



DISCIPLINARY PROCESS of the VIRGINIA STATE BAR

SCOPE

This presentation provides an overview of the Virginia State Bar's disciplinary system for processing, investigating and prosecuting complaints against attorneys who practice law in Virginia.

I. SOURCE OF THE BAR'S AUTHORITY

The Virginia State Bar gets its authority to regulate lawyer conduct from:

- A. Rules of Professional Conduct (RPCs), found in Vol. 11 of the Virginia Code and at the VSB website, www.vsb.org.
- B. Procedure for Disciplining, Suspending and Disbarring Attorneys (Paragraph 13), found in the Rules of Supreme Court of Virginia (Volume 11 of the Virginia Code) and at the VSB website, www.vsb.org.
- C. Trust Account Regulations, found in *Virginia State Bar Professional Guidelines* and the VSB website, www.vsb.org.
- D. Virginia Code, Section 54.1-3900, *et seq.* (statutes dealing with Professions Regulated by the Supreme Court of Virginia)
- E. American Bar Association's *Standards for Imposing Lawyer Sanctions (2005)*.

II. NON-DISCIPLINARY RESOURCES TO HELP LAWYERS

In addition to processing complaints about lawyers, the Office of Bar Counsel coordinates the following processes to assist lawyers in avoiding misconduct:

A. Ethics Counsel

- Ethics Counsel, a non-disciplinary arm of the Office of Bar Counsel, gives Lawyers “real time” assistance via telephone and e-mail about ethical dilemmas.
- All inquiries are held in strict confidence and are not shared with the disciplinary side of the Office of Bar Counsel.
- Contact information:
 - Telephone Hotline: 804-775-0564;
 - E-mail directly from VSB website www.vsb.org/site/regulation/ethics/.

B. Legal Ethics Opinions from Standing Committee on Lawyer Discipline

This part of VSB work is governed by the Supreme Court of Virginia through its rules found in Volume 11 of the Virginia Code.¹

Legal Ethics Opinions (LEOs) are **advisory opinions** promulgated by the Standing Committee on Legal Ethics (the Committee). Lawyers may request a LEO concerning actual or contemplated conduct.

1. Requesting a LEO

The request for a LEO must:

- Be in writing on a form mandated by the Committee;
- Be in the hypothetical, with no identifying information about the parties; and
- State that the requesting lawyer has researched ethics rules, statutory law and case law on the question at hand and the results of that research.
Para. 10-2A.

2. Anatomy of a LEO

- ❖ The Committee issues a LEO after it reaches a decision by a majority vote. No dissenting opinions are issued.

¹ Rules of Court, Pt 6, §IV, ¶ 10.

- ❖ A LEO states the operative facts, the question presented, the applicable ethics rules, relevant prior Opinions and case law, the Committee’s opinion on the facts presented, and the rationale for that opinion.
- ❖ The requesting member or any other VSB member may ask the Committee to reconsider its conclusion. The requesting member may appeal the Committee’s conclusion to the Bar Council, the governing body of the VSB. Para. 10-2D.
- ❖ If the request presents a previously resolved issue, the requesting attorney is notified through a “Legal Ethics Inquiry” response citing prior Opinions instead of through a new LEO.
- ❖ The Committee may decline to issue a LEO regarding any matter that is subject of a pending disciplinary proceeding or litigation.

3. Publication and Comment Period for LEOs

- ❖ In the Committee’s discretion, LEOs may be published as informal advisory opinions or transmitted to Bar Council for approval, modification, or disapproval as a formal advisory opinion.
- ❖ Prior to consideration of the Opinion by Council, the VSB issues a public release inviting public comment. Para 10-2C.
- ❖ If approved by Bar Council, the VSB may petition the Supreme Court of Virginia for review of the Opinion.
- ❖ Prior to consideration of the Opinion by the Court, the VSB issues a public release inviting public comment.

➔ **Note this important distinction about the legal effect of LEOs, depending upon the issuing body:**

- ❖ Opinions issued by the **Legal Ethics Committee** or the **Council** are **advisory** only, have no legal effect and are not binding on any judicial or administrative tribunal. Para. 10-2C., Para. 10-3A.
- ❖ Opinions approved by the **Supreme Court of Virginia** become a decision of the court and have the full force of law. See, e.g., LEO 1765: Whether an Attorney Working for a Federal Intelligence Agency can Perform Undercover Work Without Violating Rule 8.4

4. Finding and Researching LEOs

The LEOs or summaries of LEOs can be found at:

- Separate unnumbered volume of the Virginia Code entitled *Legal Ethics and*

Unauthorized Practice Opinions;

- By number, at the Bar's website: www.vsb.org/site/regulation/leos;
- The *Virginia Lawyer Register*; and
- Virginia CLE's website, www.vacle.org.

