *sua sponte* or on motion by Bar Counsel, with appropriate notice to the Attorney and the Attorney's counsel or guardian *ad litem*.

7. Proceedings upon Disbarment, Revocation, or Suspension in Another Jurisdiction

a. Initiation of Proceeding

Upon receipt of a notice from the Clerk of the Disciplinary System that another jurisdiction has suspended or revoked the License of the Respondent and that such action has become final (the "Suspension or Revocation Notice"), any Board member shall enter on behalf of the Board an order of Suspension against such Respondent to show

cause why the same discipline imposed in the other jurisdiction should not be imposed by the Board. The Board shall serve upon such Respondent by certified mail: a copy of the Suspension or Revocation Notice; a copy of the Board's order; and a notice fixing the date, time and place of the hearing before the Board to determine what action should be taken in response to the Suspension or Revocation Notice and stating that the purpose of the hearing is to provide Respondent an opportunity to show cause why the same discipline that was imposed in the other jurisdiction should not be imposed by the Board.

b. Opportunity for Response

Within 14 days of the date of mailing of the Board order, via certified mail, return receipt requested, to the last address of record of the Respondent with the Bar, Respondent shall file with the Clerk of the Disciplinary System an original and six copies of any written response and any communications or other materials which shall be confined to allegations that:

- (1) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
- (2) the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or
- (3) the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

c. Scheduling and Continuance of Hearing

Unless continued by the Board for good cause, the hearing shall be set not less than 21 nor more than 30 days after the date of the Board's order of Suspension.

d. Provision of Copies

The Clerk of the Disciplinary System shall furnish to the Board Members designated for the hearing and make available to Respondent copies of the Suspension or Revocation Notice, the Board's order of Suspension against the Respondent, the notice of hearing, any notice of continuance of the hearing, and any response or materials filed by Respondent.

e. Hearing Procedures

Insofar as applicable, the procedures for Proceedings on Charges of Misconduct shall govern Proceedings under this subparagraph.

The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard, and the burden of producing the Record upon which the Respondent relies to support the Respondent's contentions, and shall be limited at the hearing to proof of the specific contentions raised in any written response. Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.

f. Action by the Board

If Respondent has not filed a timely written response, or does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has failed to establish the contentions of the written response by clear and convincing evidence, the Board shall impose the same discipline as was imposed in the other jurisdiction. If the Board determines that the Respondent has established such contentions by clear and convincing evidence, the Board may dismiss the proceeding or impose a lesser discipline than was imposed in the other jurisdiction. A copy of any order imposing discipline shall be served upon the Respondent via certified mail, return receipt requested. Any such order shall be final and binding, subject only to appeal as provided in this Paragraph.

8. Reinstatement Proceeding

The filing by a former Attorney of a petition for reinstatement shall constitute a waiver of all confidentiality relating to the petition, and to the Complaint or Complaints that resulted in, or were pending at the time the former Attorney resigned or his or her license was revoked.

a. After Resignation

If after resigning from the bar, a former Attorney wishes to resume practicing law in the Commonwealth of Virginia, the former Attorney must apply to the Board of Bar Examiners, satisfy the character and fitness requirements and pass the Bar examination. Before being readmitted to the Bar, the former Attorney must also satisfy any membership obligations that were delinquent when the former Attorney resigned.

b. After Revocation

(1) After a Revocation, a Petitioner may petition this Court for Reinstatement, setting forth in that petition the reasons why his or her License to practice law in Virginia should be reinstated. The following requirements shall apply: the petition shall be filed under oath or affirmation with penalty of perjury; no petition may be filed sooner than five years from the effective date of the Revocation; and the Petitioner must certify in the petition that he or she has met the requirements of the following subparagraph (2). This Court may deny the petition or refer it to the Board for recommendation, together with the record before the clerk of this Court. The Board may recommend approval or disapproval of the petition. Final action on the petition shall be taken by this Court.

(2) After a Revocation, Petitioner's License to practice law shall not be reinstated unless the Petitioner proves by clear and convincing evidence that Petitioner: within five years prior to filing the petition has attended 60 hours of continuing legal education, of which at least ten hours shall be in the area of legal ethics or professionalism; has taken the Multistate Professional Responsibility Examination and received a scaled score of 85 or higher; has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of Petitioner's Misconduct; has paid the Bar all Costs that have been previously assessed against Petitioner, together with any interest due thereon at the judgment rate; has reimbursed the Bar for any sums of money it may have paid as a result of a receivership involving Petitioner's law practice; and is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law. The Petitioner shall post with his or her petition for Reinstatement a \$3,500 cash bond for payment of Costs resulting from the Reinstatement Proceedings. At the conclusion of the Reinstatement Proceeding, the Board or the Clerk of the Disciplinary System shall determine the Costs associated with such proceeding and submit that determination to the clerk of this Court as part of the Board's findings of fact.

(3) Upon approval of a petition by this Court, the Petitioner shall meet the following requirements prior to and as a condition of his or her Reinstatement: pay to the Bar any Costs assessed in connection with the Reinstatement Proceeding; take and pass the written portion of the Virginia State Bar examination; if required by the Board, obtain and maintain a professional liability insurance policy issued by a company authorized to write such insurance in Virginia at the cost of the Petitioner in an amount and for such term as set by the Board; and if required by the Board, obtain and maintain a blanket fidelity bond or dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia at the Petitioner's cost in an amount and for such term as set by the Board.

c. After Disciplinary Suspension for More than One Year

After a Suspension for more than one year, the License of the Attorney subject to the Suspension shall not be reinstated unless the Attorney demonstrates to the Board that he or she: has attended 12 hours of continuing legal education, of which at least two

hours shall be in the area of legal ethics or professionalism, for every year or fraction thereof of the Suspension; has taken the Multistate Professional Responsibility Examination since imposition of discipline and received a scaled score of 85 or higher; has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of the Attorney's Misconduct; and has paid to the Bar all Costs that have been assessed against him or her, together with any interest due thereon at the judgment rate at the time the Costs are paid; and has reimbursed the Bar for any sums of money it may have paid as a result of a receivership involving Petitioner's law practice.

- d. Investigation of Impairment in Reinstatement Matters
  - (1) Upon receipt of notice or evidence that an individual seeking Reinstatement has or may have an Impairment, Bar Counsel shall cause an Investigation to be made to determine whether there is reason to believe that the Impairment exists.
  - (2) As part of the Investigation of whether an Impairment exists, and for good cause shown in the interest of public protection, Bar Counsel may petition the Board to order the individual:
    - (a) to undergo at his or her expense a psychiatric, physical or other medical examination by a qualified physician or other health care provider selected by the Board; and
    - (b) to provide appropriate releases to health care providers authorizing the release of his or her psychiatric, physical or other medical records to Bar Counsel and the Board for purposes of the Investigation and any subsequent Reinstatement Proceedings.

