

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 31<sup>st</sup> day of October, 2018.*

It is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended, effective January 1, 2019.

Amend Section IV, Paragraphs 3 and 13 of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court to read as follows:

**SECTION IV. ORGANIZATION AND GOVERNMENT.**

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**3. Classes of Membership**

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(d) *Disabled and Retired Members.* — Any member of the Virginia State Bar, upon attaining the age of 70 or on the basis of a permanent disability, may 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. A disabled or retired member who has not filed a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the member will not seek transfer from the Disabled and Retired class of membership pursuant to Paragraph 13-23 may submit a petition to the executive director in writing for reinstatement to active or associate 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 or associate status upon payment of the appropriate dues, satisfaction of any other required membership obligations, and payment of any outstanding financial obligations to the Virginia State Bar. Medical and/or psychological information provided pursuant to this subparagraph (d) is confidential and shall not be disclosed by the Virginia State Bar.

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### **13. Procedure for Disciplining, Suspending, and Disbarring Attorneys.**

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

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

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“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; Guardian Ad Litem's fees and costs, if assessed by the Board; electronic and telephone conferencing and recording costs, if such procedures are requested by Respondent; copying, mailing, and required publication costs; translator fees; and an administrative charge determined by Council.

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“Lawyer Assistance Program” means a mental health and/or substance abuse treatment program for Attorneys that is approved by the Bar.

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#### 13-9 CLERK OF THE DISCIPLINARY SYSTEM

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E. 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 Board or this Court;
2. All cases against a Respondent who consents to revocation;
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 Board in which sanctions were imposed for violations of RESA and/or the Bar’s RESA regulations; and
7. With respect to Guardian Ad Litem’s fees and costs, all Disciplinary Proceedings in which a Guardian Ad Litem is appointed and the Board, in its discretion, assesses the Guardian Ad Litem’s fees and costs against Respondent.

#### 13-23. BOARD 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 or transfer to the Disabled and Retired class of membership under Paragraph 13-23.K may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of a finding of Impairment or a transfer to the Disabled and Retired class of membership militating against further proceedings, which circumstances of Impairment shall be set forth in the Dismissal.

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K. Transfer of Membership Status. Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled and Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the Respondent will not seek transfer from the Disabled and Retired class of membership. The declaration shall be endorsed by the Respondent and the Respondent's counsel or Guardian Ad Litem. Termination of the Impairment Proceeding shall not be considered a final order in an Impairment Proceeding under Paragraph 13-30. The Respondent's transfer to the Disabled and Retired class of membership and filing of the declaration pursuant to this subparagraph may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of transfer to the Disabled and Retired class of membership, militating against further proceedings, which shall be set forth in the Dismissal.

#### 13-30. CONFIDENTIALITY OF DISCIPLINARY RECORDS AND PROCEEDINGS.

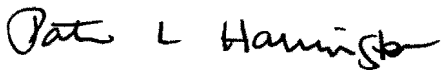
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M. Disclosure of Information to Lawyer Assistance Program. If Bar Counsel believes that an Attorney may benefit from the services of a Lawyer Assistance Program, Bar Counsel may make

an informal referral to a Lawyer Assistance Program and may share information deemed confidential under this Paragraph as part of that referral. Bar Counsel shall not share information that is protected from disclosure by other state or federal privacy laws. Bar Counsel may, but shall not be required to, notify the subject Attorney of the informal referral or transmission of confidential information to the Lawyer Assistance Program. Unless the subject Attorney has signed a release allowing the Lawyer Assistance Program to share information with Bar Counsel, the Lawyer Assistance Program shall not report information about the subject Attorney to Bar Counsel, and Bar Counsel shall not receive such information from the Lawyer Assistance Program.

A Copy,

Teste:



Clerk