III. OVERVIEW OF THE DISCIPLINARY SYSTEM

A. Rules of Disciplinary Procedure

The procedural rules governing lawyer discipline are found in the Rules of Virginia Supreme Court, Part 6, Section IV, Paragraph 13 (Volume 11 of the Virginia Code).

B. What is Misconduct?

The Supreme Court of Virginia includes in its definition of **Misconduct**:

1. Violation of Disciplinary Rules (current Rules of Professional Conduct or the older Code of Professional Responsibility);
2. Conviction of a Crime (generally, a felony or other offense involving theft, fraud, forgery, extortion, bribery or perjury).

C. Intake Process

Lawyers in the Intake section of the Office of Bar Counsel review all Inquiries to decide whether they state Misconduct. This first level of review is intended to eliminate those complaints that are frivolous or state situations that are outside the scope of the ethics rules. About 75% of complaints are dismissed and referred to as NATs, No Action Taken.

The Intake staff may use its **proactive** process, or informal investigation, to resolve the situation. This involves contacts by the staff with the respondent and complainant in an effort to reach resolution.

D. Preliminary Investigation

1. If the Intake staff identifies possible disciplinary rule violations, the matter is assigned to Bar Counsel to conduct a **preliminary investigation**.
2. The Preliminary Investigation usually includes sending the complaint to the Respondent so he can file a written response and allowing the Complainant to

respond to the Respondent's response.

3. The bar strives to complete preliminary investigations within 60 days of receipt of the complaint.

E. Preliminary Investigation Dispositions

Within the 60-day time limit, Bar Counsel should decide the disposition of the complaint using the following authority and alternatives:

1. **Dismiss** the complaint if any of the following apply:
 - As a matter of law, the conduct does not constitute Misconduct; or
 - The evidence shows that the Respondent did not engage in the Misconduct alleged; or
 - There is no credible evidence that the Respondent committed Misconduct; or
 - There is not "clear and convincing" evidence of Misconduct.
Para. 13-10 E.
2. If none of the above bases for dismissal exists, Bar Counsel will **refer** the matter to a **District Committee** for a more detailed investigation.

F. Investigative Authority of Bar Counsel

1. Bar Counsel has the authority to issue subpoena *duces tecum* (for documents) and summonses (for witnesses) during its investigation. Para. 13-8A.5.
2. Bar Counsel has the authority to examine the financial books and records maintained by an attorney in her law practice. Para. 13-8A.3-4²
3. Rule 8.1(c) of the Rules of Professional Conduct requires cooperation with a "lawful request" of a discipline investigation.
4. Para. 13-6G.3. empowers the Disciplinary Board 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, Bar Counsel, or any lawyer member of a District Committee.³

² As a result of a study by the Virginia State Bar Random Trust Account Review Committee, the VSB has initiated a policy to promptly review attorney escrow account records upon receipt of information that may call into question an attorney's management of his or her escrow account. An example may be a second escrow account check returned for insufficient funds, regardless of the explanation.

³ A related power is the Board's broad sanction power under Para. 13-6G1., including interim suspension, for failure to comply with a Board order. This has arisen in the context of disability hearings where a Respondent has been ordered to disclose health care providers, provide releases, and submit to a mental or physical examination and evaluation.

G. District Committee Investigations

1. A District Committee investigation can be performed by either the Office of Bar Counsel or an attorney member of the District Committee. Most cases are investigated by one of the staff investigators of the Office of Bar Counsel. Summonses and subpoena duces tecum may be issued by Bar Counsel as a part of the investigation. Para. 13-8A.5.
2. The investigation will result in the submission of a report to the Subcommittee of the District Committee. Para 13-10F.