The Board shall hold a hearing to determine whether such examination(s) and releases(s) are appropriate, upon notice to the individual petitioning for Reinstatement.

9. Reinstatement Hearings

The Clerk of the Disciplinary System shall advise the Petitioner in writing upon receipt of a petition for Reinstatement from the clerk of this Court and arrange a hearing date with the Petitioner and Bar Counsel.

- a. Quorum
 

A quorum shall be five members of the Board.
- b. Powers of the Board in Reinstatement Cases
 

The Board is empowered to hold a hearing and make its recommendation to this Court either to approve or disapprove the petition.
- c. Hearing Date
 

The date of the hearing shall be determined by the Chair. Upon the scheduling of a hearing date, the Clerk of the Disciplinary System shall file six copies of the available transcript, exhibits, pleadings, and orders from the original Disciplinary Proceeding.
- d. Investigation
 

Bar Counsel shall conduct such Investigation and make such inquiry as it deems appropriate. On request of Bar Counsel, the Petitioner shall promptly sign such forms and give such permission as are necessary to permit inquiry of the Petitioner's background through IRS, NCIC, NCIN and any other similar information network or system.
- e. Notice
 

Reasonable notice of filing of the petition and the date of the hearing shall be mailed by the Clerk of the Disciplinary System to all members of the Bar of the circuit in the jurisdictions in which the Petitioner resided, and of the circuit in which the Petitioner maintained a principal office, at the time of the Revocation or Suspension. The Clerk of the Disciplinary System shall also mail the notice to the members of the District Committee who heard the original Complaint, to members of the Board who heard the

original Complaint, to the members of the District Committee for the judicial circuit in which the Petitioner currently resides, to the complaining witness or witnesses on all Complaints pending against the Petitioner before the Board, a District Committee or a court at the date of the Revocation or Suspension and to such other individuals as the Clerk of the Disciplinary System deems appropriate. The Clerk of the Disciplinary System shall publish a synopsis of the petition in the Virginia Lawyer Register and in a newspaper of general circulation in the judicial circuit where the Petitioner currently resides and where the Petitioner maintained a principal office at the time of the Revocation or Suspension. The entire petition and exhibits together with the documents referred to in subparagraph 8.b.(2) above, shall be available for inspection and copying by interested persons at the office of the Bar on reasonable notice and on payment of costs incurred to make the copies.

f. Bill of Particulars

On written request by Bar Counsel, a Petitioner seeking Reinstatement shall file with the Clerk of the Disciplinary System within 21 days after receipt of the request, an original and six copies of a bill of particulars setting forth the grounds for Reinstatement.

g. Hearing

(1) On the date set for the hearing, the Petitioner shall have the right to representation by counsel, to examine and cross-examine witnesses and to present evidence. The testimony and other incidents of the hearing shall be transcribed and preserved, together with all exhibits (or copies thereof) received or refused into evidence.

(2) Bar Counsel shall appear and represent the Commonwealth and its citizens. Bar Counsel shall have the right to cross-examine, call witnesses and present evidence in opposition to the petition.

(3) Board members may examine witnesses called by either party.

(4) Legal advice to the Board, if required, shall be rendered by the Office of the Attorney General.

h. Factors to be Considered:

In considering the matter prior to making a recommendation to this Court the Board may consider, but is not bound by, the factors spelled out *In the Matter of Alfred Lee Hiss*, VSB Docket No. 83-26 ( Va. Sup. Ct. July 2, 1984).

i. Character Witnesses:

Up to five character witnesses supporting and up to five character witnesses opposing the petition shall be heard. In addition, the Board may consider any letters submitted regarding the Petitioner's character and fitness.

j. Determination by the Board:

The Board shall, within 60 days after the receipt of the transcript, forward the record and its recommendations to this Court with a copy to the Petitioner and Bar Counsel. A recommendation of approval may be conditioned upon Petitioner obtaining malpractice insurance coverage and/or a blanket fidelity bond or dishonesty insurance coverage in amount(s) set by the Board from an approved professional insurance carrier for a definite term or on an ongoing basis.

J. Appeal from Board Determinations

1. Right

As a matter of right any Respondent may appeal to this Court from an order of Admonition, Public Reprimand, Suspension, or Disbarment imposed by the Board. An appeal shall lie once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal shall lie from a Summary Order.

2. Notice of Appeal

The Respondent shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order of the Board is served on the Respondent. This action within the time prescribed is jurisdictional.

3. Further Proceedings

Further proceedings shall be as provided in this Court's procedure for filing an appeal from a trial court and procedure following perfection of appeal. For the purposes of determining dates of filing, the date of filing the record with the clerk of this Court shall be deemed to be the date of the issuance of the certificate of the clerk of this Court under Rule 5:23. The Clerk of the Disciplinary System shall immediately notify the Respondent and his counsel, if any, by certified mail, of the date on which the record is filed.

4. Determination

This Court shall hear the case and make such determination in connection therewith as it shall deem right and proper.

5. Office of the Attorney General

In all appeals to this Court, the Office of the Attorney General, or the Bar Counsel, if so requested by the Attorney General, shall represent the interests of the Commonwealth and its citizens as appellees.

6. Stay Pending Appeal

Upon the entry by the Board of either a Summary or Memorandum Order of Suspension, this Court may, upon petition of the Respondent, stay the effect of such an order of suspension prior to or during the pendency of the appeal. Any order of Admonition or Public Reprimand shall be automatically stayed prior to or during the pendency of an appeal therefrom. No stay shall be granted in cases where the Respondent's license to practice law has been revoked by either the Summary or Memorandum Order of the Board.

K. Resignation

1. Application

A sworn and notarized application to resign from the practice of law shall be submitted to the Clerk of the Disciplinary System. The application shall state that the resignation is not being offered to avoid disciplinary action and that the Attorney has no knowledge of any complaint, investigation, action, or proceeding in any jurisdiction involving allegations of Misconduct by the Attorney. An application to resign will not prevent or preclude any disciplinary proceeding or action against an Attorney.

2. Procedure

The Clerk of the Disciplinary System shall submit applications for resignation to Bar Counsel, who shall investigate each application and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the application with the Clerk of the Disciplinary System, the Board shall hold a hearing on whether the application should be accepted. If Bar Counsel does not file an objection, the Board may enter an order accepting the Attorney's resignation without a hearing. A resignation shall be effective only upon entry of an order accepting it.

3. Notice Requirement

Upon entry of an order accepting an Attorney's resignation, the former Attorney shall immediately cease the practice of law and make appropriate arrangements for the disposition of matters in the Attorney's care in conformity with the wishes of the Attorney's clients.

L. Consent to Revocation

1. An Attorney may not resign while the Attorney is the subject of a disciplinary complaint, investigation, action, or proceeding involving allegations of Misconduct.

