

**VIRGINIA:**

**IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND**

**IN THE MATTER OF  
SUPREME COURT RULES, PART 6, § IV, PARAGRAPH 13**

**PETITION**

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF VIRGINIA:

COMES NOW the Virginia State Bar, by its president and executive director, pursuant to Part 6, § IV of the Rules of this Court, and requests review and approval of proposed amendments to Paragraph 13 of Part 6, § IV of the Rules of Court governing the Organization and Government of the Virginia State Bar (VSB), as set forth below. The Council of the Virginia State Bar approved the proposed amendments unanimously on February 24, 2018, after the reference to CRESPA was put back into Paragraph 13-1, subparagraph 3.

**I. Overview of the Issues**

**A. Revisions to Paragraph 13, correcting “CRESPA” to “RESA”**

The proposed amendments conform Paragraph 13 to Chapter 27.2 of Title 55 of the Code of Virginia. CRESPA (Consumer Real Estate Settlement Protection Act) was renamed RESA (Real Estate Settlement Agents).

## **B. Revisions to subparagraph 13-1 Definitions**

The proposed amendment to Paragraph 13-1 clarifies that administrative and Impairment Suspensions are not part of a lawyer's Disciplinary Record. The Standing Committee on Lawyer Discipline (COLD) determined that it is neither fair nor appropriate to view impairment as disciplinary in nature because it derives only from attorney health or well-being issues, not professional misconduct. COLD reached the same conclusion with respect to administrative suspensions, which derive from financial and educational requirements, not professional misconduct.

## **C. The addition of Paragraph 13-1.1**

The proposed addition of Paragraph 13-1.1 defines the burden of proof in all Disciplinary Proceedings as clear and convincing evidence. The intent of the proposed change is to clarify for respondent attorneys and other interested persons that this is the burden of proof in all proceedings under Paragraph 13, including impairment. In its current version, the Rule defines the burden of proof only in district committee proceedings and some proceedings before the disciplinary board.

## **II. Publication and Comments**

COLD approved the proposed amendments to Paragraph 13 on November 8, 2017. The bar posted notice of the proposed amendments, with a request for

written comments and questions, on its website on November 17, 2017. No comments were submitted.

### **III. Proposed Rule Changes**<sup>1</sup>

#### **A. Revisions to Paragraph 13 changing CRESPA to RESA**

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

##### **13-1 DEFINITIONS**

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

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

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3. Any proceeding in which the Respondent has been found guilty of a violation of CRESPA or RESA; and

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“Misconduct” means any:

5. Violation of RESA~~CRESPA~~ or any regulations adopted pursuant thereto.

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<sup>1</sup> Additions are denoted by underlining. Deletions are noted by strikethroughs.

“RESA” means Chapter 27.2 of Title 55 of the Code of Virginia entitled “Real Estate Settlement Agents” (formerly Consumer Real Estate Settlement Protection Act or “CRESPA”).

“Respondent” means any Attorney:

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2. Who is the subject of any proceeding under this Paragraph, Va. Code §§ 54.1-3900.01, 54.1-3935, 54.1-3936, or RESACRESPA; or

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### 13-6 DISCIPLINARY BOARD

F. Jurisdiction. The Board shall have jurisdiction to consider: ...(8) Violations of RESACRESPA or any regulations adopted pursuant thereto;

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### 13-9 CLERK OF THE DISCIPLINARY SYSTEM

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

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C. File Destruction. Whenever a File is destroyed, the following information shall be preserved:

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Such summary information shall be retained for at least five years whenever the Complaint or allegation 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 RESACRESPA violation is made.

D. Preservation of Determinations and Orders. 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 impaired, to have committed a violation of RESACRESPA or requested Reinstatement.

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

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6. All cases before the Board in which sanctions were imposed for violations of RESACRESPA and/or the Bar's RESACRESPA regulations.

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## **B. Revisions to subparagraph 13-1**

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

#### **13-1 DEFINITIONS**

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

1. Any proceeding in which the Respondent has been found guilty of Misconduct, including those proceedings in which (a) the Board's or Court's finding of Misconduct has been appealed to this Court; (b) the Respondent's License has been revoked upon consent to revocation or Respondent has been found guilty of a Crime; or (c) the Respondent has received a sanction pursuant to this Paragraph; and
2. Any proceeding which has been resolved by (a) a De Minimis Dismissal; (b) a Dismissal for Exceptional Circumstances; or (c) an Admonition; and
3. Any proceeding in which the Respondent has been found guilty of a violation of CRESPA or RESA; and
4. Any proceeding which resulted in a sanction which created a disciplinary record at the time it was imposed.

Disciplinary Record does not include administrative or Impairment Suspensions.

## **C. Proposed addition of subparagraph 13-1.1**

### **13-1.1 BURDEN OF PROOF**

The burden of proof in all Disciplinary Proceedings is clear and convincing evidence.

**IV. Conclusion**

The Virginia State Bar, by its president and executive director, respectfully requests the Court to adopt the foregoing amendments to Part 6, § IV, Paragraph 13 for the reasons stated above.

Respectfully submitted,  
VIRGINIA STATE BAR



Doris Henderson Causey, President



Karen A. Gould, Executive Director

Dated this 2nd day of March, 2018.