H. Action by the Subcommittee

1. The Subcommittee consists of three District Committee members: a lay person and two attorney members. One attorney member shall be appointed by the District Committee or Section Chair to act as Chair of that Subcommittee.
2. The Subcommittee will consider the report of Investigation and the recommendation submitted by the Office of Bar Counsel in order to make a disposition of each of the complaints presented.
3. The Subcommittee acts by majority vote. Para. 13-15C. However it must have a unanimous vote to approve an Agreed Disposition. Para. 13-7A.9.
4. The Subcommittee can:
 - a. Dismiss the complaint; or
 - b. Impose limited discipline; or
 - c. Accept an Agreed Disposition of discipline; or
 - d. Set a hearing in the matter; or
 - e. Certify the matter to the VSB Disciplinary Board.
5. The Subcommittee can **dismiss** a complaint if:
 - As a matter of law the conduct does not constitute Misconduct. Para. 13-15B.1.a.
 - The evidence shows that the Respondent did not engage in the Misconduct alleged. Para. 13-15B.1.b.
 - There is no credible evidence to show Misconduct by the Respondent. Para. 13-15B.1.b.
 - There is no “clear and convincing” evidence of Misconduct. Para. 13-15B.1.b.

- The alleged Misconduct is protected by superseding law. Para. 13-15B1.e.

6. **Limited Discipline by the Subcommittee without a hearing**

- a. The Subcommittee can impose the limited discipline of a private **Admonition without Terms** without a hearing if it believes the bar's investigation shows that the Respondent has engaged in Misconduct. The Respondent may reject this disposition and request a full evidentiary hearing before the District Committee. Para. 13-15B.2.
- b. The Subcommittee can impose a private **Dismissal De Minimis** without a hearing if it finds that the Respondent has engaged in Misconduct that is not of sufficient magnitude to warrant disciplinary action, and the Respondent has taken reasonable precautions against a recurrence of the Misconduct. Para. 13-15B1.c
- c. The Subcommittee can impose a private **Dismissal for Exceptional Circumstances** without a hearing if it finds that the Respondent has engaged in Misconduct but there exist exceptional circumstances mitigating against further proceedings. Para. 13-15B1.d.

7. **Agreed Dispositions before the Subcommittee**

- a. The Subcommittee can accept an **Agreed Disposition** between the bar and the Respondent. Para 13-15B.4.
- b. All members of the Subcommittee must accept the Agreed Disposition. If any one member rejects the agreement, a hearing will be scheduled before the full District Committee. Paras. 13-7A.9., 13-15C.
- c. If the Subcommittee accepts the Agreed Disposition, it will issue a document called the "**Subcommittee Determination**" that outlines the relevant facts, rule violations and discipline to be imposed upon the Respondent.

8. **Subcommittee Decision to Set for Hearing Before the Full District Committee**

If the Subcommittee does not dismiss the complaint, it must set the matter for a hearing before the District Committee or certify it to the Disciplinary Board.

a. **Information available to Respondent**

When a matter is set for a District Committee hearing by the issuance of a Charge of Misconduct, the Respondent is provided with a copy of the Investigative Report and any exculpatory materials in the possession of Bar Counsel. Paragraph 13-16A. However, there is no requirement of reciprocity on the part of the Respondent. But RPC 8.1 states that "a lawyer ... in

connection with a disciplinary matter, shall not: ... (a) knowingly make a false statement of material fact; (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter; (c) fail to respond to a lawful demand for information from ... disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or (d) obstruct a lawful investigation by ... disciplinary authority.”

b. District Committee Hearings are Public

Private discipline is available only up through the first 21 days of the issuance of the Charge of Misconduct. Any discipline agreed to during the second 21 day period is public, as is the district committee hearing. However, the hearing will not be posted on the public hearing docket until 21 days after the date of the Charge of Misconduct. Para. 13-16H. After the matter is posted on the public docket, it will not be possible to work out an agreed disposition imposing private discipline, and any discipline imposed will become a matter of public record.

9. Certification to Disciplinary Board

The Subcommittee may bypass a District Committee hearing and **certify** the matter directly to the Disciplinary Board if there is a reasonable belief that the Respondent has engaged in Misconduct that, if proved, would justify a suspension or revocation of the Respondent's license to practice law. Paragraph 13-15B.3.

10. Terms

- a. The Subcommittee is authorized to approve an Agreed Disposition that can include imposing certain conditions or **terms**, which the Respondent is required to perform as a condition predicate for the imposition of an admonition with terms, a private reprimand with terms, or a public reprimand with terms. With the imposition of terms, there must also be provided an alternative sanction in case of non-compliance with the term within the deadline for compliance.
- b. The Terms must be performed within the deadline set by the Subcommittee. If the Terms are not met, the alternative sanction will be imposed against the Respondent through a show cause hearing. Para. 13-15.F.

In the event of non-compliance, Bar Counsel will initiate a **show cause hearing** before the District Committee.