2. An Attorney who is the subject of a disciplinary complaint, investigation or Proceeding involving allegations of Misconduct may consent to Revocation, but only by delivering to the Clerk of the Disciplinary System an affidavit declaring the Attorney's consent to Revocation and stating:
  - (a) That the consent is freely and voluntarily rendered, that the Attorney is not being subjected to coercion or duress, and that the Attorney is fully aware of the implications of consenting to Revocation;
  - (b) That the Attorney is aware that there is currently pending a complaint, an investigation into, or a Proceeding involving, allegations of Misconduct, the nature of which shall be specifically set forth in the affidavit;
  - (c) That the Attorney acknowledges that the material facts upon which the allegations of Misconduct are predicated are true; and
  - (d) The Attorney submits the consent to Revocation because the Attorney knows that if disciplinary Proceedings based on the alleged Misconduct were brought or prosecuted to a conclusion, the Attorney could not successfully defend them.

The admissions offered in the affidavit consenting to Revocation shall not be deemed an admission in any proceeding except one relating to the status of the Attorney as a member of the Bar.

3. The Clerk of the Disciplinary System shall submit the affidavit to Bar Counsel, who shall investigate the affidavit and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the affidavit with the Clerk of the Disciplinary System, the Board shall hold a hearing on whether the affidavit and consent to Revocation should be accepted. If Bar Counsel does not file an objection, the Board shall enter an order revoking the Attorney's license to practice law by consent without a hearing.
4. Upon entry of such an order of Revocation by consent, the revoked Attorney shall immediately cease the practice of law and shall comply with the notice requirements set forth in Paragraph M., *infra*.
5. When an Attorney's license is revoked by consent, Bar Counsel, in his or her discretion, may dismiss without prejudice any and all Complaints or Charges of Misconduct then pending by notifying the Clerk of the Disciplinary System and the District Committee, Board or Court wherein the matter or matters lie.

**M. Duties of Disbarred or Suspended Respondent**

After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

**N. Confidentiality of Disciplinary Records and Proceedings:**

1. Except as otherwise provided in this paragraph, the following Disciplinary Proceedings, records, and information are confidential and shall not be disclosed:
  - a. Complaints, unless introduced at a public hearing or incorporated in a Charge of Misconduct or a Certification;
  - b. Investigations, except that Investigative Reports admitted as exhibits at a public hearing are public;

- c. Impairment proceedings, except that final orders are public;
  - d. Notes, memoranda, research, and all other work product of Bar Counsel;
  - e. Records, communications, and information protected by Disciplinary Rule 1.6;
  - f. Subcommittee records and proceedings, except determinations imposing public discipline; and
  - g. Deliberations and working papers of District Committees, the Board or a three-judge Circuit Court.
2. Timing of Disclosure of Disciplinary Record in Sanctions Proceedings
- If an Attorney has a Disciplinary Record and is subsequently found by a Subcommittee, a District Committee, the Board or a three-judge Circuit Court empaneled under Va. Code § 54.1-3935 to have engaged in Misconduct, the facts and circumstances giving rise to such Disciplinary Record may be disclosed (i) to the Subcommittee, District Committee, Board or three-judge Circuit Court prior to the imposition of any sanction and (ii) by the Subcommittee, District Committee, Board or three-judge Circuit Court in its findings of fact set forth in its order. The facts and circumstances giving rise to such Disciplinary Record may also be disclosed to the Disciplinary Board during a hearing concerning whether an affidavit and consent to Revocation should be accepted.
3. Timing of Public Access to Disciplinary Information:
- All records of a matter set for public hearing remain confidential until the matter is dismissed or a public sanction is imposed except:
- a. A Charge of Misconduct is public when the matter is placed on the public District Committee hearing docket; and
  - b. A Certification is public when filed with the Clerk of the Disciplinary System.
4. Public Statements Concerning Disciplinary Information
- To the extent necessary to exercise their official duties, Bar Officials have access to all confidential information; however, except for Bar Counsel, no Bar Official shall communicate with a member of the media or the public concerning a matter that is confidential under this Paragraph.
- If an inquiry is made about a matter that, although confidential under this Paragraph, has become a matter of public record or has become known to the public, Bar Counsel may confirm whether the bar is conducting an Investigation or if an Investigation resulted in a determination that further proceedings were not warranted.
5. Protection of the Public:
- Bar Counsel may transmit confidential information to persons or agencies outside of the disciplinary system if such disclosure is necessary to protect the public or the administration of justice.
- Bar Counsel may share information regarding an Investigation with his or her counterparts in other jurisdictions provided that such jurisdiction agrees to maintain the confidentiality of the information as provided in this Paragraph.
- If Bar Counsel or a Chair of the Board or a Chair of a District Committee discovers evidence of criminal activity by an Attorney, Bar Counsel, the Chair of the Board or a Chair of a District Committee shall forward such evidence to the appropriate Commonwealth's Attorney, United States Attorney or other law enforcement agency. The Attorney concerned shall be notified whenever this information is transmitted pursuant to this subparagraph unless Bar Counsel decides that giving such notice will prejudice a disciplinary investigation.
6. Disclosure of Information to Government Entities:
- By order of this Court, confidential information may be disclosed to the Joint Legislative Audit and Review Commission or other governmental entities incident to their discharge of official duties, provided the entity is required or agrees to maintain the confidentiality of the information provided.

7. Waiver of Confidentiality:

Confidential information, excluding notes, memoranda, research, and all other work product of Bar Counsel, may upon written request be disclosed when and to the extent confidentiality is waived by the Respondent, by the Complainant, *and*, if protected by Disciplinary Rule 1.6, by Respondent's client.

8. Testimony about Disciplinary Proceedings:

a. In no case shall Bar Counsel, a member of COLD, a member of a District Committee, a member of the Board, or a Committee Counsel be subject to a subpoena or otherwise compelled to testify in any proceeding regarding any matter investigated or considered in such person's official capacity, except that an Investigator may be compelled to testify in a Disciplinary Proceeding, subject to rulings of the court or Chair.

b. In no case shall the Clerk of the Disciplinary System be subject to a subpoena or otherwise compelled to testify regarding any matter investigated or considered in the disciplinary system, or the records of any such matter, dealt with by the Clerk of the Disciplinary System in his or her official capacity, except that the Clerk of the Disciplinary System may be compelled to testify in a Disciplinary Proceeding in order to authenticate records of the Clerk of the Disciplinary System.

9. In no case shall confidential records of the attorney disciplinary system be subject to subpoena.

10. Virginia Lawyer Referral Service:

Bar Counsel shall notify the Virginia Lawyer Referral Service when a Complaint involving any Attorney member of the service is referred to a District Committee for Investigation or when any Attorney member of the service is disciplined. Bar Counsel shall also notify the Virginia Lawyer Referral Service when any Complaint involving an Attorney member of the service is dismissed following Investigation or when any Attorney member of the service complies with Terms imposed.

O. When an Attorney's license is revoked without consent, or upon the death of an Attorney, Bar Counsel, in his or her discretion, may dismiss without prejudice any and all Complaints or Charges of Misconduct then pending against said Attorney by notifying the Clerk of the Disciplinary System, the Complainant(s) and the District Committee, Board or court wherein the matter(s) lies.

13.1 SUSPENSION FOR FAILURE TO COMPLETE PROFESSIONALISM COURSE.—Each person admitted to the Virginia State Bar on or after July 1, 1988, as an active member shall complete the course of study prescribed by the Executive Committee of the Virginia State Bar and approved by the Supreme Court of Virginia on the Rules of Professional Conduct and the lawyer's broader professional obligations, and any active member who fails to complete the course shall be suspended unless a waiver is obtained for good cause shown. Such course of study shall be funded by attendance fees paid by those attending the course.

Any active member licensed after June 30, 1988, and any other member who changes his or her membership to active status shall complete the required course within twelve months of becoming an active member. Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein.

"Good cause shown" as used herein shall include illness, hospitalization or such other cause as may be determined by the Executive Committee, whose determination shall be final. Any determination by the Executive Committee may be reviewed by the Supreme Court on request of the member seeking a waiver.

13.2 SUSPENSION FOR FAILURE TO COMPLETE CONTINUING LEGAL EDUCATION REQUIREMENT.—Each active member of the Virginia State Bar shall complete the Continuing Legal Education requirement prescribed by Paragraph 17 of these Rules, and any active member who fails to complete the requirement shall be suspended unless a waiver is obtained for good cause shown. Any active member licensed on or after July 1, 1986, shall thereafter annually file prior to, but no later than, December 15, certifications that he or she has completed the mandatory continuing legal education programs required by Paragraph 17, or obtain a waiver for good cause shown; provided, however, the next certification deadline following July 31, 2001, shall be December 15, 2002.

Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein.

“Good cause shown” as used herein shall include illness, hospitalization, or such other cause as may be determined by the Continuing Legal Education Board whose determination shall be final. Any determination by the Continuing Legal Education Board may be reviewed by the Supreme Court upon request of the suspended member.

14. Professional Corporations, Professional Limited Liability Companies and Limited Liability Partnerships (Limited Liabilities Entities).—The rules and regulations in the following provisions of this Paragraph 14 shall constitute a Code of Ethics governing the professional conduct of the practice of law through professional law corporations, professional limited liability companies and registered limited liability partnerships in Virginia.

(a) Scope.

All applications, reports and other documents required to be filed with the Virginia State Bar by this Paragraph 14 shall be signed and verified by an officer, director, partner, or manager of the applicant who is a duly licensed, active member of the Virginia State Bar or who is otherwise legally authorized to practice law in Virginia and filed at the office of the Virginia State Bar.

(b) Certificate of Registration.

An applicant for registration as a limited liability entity shall file with the Virginia State Bar an application for a Certificate of Registration, on a form furnished by the Virginia State Bar, and pay a fee of \$100. The term “limited liability entity,” as used in this Paragraph 14 shall include a professional law corporation, professional limited liability company, and a registered limited liability partnership.

(i) The Executive Director of the Virginia State Bar, or a person or persons designated by him, shall review such application for registration and, within 15 days after receipt of such application, approve the application and issue a Certificate of Registration provided the application conforms to the requirements of law and this Paragraph 14. If the application fails to include the information required in subparagraphs (c)(i) through (c)(v) of this Paragraph 14, the Executive Director shall refuse to approve the application and notify the applicant of the reasons therefore. A request by the Executive Director for further information to comply with the requirement of said subparagraph (c) of this Paragraph 14, or a request that the application be amended, may be deemed by the applicant to be a refusal to approve the application for purposes of initiating review under subparagraph (b)(iii) of this Paragraph 14.

(ii) The effective date of the Certificate of Registration shall be the date on which the applicant has filed with the Virginia State Bar all material required for approval of the application; provided, however, that (1) a later effective date may be granted if requested by the applicant prior to the issuance of the Certificate of Registration, or (2) in the discretion of the Executive Director an earlier effective date may be granted if good cause appears therefore.

(iii) An applicant may request a review of a refusal to approve its application within sixty days after the date of the notice of such refusal. Such request shall be heard by the Executive Committee of the Virginia State Bar. Upon completion of review, which may include examination of all information submitted by the applicant and a hearing, the Committee shall either (1) approve the application and order the issuance of a Certificate of Registration, or (2) request further information required by subparagraph (c) of this Paragraph 14 or amendments not theretofore supplied by the applicant, or (3) refuse to approve the application in any case where the applicant fails or refuses to supply the required information or has made a material misrepresentation of fact. The Committee shall report in writing its findings of fact and the reasons for its order, whether approving or refusing to approve the application. Notice of the order and a copy of the report shall be mailed to the applicant.

(iv) Insofar as applicable, the rules of procedure of the Virginia State Bar shall apply to the procedure in (b)(iii) above. An aggrieved applicant may proceed in a court of competent jurisdiction by motion for declaratory judgment for review of matters relating to its application.

(c) Application for Certificates.

A Certificate of Registration as a limited liability entity shall be issued if the application shows:

(i) The applicant is organized and qualified under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Corporations Act), organized and qualified under the provisions of Chapter 13 (Section 13.1-1100 et seq.) of Title 13.1 of the

*Code of Virginia* (the Virginia Professional Limited Liability Company Act), organized and qualified under the provisions of Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 (the Virginia Registered Limited Liability Partnership Act), or organized and qualified under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in Section 13.1-543(A) of the *Code of Virginia*.