- (i) The hearing is simply to allow the Respondent an opportunity to show that he has complied with the Terms; it is not for the purpose of extending the time for compliance.

- (ii) The burden of proof is on the Respondent to show by clear and convincing evidence that he has complied with the Terms within the time specified by the Terms. A finding of failure to comply with the terms within the specified time period requires the alternative disposition or sanction to be imposed. Para 13-15.F.

I. Action by the District Committee

1. Hearings

a. Charge of Misconduct

- The initial pleading or charging document is a notice pleading, not a fact pleading. The hearing “is an informal proceeding and it is only necessary that the defendant be informed of the nature of the charge and be given an opportunity to answer.” *Norfolk & Portsmouth Bar Ass’n v. Drewry*, 161 Va. 833,838, 172 S.E. 282 (1933).
- At least 42 days before the hearing date, Bar Counsel must 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. Para. 13-16A.
- Within 21 days after service of the Charge of Misconduct, Respondent must file an **answer** or a **demand** that the District Committee proceedings be terminated and the matter transferred to a three judge circuit court panel pursuant to Virginia Code Section 54.1-3935. Para. 13-16B.

b. Summons and Subpoena

- The District Committee can issue summonses and subpoena *duces tecum* either through a lawyer committee member or the Office of Bar Counsel. Should a Respondent wish to have such process effected on his or her behalf in preparation for the hearing, the Office of Bar Counsel will issue the process on behalf of the District Committee. Para 13-16E.
- A subpoena compelling the Respondent to produce documents may be served upon the Respondent by certified mail at the Respondent’s last address of record with the bar in the same manner as other notices served upon Respondents.

- The Chair may quash any summons or subpoena issued on behalf of the Committee for good cause. The Chair may also refuse to issue summons or subpoena requested by the Respondent. Paragraph 13-16E.
- Summons and subpoena issued by the Committee can be enforced by a Circuit Court. Paragraph 13-2.

c. Participants in District Committee Hearing

- Bar Counsel presents the case against the Respondent on behalf of the bar.
- The Respondent or, if represented by counsel, the Respondent's counsel, presents the Respondent's case.
- District Committee Members on the hearing panel may ask questions of the witnesses.
Para. 13-16L-M

d. Order of the District Committee Hearing

The District Committee Hearing proceeds in the following order:

- (i) Opening statements;
- (ii) Presentation of the bar's case;
- (iii) Presentation of the Respondent's case;
- (iv) Motion to Strike--argument on the question of whether ethics rule violations have been proved by clear and convincing evidence and whether the bar has failed to introduce sufficient evidence that would under any set of circumstances support the conclusion that Respondent has engaged in the alleged Misconduct. The ruling is made by the Chair, subject to being over-ruled by the majority of the remaining members of the panel. Para 13-16R;
- (v) Private Committee deliberation on the question of ethics rule violations. Para. 13-16T;
- (vi) Committee announcement of its decision on ethics rule violations;

- (vii) Evidence and argument on the sanction to be imposed for any misconduct found;
 - (viii) Committee announcement of its decision from the bench on discipline imposed;
 - (ix) Formal written decision issued by District Committee Determination setting forth findings of facts, nature of the Misconduct—including Rule violations, and sanctions imposed. Para 13-16Y.
- e. Rules of evidence are not strictly enforced⁴. Para.13-12D.
 - f. Objections may be made and are ruled upon by the presiding chair, subject to being overruled by a majority of the remaining hearing panel. Para 13-16Q.
 - g. A quorum of five District Committee members is required for a hearing. Each District Committee consists of seven attorneys and three lay people. Any five members of the Committee may constitute a quorum, although an effort is made to include a lay member in the quorum whenever possible. Para. 13-4B. The members of the Subcommittee who set the matter for hearing may participate in the hearing.
 - h. District Committee Hearings, except for deliberations of the panel, are open to the public. Para 13-16G.
 - i. Neither counsel for the complainant or any witness may examine or cross-examine any witness, introduce evidence, or present an argument. Para. 13-16N.

2. **District Committee Decisions after a hearing include:**

- a. Dismissal;
- b. Public Dismissal *De Minimis*;
- c. Public Dismissal Exceptional Circumstances;
- d. Public Admonition, with or without terms;

⁴ 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. Para. 13-12D.

- e. Public reprimand, with or without terms;
- f. Certification to the Disciplinary Board or file a complaint in a circuit court pursuant to Va. Code Section 54.1-3935. Para. 13-16X.

3. **Appeals of District Committee Determinations**

An appeal from a Determination by a District Committee upon trial is heard by either the Disciplinary Board or a three judge circuit court panel, if so chosen by the Respondent. Para. 13-17A.⁵ Such appeals are based solely upon the record from the District Committee. The standard for the appeal is whether there was substantial evidence to support the findings of the District Committee. Para. 13-19.

4. **Terms**

The District Committee has the same authority as the Subcommittee regarding the issuance and enforcement of Terms.

J. Action by the Disciplinary Board

1. **Composition**

The Disciplinary Board is composed of 20 persons, including 16 attorneys and 4 lay persons. Para.13-6A. It generally holds its hearings in Richmond. A quorum of any 5 Disciplinary Board members is required for a hearing. An effort is made to include at least one lay person in each quorum. Para. 13-6D.

2. **Notice**

Upon certification, the Clerk of the Disciplinary System will serve upon the Respondent a notice of the hearing date before the Disciplinary Board and the Certification from the District Committee of at least 21 days prior to the hearing date. Para. 13-18C.

3. **Election by Respondent**

Respondent will have 21 days from service of the Certification (or "charge of misconduct") in which time the Respondent may:

⁵The bar has no right to appeal. Its sole recourse is a motion to reconsider, which is also available to the Respondent, based upon the discovery of material evidence not known or available when first heard and to prevent an injustice or warranted by specific exceptional circumstances. Para 13-16DD

- a. File a signed answer, or
- b. File a signed answer with a demand that proceedings before the Disciplinary Board be terminated and further proceedings be conducted before a three-judge circuit court. Para. 13-18A.1.; Va. Code §54.1-3935.
- c. If an answer is filed, or if no answer or demand is filed within 21 days of service of the Certification, the complaint will be heard by the Disciplinary Board. Para. 13-18B.

4. **Disciplinary Board Hearings**

- a. Board hearings consist of the same basic steps as those in a District Committee proceeding. However, Board proceedings are generally more formal in nature and generally include a pre-hearing order or scheduling order requiring pre-hearing designation of exhibits and witnesses, objections thereto, and stipulations. Para. 13-18E.
- b. Summonses and subpoena *duces tecum* are issued by the Clerk of the Disciplinary System upon request of Bar Counsel, the Respondent, or the Board itself. Para. 13-6G.2.
- c. Members of the Board panel may ask questions of the witnesses. Para. 13-18I.2,3.

5. **Disciplinary Board Dispositions:**

The Disciplinary Board can hand down any of the following decisions:

- a. Dismissal;
- b. Admonition, with or without terms;
- c. Public reprimand, with or without terms;
- d. Suspension of license for up to five years;
- e. Suspension of license for one year or less, with or without Terms;
- f. Revocation of license.
Para. 13-18M.

➔ **NOTE:** There is no Board sanction that incorporates the word "private" in its nomenclature. Misconduct cases before the Disciplinary Board, except Impairment cases, are public proceedings.

6. Cases of Original Jurisdiction

The Board also hears cases of original jurisdiction regarding impairment, Para.13-23; criminal convictions of a specific nature in Para.13-21, First Offender Statute, and Para. 13-22, Guilty Plea or Adjudication of Crime; and reciprocal discipline of disbarment or suspension by another jurisdiction, Para.13-24. The Board also may hear matters related to the failure of a Respondent, who has elected to appeal a district committee decision to a three judge court, to file a transcript.

7. Appeal of a Disciplinary Board Decision

- a. The Respondent has an appeal as a matter of right to the Supreme Court of Virginia from an order of Admonition, Public Reprimand, Suspension, or Disbarment imposed by the Disciplinary Board. Para. 13-26A.
- b. A notice of appeal and assignments of error must be filed with the Clerk of the Disciplinary System within 30 days after the Memorandum Order of the Disciplinary Board is served on the Respondent. This action within the time prescribed is jurisdictional. Para.13-26B.
- c. A stay is automatically imposed on a Board order of Admonition or Public Reprimand during the pendency of the appeal. A Board order of suspension may be stayed by the Supreme Court during an appeal upon appropriate petition. However, there is no provision for a stay of a Board order of revocation. Para. 13-26F.

IV. MISCELLANEOUS ITEMS OF INTEREST

A. Request by Complainant to Withdraw Complaint

The fact that a Complainant wishes to withdraw his/her complaint will not be the sole basis upon which to dismiss the matter. The investigation and prosecution of the complaint will proceed to its appropriate conclusion despite the request to withdraw the complaint by the Complainant. Para. 13-10B.