- (ii) All of the applicant's shareholders, directors, officers, partners, members or managers and their names and addresses are set forth in full in the application.
  - (iii) Each member, manager, partner, employee or agent of the applicant who will practice law in Virginia, the names and addresses of whom are set forth in full in the application, whether or not a director, officer, shareholder, partner, member or manager of the applicant, is an active member of the Virginia State Bar or otherwise legally authorized to practice law in Virginia. Nothing in this Paragraph 14(c)(iii) shall be deemed to prohibit a non-licensed individual from serving as secretary, treasurer, office manager or business manager of any limited liability entity, provided, however, that such individual shall not be held out to be qualified or otherwise authorized to practice law or give advice on a legal or related matter to the clients of the entity. Any employee or agent of the applicant who is duly licensed to practice law in Virginia and who is not held out to the public to be so authorized shall be deemed for the purposes of these Rules to be a non-licensed individual.
  - (iv) A trade name may be used by a limited liability entity if it does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of Virginia Rules of Professional Conduct 7.1(a). The name of a lawyer holding a public office shall not be used in the name of the entity, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the entity.
  - (v) The applicant has advised or intends to advise the clients of any predecessor organization, and the clients of any shareholder, director, officer, member, partner, manager, employee or agent of the applicant who will practice law, of the transfer of such organization's or lawyer's practice to a limited liability entity.
- (d) **Ownership.**
- An interest in or shares of a professional law corporation or professional limited liability company may be owned only in accordance with the provisions of Chapter 7 or Chapter 13 of Title 13.1. Ownership of shares of a professional law corporation or professional limited liability company for the purpose of construing this subparagraph (d) shall mean both legal and beneficial ownership. All the trustees of any voting trust which may be entered into by any shareholder shall be duly licensed or otherwise legally authorized to practice law in Virginia, and no proxy to vote any of such shares shall be valid unless granted to and voted by an individual or individuals duly licensed or otherwise legally authorized to practice law in Virginia.
- (e) **Control Over and Rendition of Legal Services; Letterhead.**
- No person not a member of the Virginia State Bar and duly licensed to practice law in Virginia shall have the right to direct or control the professional judgment of any employee of a limited liability entity or the conduct of employees of the entity with respect to the practice of law in Virginia. Any limited liability entity practicing law in a foreign jurisdiction and which enumerates its employees on its letterhead and in other permissible listings shall do so in a manner which will make clear the jurisdictional limitations on those employees and agents of the entity not licensed to practice in all listed jurisdictions.
- (f) **Correspondence, Pleadings and Documents.**
- Correspondence, pleadings and other documents, the execution of which constitutes the practice of law in Virginia, shall be executed on behalf of a limited liability entity by an employee who is an active member of the Virginia State Bar and duly licensed to practice law in Virginia. Corporate documents, the execution of which does not constitute the practice of law, may be executed on behalf of a limited liability entity by any authorized employee, whether or not licensed to practice law.
- (g) **Division of Fees.**
- It shall be lawful, ethical and proper for a lawyer employed by a limited liability entity, as part of the terms of his employment, to agree to turn over to the entity by which he is employed all fees, compensation or reimbursement which he may be entitled to receive for his professional services, regardless of where such professional services are rendered. No limited liability entity with a Certificate of Registration

in effect shall be deemed a lay agency, nor shall any employee of such entity be deemed to be practicing law through an intermediary during any period for which such entity maintains a Certificate of Registration in effect.

(h) Professional Responsibility.

Nothing in this Paragraph 14 shall be deemed to diminish or change the obligation of any lawyer employed by a limited liability entity to conduct the practice of law in accordance with any specific standards promulgated by the Supreme Court of Virginia. Any lawyer who by act or omission causes the entity by which he is employed to act or fail to act in a manner which violates any applicable standard of professional conduct, including any of the provisions of this Paragraph 14, shall be personally responsible for such act or omission and subject to discipline therefore.

(i) Attorney-Client Privilege.

Nothing in this Paragraph 14 shall be deemed to modify, abrogate or reduce the attorney-client privilege or any comparable privilege or relationship, whether derived by statute or from common law.

(j) Discipline.

A Certificate of Registration shall continue in effect until it is suspended or revoked as provided herein. Such certificate may be suspended or revoked if a limited liability entity fails at any time to comply fully with the provisions of this Paragraph 14, the Rules of Professional Conduct, the Code of Professional Responsibility, the applicable Virginia Professional Corporation Act, the Virginia Professional Limited Liability Company Act, or the Virginia Registered Limited Liability Partnership Act, after notice and an opportunity to be heard as provided in 14(j)(ii) below; provided that, if the violation be such as can be corrected upon notice to the entity of its violation, or if the violation be that of one or several persons only, suspension or revocation of the certificate need not be invoked if the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individual(s) involved.

(i) Upon receipt of a resolution of the board of directors or the written statement of the manager(s) or partner(s) of a limited liability entity requesting the cancellation of the Certificate of Registration of that entity, such certificate shall be cancelled by the Executive Director of the Virginia State Bar, or by a person or persons designated by him. The cancellation of a Certificate of Registration at the request of a limited liability entity shall be effective as of the date such request is received at the office of the Virginia State Bar, except that a later effective date shall be granted upon request of the entity or, in the discretion of the Executive Director of the Virginia State Bar, an earlier effective date may be granted if good cause appears therefore.

(ii) Where a limited liability entity has violated or is about to violate any pertinent statute, rule or any provision of this Paragraph 14, the Executive Director of the Virginia State Bar, or a person or persons designated by him, may issue a notice directing Bar Counsel to investigate the alleged violation. Bar Counsel may issue such summons and subpoenas, and/or compel the production of such documents as he/she may reasonably deem necessary or material for the effective conduct of an investigation. Every Circuit Court shall have power to enforce any summons or subpoena issued by Bar Counsel and to adjudge disobedience thereof as contempt.

If the report of Bar Counsel concludes either that the allegation is without merit or that specific corrective action has been or will be taken, the Executive Director shall dismiss the matter forthwith. If Bar Counsel concludes that the allegation has merit warranting court action, Bar Counsel shall file with the Circuit Court having jurisdiction in the premises a verified complaint. The court shall issue a rule against the limited liability entity concerned and conduct further proceedings in the matter in accordance with Section 54.1-3937 of the *Code of Virginia*, as amended, which is incorporated herein by reference. In addition to or in lieu of a Circuit Court complaint against the entity, Bar Counsel may refer the matter to the appropriate District Committee pursuant to Part 6, Section IV, Para. 13, B.(5)(a) et seq. of these Rules. After the court has held its hearing pursuant to its rule, it shall enter an order reprimanding the entity or revoking or suspending its Certificate of Registration if it finds that the circumstances of the violation warrant such action; otherwise the court shall dismiss the matter.

(k) Certificate Renewal.

On the date two years after the effective date of its initial Certificate of Registration and biennially thereafter, each limited liability entity shall pay a fee of \$50 whereupon its Certificate of Registration shall be automatically renewed.

(l) Annual Report; Corporate or Partnership Changes.

Each limited liability entity shall file with the Virginia State Bar a copy of any document or report required to be filed with the State Corporation Commission. Each professional limited corporation, upon renewal every two years, must file on a special form provided by the Virginia State Bar, information regarding any changes in its shareholders, directors, officers, members, managers, partners, employees or agents duly licensed to practice law.

(m) Effective Dates.

This Paragraph 14 shall become effective on July 1, 2006 and shall apply in like manner to professional corporations theretofore or thereafter organized under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to professional limited liability companies theretofore or thereafter organized under the provisions of Chapter 13 (Section 13.1-1100 et. seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to registered limited liability partnerships theretofore or thereafter organized under the provisions of Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 of the *Code of Virginia* to practice law, except where inconsistent with the provisions of such laws.

15. THIRD YEAR STUDENT PRACTICE RULE.—

(a) Activities.

(i) An eligible law student may, in the presence of a supervising lawyer, appear in any court or before any administrative tribunal in this Commonwealth in any civil, criminal or administrative matter on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance. The eligible law student must obtain written approval from the court or administrative tribunal prior to any appearance before the court or administrative tribunal.

(ii) An eligible law student may also, in the presence of a supervising lawyer, appear in any criminal matter on behalf of the Commonwealth with the written approval of the prosecuting attorney or his authorized representative, provided the student obtains the written authorization from the court or administrative tribunal prescribed in paragraph (a)(i) of this Rule.

(iii) The written consent and approval of the person or entity on whose behalf the student appears shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(b) Requirements and Limitations.

In order to qualify pursuant to this Rule, the law student must:

(i) (a) Be duly enrolled and in good standing in a law school that is approved by the American Bar Association, but if such school is located in another state that permits law student practice, only if such other state permits a student of a law school in this State to engage in such practice; or

(b) Be duly enrolled in a program of study in the office of an attorney as authorized in subdivision 2. of §54.1-3926, *Code of Virginia*, and in accordance with the Rules of the Virginia Board of Bar Examiners.

(ii) (a) Have completed satisfactorily legal studies amounting to at least four semesters, or the equivalent if the school is on a basis other than a semester basis; or

(b) Be certified by the Virginia Board of Bar Examiners as being in the final year of a program of study in the office of an attorney as authorized in subdivision 2. of §54.1-3926, *Code of Virginia*, and in accordance with the Rules of the Virginia Board of Bar Examiners.

(iii) Be certified by the dean of his law school, or by the attorney under whom he is studying in the case of a law reader, as being of good character and competent ability, and as having completed satisfactorily a course or program of study in each of the following: criminal law, professional ethics, evidence and procedure.

(iv) Be introduced to the court or agency in which he is appearing by an attorney admitted to practice in that court or agency.

(v) Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services but this shall not prevent a lawyer or law firm, legal aid bureau, public defender agency, or the Commonwealth from paying compensation to the eligible law student, nor shall it prevent charges by a lawyer or law firm for such services as may otherwise be proper.

(c) Certification.

The certification of a student by Virginia Board of Bar Examiners, the law school dean or the attorney under whom the student is studying in compliance with Paragraph 15 (b)(ii) and (iii) above:

(i) Shall be filed with the Executive Director of the Virginia State Bar and, unless it is sooner withdrawn, shall remain in effect until the expiration of eighteen months after it is filed, or until the announcement of the results of the first examination be given by the Virginia Board of Bar Examiners following the student's graduation or completion of the program of study, whichever date is earlier. Thereafter, the certification shall lapse and be of no further force and effect.

(ii) May be withdrawn by the Board, dean or attorney under whom the student is studying at any time by mailing a notice to that effect to the Executive Director of the Virginia State Bar. It is not necessary that the notice state the cause for withdrawal.

(d) Supervision.

The supervising attorney under whose supervision an eligible law student performs any of the activities permitted by this Rule (Paragraph) 15 shall:

(i) Be an active member of the Virginia State Bar who practices before, and whose service as a supervising lawyer for this program is approved by, each court or administrative body in which the eligible law student engages in limited practice.

(ii) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(iii) Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

(iv) The approval of the court designated in (a)(i) or (d)(i) may be withdrawn at any time without stating the cause for withdrawal.

(e) Miscellaneous.

Nothing contained in this Rule (Paragraph) shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do before the adoption of this Rule (Paragraph).

16. CLIENTS' PROTECTION FUND.—The Council may establish a Clients' Protection Fund for the purposes of reimbursing all or part of losses sustained by a client or other person or entity to whom a fiduciary duty is owed as a result of dishonest conduct of a member of the Virginia State Bar. The Board shall be appointed by Council, and shall receive, hold, manage, invest and distribute funds appropriated to it by Council or otherwise received, in accordance with procedures established by Council.

Effective July 1, 2007, each active member of the Virginia State Bar shall be assessed a required fee of \$25 for the Clients' Protection Fund on the bar's annual dues statement. The fee shall be in addition to each member's annual dues as prescribed in Part 6, Section IV, Paragraph 11 of these rules, and it shall be paid on or before the 31<sup>st</sup> day of July each fiscal year.

All monies collected under this Paragraph 16 shall be accounted for and paid into the State Treasury of Virginia and transferred by the bar from the Treasury to the Clients' Protection Fund. The bar shall report annually on or about January 15 to the Supreme Court of Virginia on the financial condition of the Clients' Protection Fund, and the assessment will be discontinued whenever directed by the Court.

Failure to comply with the requirements of this Paragraph 16 shall subject the active member to penalties set forth in Part 6, Section IV, Paragraph 19 of these rules.

17. MANDATORY CONTINUING LEGAL EDUCATION RULE.—The Virginia Supreme Court hereby establishes a Mandatory Continuing Legal Education Program in the Commonwealth of Virginia.

A. Purpose:

Continuing professional education of lawyers serves to improve the administration of justice and benefit the public interest. Regular participation in Continuing Legal Education programs will enhance the professional skills of practicing lawyers, afford them periodic opportunities for professional self-evaluation and improve the quality of legal services rendered to the public. All active members of the Virginia State Bar shall participate in an additional amount of further legal study throughout the period of their active practice of law, and failure to do so shall result in their suspension from membership in the Virginia State Bar.

B. Continuing Legal Education Board:

A Continuing Legal Education Board shall be established for the purpose of administering the program.

(1) Appointment:

The Chief Justice of the Supreme Court shall appoint, after consultation with the Council, the members of the board who shall be members of the Bar and twelve in number. One member shall be designated by the Chief Justice as Chair and another as Vice chairman. Members shall serve terms of three years each, except that, initially, four members shall be appointed for terms of one year, four for terms of two years, and four for terms of three years. No member shall serve more than two consecutive terms but shall be eligible for reappointment after the lapse of one or more years following expiration of the previous term. The Executive Director of the Virginia State Bar shall be an *ex officio* member of the board.

(2) Notice of Meetings/Quorum:

The board shall meet on reasonable notice by the Chair, Vice chair or the Executive Director. Five members shall constitute a quorum and the action of a majority of a quorum shall constitute action of the Board.

(3) Powers:

The Board shall have those general administrative and supervisory powers necessary to effectuate the purposes of this Rule, including the power to adopt reasonable and necessary regulations consistent with this Rule. The Virginia State Bar shall have the responsibility for funding the Board and for enforcing Mandatory Continuing Legal Education requirements.

The board shall specifically have the following powers and duties:

- (a) To approve, on an individual basis, CLE programs and sponsors and publish a list of those approved. The publication shall include the number of credits earned for completion of a particular program;
- (b) To establish procedures for the approval of Continuing Legal Education courses, whether those courses are offered within the Commonwealth or elsewhere. These procedures should include the method by which CLE sponsors could make application to the Board for approval, and if necessary, make amendments to their application;
- (c) To authorize sponsors of Continuing Legal Education programs to advertise that participation in their program fulfills the CLE requirements of this Rule;
- (d) To formulate and distribute to all members of the Virginia State Bar appropriate information regarding the requirements of this Rule, including the distribution of a certification form to be filed annually by each active member.