B. Existence of Pending Criminal/Civil Litigation

The pendency of civil or criminal litigation similar to the charges of misconduct may result in the deferment of proceedings, based on the prosecutorial discretion of Bar Counsel.

C. Service

Service is effective in the disciplinary system when mailed by certified mail to the Respondent at the Respondent's last address on record for licensing purposes with the Bar. Thus, it is important that the Respondent maintain a current address with the Bar membership department.

Para. 13-12C.

D. Costs

Costs are assessed upon the Respondent in every case in which there has been a final determination of misconduct by a District Committee (and its subcommittee), Circuit Court, the Disciplinary Board, or the Supreme Court, following a hearing or entry of an agreed disposition when a Dismissal *de minimis*, Dismissal for Exceptional Circumstances, an Admonition, Reprimand, Suspension, or Revocation is imposed; cases against a Respondent who surrenders his license to practice law when charges are pending against him; cases in which a Respondent has been found guilty of a Crime by the Disciplinary Board; reciprocal discipline cases; and reinstatement cases. Para. 13-9E.

The costs are assessed by the Clerk of the Disciplinary System and include 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, required publication costs and an administrative charge as determined by the Virginia State Bar Council. Costs are now \$500.00 at the Subcommittee level, \$750.00 at the district committee level, and \$1000.00 at the Board or Circuit Court level. Costs unpaid by a specified date will result in the suspension of the Respondent's license to practice law by the Disciplinary Board until payment is made. Para. 13-9F.

E. **Disciplinary Trials/Civil Litigation**

1. A disciplinary proceeding is a civil proceeding, in the nature of an inquest into the conduct of the attorney. *Moseley v. Virginia State Bar ex rel. Seventh District Committee*, 694 S.E.2d 586, 589 (Va. 2010). See also, *Maddy v. District Committee*, 205 Va. 652, 658, 139 S.E.2d 56, 58 (1964); cf. *Seventh District Committee v. Gunter*, 212 Va. 278, 183 S.E.2d 713, 717 (1971), cited with approval in *Gunter v. Virginia State Bar*, 241 Va. 186, 399 S.E.2d 820 (1991).
2. Since the proceeding is in the nature of an inquest, it is conducted much like an administrative proceeding.

3. The Respondent has no procedural due process right to discovery in a disciplinary proceeding. *Gunter v. Virginia State Bar*, id.; Para.13-11.
4. Hearings are bifurcated. The District Committee and Board will first determine if the bar has proved Misconduct; if so, the District Committee or Board will then hear evidence in mitigation or aggravation before determining the appropriate sanction.
5. Motions to Strike are permitted in hearings at the conclusion of the Bar's evidence and at the conclusion of all of the evidence. Para. 13-16R, District Committee hearings, and Paragraph 13-18J., Disciplinary Board hearings.

F. Procedure for Conducting Three Judge Court Proceedings

Matters which are taken to a three judge court pursuant to Va. Code Section 54.1-3935 are conducted in accordance with the rules and procedures of Paragraph 13. Va. Code Section 54.1-3935(B).

V. MYTHS AND MISCONCEPTIONS ABOUT BAR COMPLAINTS

- A. **Myth:** There is a statute of limitations for filing a bar complaint.
 - **Reality:** No limit exists. A complainant may file a complaint regarding conduct far in the past. *Moseley v. Virginia State Bar ex rel. Seventh District Committee*, 694 S.E.2d 586, 589 (Va. 2010)
- B. **Myth:** Only clients can file complaints.
 - **Reality:** Anyone can file a complaint regarding any attorney's conduct.
- C. **Myth:** If a complainant withdraws a complaint, the matter is closed.
 - **Reality:** Once a complainant files a complaint, the Bar investigates and pursues the allegations based on the merit of each claim, not on the preferences of the complainant.
- D. **Myth:** If a complainant is a criminal, his complaint is unreliable and will surely be dismissed.

- **Reality:** The Bar evaluates the merits of each allegation regardless of the identity of the complainant. Each year, the bar prosecutes cases to the highest tribunals based upon complaints initiated by inmates.

E. **Myth:** The Bar can only investigate the specific allegations of the complainant.

- **Reality:** The Bar investigates all issues present in the information obtained.

F. **Myth:** If there is no showing of harm, the complaint will be dismissed.

- **Reality:** The complaint system determines misconduct, not damages.