C. Continuing Legal Education Requirements:

- (1) All active members of the Virginia State Bar shall annually complete and certify attendance at a minimum of twelve (12) credit hours of approved Continuing Legal Education courses of which at least two (2) hours shall be in the area of legal ethics or professionalism, except those lawyers expressly exempted from the requirement by this Rule or by decision of the Continuing Legal Education Board; provided, however, that for the period July 1, 2001 through October 31, 2002, active members shall complete and certify attendance at a minimum of fifteen (15) credit hours of approved Continuing Legal Education courses of which at least two (2) hours shall be in the area of legal ethics or professionalism, except those lawyers expressly exempted from the requirement by this rule or by decision of the Continuing Legal Education Board. Each active member shall complete the required Continuing Legal Education courses each year during the

period November 1 through October 31 of the following year; provided, however, the next completion period following June 30, 2001, shall be July 1, 2001 through October 31, 2002.

- (2) In order to provide flexibility in fulfilling the annual requirement, a one-year carryover of credit hours is permitted, so that accrued credit hours in excess of one year's requirement may be carried forward from one year to meet the requirement for the next year. A member may carry forward a maximum of twelve (12) credit hours, two (2) of which, if earned in legal ethics or professionalism, may be counted toward the two (2) hours required in legal ethics or professionalism.
- (3) Each active member of the Virginia State Bar shall be responsible for ascertaining whether or not a particular course satisfies the requirements of this Rule. Each member should exercise discretion in choosing those approved programs which are most likely to enhance professional skills and improve delivery of legal services.

D. Certificate of Attendance:

- (1) Each active member of the Virginia State Bar shall certify prior to December 15 each year that such lawyer attended approved Mandatory Continuing Legal Education programs for the minimum number of hours required during the previous calendar year ending October 31; provided, however, the next certification deadline following July 31, 2001, shall be December 15, 2002. The failure to certify shall cause suspension of such lawyer's license to practice law. An untruthful certification shall subject the lawyer to appropriate disciplinary action.

E. Exemptions:

Each active member of the Virginia State Bar shall comply with this Rule except as follows:

- (1) A newly admitted member shall be exempted from filing a certification for the completion period in which he or she is first admitted.
- (2) A member who has obtained a waiver for good cause shown, as may be determined by the board, shall be exempted from filing a certification for the completion period for which the waiver is granted.

F. Activation or Reactivation:

A member of any category who wishes to become an active member of the Virginia State Bar shall furnish to the Secretary an affidavit stating that he or she has completed twelve (12) hours of Continuing Legal Education, including two (2) hours in legal ethics or professionalism within the previous twelve months. Thereafter, that member shall have the same completion period and certification deadline as other active members.

G. Credits:

- (1) Credit will be given only for Continuing Legal Education courses or activities approved by the board.
- (2) Hours in excess of the minimum requirements defined in this Rule may not be carried forward for credit beyond the one year provided for in the Rule.
- (3) Credit will not be given for Continuing Legal Education hours accumulated prior to admission to the Virginia State Bar.
- (4) Credit shall be given to active members of the Virginia State Bar who prepare course materials and who personally participate as instructors. The credit, as determined by the board, will reflect the time reasonably required for preparation of materials, as well as the actual time spent instructing.

H. Standards:

The Board shall evaluate, and where appropriate, approve, those programs which serve to satisfy the requirements of this Rule. In evaluating the specific programs, the Board shall consider the following factors:

- (1) Whether the course tends to increase the participant's professional competence as a lawyer.
- (2) The number of hours of actual presentation, lecture, or participation, so that the appropriate number of credit hours can be identified and published.
- (3) The usage of written educational materials which reflect a thorough preparation by the provider of the course, and which assist course participants in improving their legal competence.

- (4) To qualify for mandatory legal education credit, a course is not required to have a component on legal ethics or professionalism, although such components are encouraged. When topics on legal ethics or professionalism are offered, either as an entire course or component thereof, they must be clearly identified as such.

18. FINANCIAL RESPONSIBILITY.—In order to make available to the public information about the financial responsibility of each active member of the Virginia State Bar for professional liability claims, each such member shall, upon admission to the bar, and with each application for renewal thereof, submit the certification required herein or obtain a waiver for good cause shown. The active member shall certify to the bar on or before July 31 of each year: a) whether or not such member is currently covered by professional liability insurance, other than an extended reporting endorsement; b) whether or not such member is engaged in the private practice of law involving representation of clients drawn from the public, and, if so, whether the member intends to maintain professional liability insurance coverage during the period of time the member remains engaged in the private practice of law; and c) the date, amount, and court where rendered, of any unsatisfied final judgment(s) against such member, or any firm or professional corporation in which he or she has practiced, for acts, errors, or omissions (including, but not limited to, acts of dishonesty, fraud, or intentional wrongdoing) arising out of the performance of legal services by such member.

The foregoing shall be certified by each active member of the Virginia State Bar in such form as may be prescribed by the Virginia State Bar and shall be made available to the public by such means as may be designated by the Virginia State Bar.

Each active member who certifies to the bar that such member is covered by professional liability insurance shall notify the bar in writing within thirty (30) days if the insurance policy providing coverage lapses, is no longer in effect or terminates for any reason, unless the policy is replaced with another policy and no lapse in coverage occurs.

Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein. An untruthful certification or unjustified failure to notify the bar of a lapse or termination of coverage shall subject the member to appropriate disciplinary action.

“Good cause shown” as used herein shall include illness, absence from the Commonwealth of Virginia, or such cause as may be determined by the Executive Committee of the Virginia State Bar whose determination shall be final. Any determination by the Executive Committee may be reviewed by the Supreme Court upon request of the member seeking a waiver.

19. PROCEDURE FOR THE ADMINISTRATIVE SUSPENSION OF A MEMBER.—Whenever it appears that a member of the Virginia State Bar has failed to comply with any of the Rules of Court relating to such person’s membership in the bar, the Secretary-Treasurer shall mail a notice to the member advising of the member’s non-compliance and demanding (1) compliance within sixty (60) days of the date of such notice and (2) payment of a delinquency fee of \$50, for each Rule violated, provided, however, that the delinquency fee for an attorney who does not comply with the timely completion requirements of Paragraphs 13.2 and 17 (C) of these rules shall be \$100, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs 13.2 and 17 (D) of these rules shall be \$100. The notice shall be mailed by certified mail to the member at his last address on file at the Virginia State Bar.

In the event the member fails to comply with the directive of the Secretary-Treasurer within the time allowed, the Secretary-Treasurer will then mail a notice to the member by certified mail to advise (1) that the attorney’s membership in the bar has been suspended and (2) that the attorney may no longer practice law in the Commonwealth of Virginia or in any way hold himself or herself out as a member of the Virginia State Bar. Thereafter the attorney’s membership in the Virginia State Bar may be reinstated only upon showing to the Secretary-Treasurer (1) that the attorney has complied with all the Court’s rules relating to his or her membership in the bar and (2) upon payment of a reinstatement fee of \$150 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with Paragraphs 13.2 and 17 of these rules shall be \$250, and shall increase by \$50 for each subsequent such suspension, not to exceed a maximum of \$500.

Whenever the Secretary-Treasurer notifies a member that his or her membership in the bar has been administratively suspended, the Secretary-Treasurer shall also (1) advise the Chief Judges of the circuit and district in which the attorney has his or her office, as well as the clerks of those courts and the Clerk of the Supreme Court, of such suspension and (2) publish notice of the suspension in the next issue of the *Virginia Lawyer Register*.

An administrative suspension shall not relieve the delinquent member of his or her annual responsibility to attend continuing legal education programs or to pay his or her dues to the Virginia State Bar.

20. MAINTENANCE OF TRUST ACCOUNTS; NOTICE OF ELECTION REQUIREMENTS.— Every trust account maintained by an active member of the VSB under Rules of Professional Conduct 1.15 shall also be maintained in accordance with this paragraph.
- (A) A lawyer may maintain funds of clients in one or more interest-bearing accounts in one or more banks, whenever the lawyer has established and follows record-keeping, accounting, clerical, and administrative procedures to compute and credit or pay periodically, but at least quarterly, pro rata to each client the interest on such client's funds less fees, costs, or expenses charged by the lawyer for the record-keeping, accounting, clerical, and administrative procedures associated with computing and crediting or paying such amounts.
- (B) A lawyer may deposit funds of a client in an interest-bearing trust (IOLTA) bank account for which the lawyer has not established procedures to compute and credit or pay pro rata net earnings to such client whenever:
- (1) At the time of such deposit the lawyer reasonably expects that the fees, costs, or expenses which the lawyer would be entitled to charge under Paragraph 20(A) would equal or exceed the pro rata interest on such client's funds, and
  - (2) The bank has agreed to:
    - (a) Periodically, but at least quarterly, remit to the Legal Services Corporation of Virginia (LSCV) interest or dividends on the average monthly balance of each such account or as otherwise computed in accordance with such bank's standard accounting practice, provided that such rate of interest shall not be less than the rate paid by such bank to regular, non-attorney depositors;
    - (b) Transmit with each remittance to LSCV a statement identifying the name of the lawyer or law firm from whose account the remittance is sent, the rate of interest applied, the period for which the remittance is made, the total amount of interest earned, the service charges or other fees assessed against the account, if any, and the net amount of interest remitted;
    - (c) Transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to LSCV from such interest-bearing account, the rate of interest applied, the fees assessed, if any, and the average account balance for the period for which the report is made;
    - (d) Charge no fees against an IOLTA trust account that are greater than the fees charged to non-attorney depositors, except that an IOLTA remittance fee may be charged to defray the depository institution's administrative costs attributable to calculating and remitting the interest to LSCV;
    - (e) Collect no fees from the principal deposited in the IOLTA trust account; and
    - (f) Pay all or part of the funds deposited in such interest-bearing trust account upon demand or order.
  - (3) Interest accruing on such accounts and paid by the financial institution to LSCV shall be used for funding 1) civil legal services to the poor in Virginia, 2) LSCV's administrative expenses, and 3) the creation and augmentation of a reserve fund for the same purposes.
  - (4) The Virginia Law Foundation (Foundation), which prior to July 1, 1995 was the recipient of interest accruing on IOLTA trust accounts, shall, after July 1, 1995, continue to administer and may enhance its endowment, which was created and augmented with IOLTA funds, and shall use those funds, the interest and all other income earned on those funds to support the objectives of legal services to the poor, pro bono activities, improvements in the administration of justice, law-related education of the public, summer internships for law students and the Foundation's administrative expenses.

- (C) A lawyer who deposits funds of a client in an interest-bearing account in accordance with Paragraph 20(B) shall not be required to seek permission from such client or to compute or report to such client any payment to LSCV of interest or dividends by the banking institution on funds in any such account wherein the client's funds have been deposited by the lawyer.
- (D) Unless an election not to participate in the maintenance of an interest-bearing trust account as described in Paragraph 20(B) is submitted in accordance with the procedures set forth in Paragraph 20(F) of this rule, a member of the Virginia State Bar shall maintain such account(s).
- (E) A law firm of which any participating lawyer is a member may maintain the account(s) on behalf of any or all lawyers in the firm.
- (F) A lawyer who elects not to maintain an account as described in Paragraph 20(B) after June 30, 1995 shall make such election on a notice of election form provided by LSCV. A lawyer admitted into the Virginia State Bar after July 1, 1995, who elects not to maintain such an account shall submit an appropriate notice of election within ninety days after admission into the bar. If a notice of election is not submitted within the applicable time, the lawyer shall be required to maintain an account as described in Paragraph 20(B) until such election is made. Except for the above provision regarding new admittees to the bar, any lawyer may begin or withdraw from participation in the program at any time during the year by submitting an appropriate notice of election during the preceding month to LSCV. Notwithstanding the foregoing provisions of this paragraph, LSCV may for good cause permit withdrawal from participation in the program at any time. Any lawyer who does not receive client funds may file a certificate with the LSCV and will thereafter be exempt from the requirement of maintaining interest-bearing accounts under this rule so long as such lawyer does not receive client funds.

21. **COMPUTERIZED LEGAL RESEARCH SERVICES RULE.**—The Supreme Court of Virginia hereby authorizes and directs the Virginia State Bar to contract to provide online computerized legal research services to its members.

*A. Purpose*—It is the policy and objective of the Commonwealth of Virginia to improve the quality and reduce the costs of legal services available to the citizens of Virginia. It is also the policy of this Commonwealth to enhance the availability of legal services to poor litigants and indigent criminal defendants. The provision of online computerized legal research tools to all Virginia lawyers will further these policies by increasing and improving the available knowledge and information base for attorneys, enhancing the quality of legal research and advice, making legal research more efficient for many attorneys, reducing the costs of legal services to the poor, and providing additional resources to lawyers who are appointed by courts to represent indigent criminal defendants. The provision of online computerized legal research services to all lawyers in Virginia will reduce the time spent and costs incurred in performing legal research, which will decrease the costs of legal services to consumers in Virginia and thereby increase access to attorneys. In addition, the provision of online computerized legal research will enable more lawyers to provide *pro bono* services since this research tool will lower their costs and reduce the amount of research time required.

*B. Procedure*—For these reasons, the Virginia State Bar, through its governing body, is authorized to contract to provide online computerized legal research services to its members. In connection therewith, the Virginia State Bar is authorized and directed to solicit proposals from providers of online computerized legal research services, enter into contracts for those services, and expend funds for the purchase of online computerized legal research services for its members. The Virginia State Bar shall supervise and periodically review the provision of online computerized legal research services to its members to ensure the continued quality of those services and that the policies and objectives of the Commonwealth are being met. The Virginia State Bar also shall submit to the Supreme Court of Virginia an annual report that describes and analyzes the status of the Bar's contracts for online computerized legal research services, the online computerized legal research services that are being provided, and the utilization of those services.