

---

# I. VSB Operation and Strategic Plan

## A. Creation of Virginia State Bar

The Virginia State Bar (VSB) was created in 1938 by the General Assembly as a unified bar and an administrative agency of the Supreme Court of Virginia.<sup>1</sup> The Bar Act of 1938 invested the Supreme Court of Appeals (now the Supreme Court of Virginia) with legislative authority to promulgate rules and regulations “organizing and governing the Virginia State Bar.” In October 1938, the Court adopted the Rules for the Integration of the Virginia State Bar, which today are in Part 6 of the Rules of Court. Part 6, Section IV, Organization and Government gives Council general administrative authority for the VSB and the power to adopt bylaws.

- *Code of Virginia* §§ 54.1-3909-54.1-3918
- *Rules of the Supreme Court of Virginia* Part 6, § IV Organization and Government
- *Bylaws of Virginia State Bar and Council*

<sup>1</sup>Chapter 410 of the 1938 Acts of Assembly, now § 54.1-3909 *et seq.* of the *Code of Virginia*.

## B. Mission Statement

The mission of the Virginia State Bar, as an administrative agency of the Supreme Court of Virginia, is (1) to regulate the legal profession of Virginia; (2) to advance the availability and quality of legal services provided to the people of Virginia; and (3) to assist in improving the legal profession and the judicial system.

### Commentary

The Mission Statement contains the three basic elements which are found in most of the sources relating to the existence, power, and authority of the Virginia State Bar. They are (1) professional regulation; (2) public access to legal services; and (3) improving the system. The authority for the Mission Statement is found in, e.g., *Va. Code* Section 54.1-3909 (the Supreme Court’s authority to promulgate rules and regulations regarding the practice of law), *Va. Code* Section 54.1-3910 (establishing VSB as an administrative agency of the Court for professional regulation). Rules of Court Part 6, Section IV, paragraph 9(j)(the “necessary powers”).

Everything the VSB does should and can be related to one of these three areas. In the list which follows, each of the State Bar’s present functions has been placed in one or more of these categories.

### I. Regulating the Legal Profession

- A. Office of Bar Counsel/Professional Regulation Department/Clerk of the Disciplinary System
- B. Disciplinary Board
- C. District Disciplinary Committees
- D. Standing Committee on Lawyer Discipline
- E. Standing Committee on Legal Ethics
- F. Standing Committee on Unauthorized Practice of Law
- G. Mandatory Continuing Legal Education Board/Staff
- H. Publications/Public Information Department and Communications Committee
- I. Membership Department
- J. Administrative Support

### II. Improving Legal Services to Public

- A. Lawyer Regulation (see I. above)
- B. Standing Committee on Professionalism/Professionalism Course
- C. Committee on Access to Legal Services
- D. Alternative Dispute Resolution Joint Committee
- E. Lawyer Referral
- F. Publications/Public Information Department
- G. Clients’ Protection Fund
- H. Access to Justice Director

- 
- I. Membership Department
  - J. Administrative Support

### III. Improving Legal Profession and Judicial System

- A. Lawyer Regulation (see I. above)
- B. Professionalism (see II. above)
- C. Judicial Nominations Committee
- D. Sections and Conferences
- E. MCLE (see I. above)
- F. Lawyer Assistance Program
- G. Local and Specialty Bar Relations Coordinator
- H. Bench Bar Relations Committee
- I. Administrative Support

Approved by VSB Council  
February 28, 1998

## C. Governance

### Council

The rules provide that the powers of the Virginia State Bar shall be exercised by a Council elected pursuant to the Rules. Each of the 31 judicial circuits is entitled to elect one or more Council members. The election is by vote of active VSB members licensed to practice in the circuit wherein an election is held. The term of the Council member is three years with a provision that a Council member may be elected for one additional three-year term. Council elections are held in April.

In addition to the elected Council members, the Supreme Court of Virginia appoints nine at-large members. The chair of the Conference of Local Bar Associations, the president of the Young Lawyers Conference, the chair of the Senior Lawyers Conference and the chair of the Diversity Conference serve as *ex-officio* members of Council.

The president, president-elect and immediate past president of the bar serve as *ex-officio* members of the Council, with the president serving as presiding officer. The executive director/chief operating officer serves as secretary and treasurer of the VSB.

The Council typically meets three times a year: in October; in late February or early March, and in June, prior to the Annual Meeting.

### Executive Committee

Between meetings of the Council, its duties and functions may be performed by the Executive Committee of twelve members, six of whom are elected annually by and from the Council, with the president, president-elect, immediate past president, chair of the Conference of Local Bar Associations, president of the Young Lawyers Conference and chair of the Senior Lawyers Conference serving as *ex-officio* members.

### Powers of Council

#### Part 6, Section IV, Paragraph 9(j)

#### Rules for Organization and Government, Virginia State Bar

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 encourage and promote diversity in the profession and the judiciary; and

To perform all duties imposed by law.

Amended by VSB Council  
June 18, 2009

Approved by Supreme Court of Virginia  
January 22, 2010

## **D. Council Bylaws Establishing Sections (Article XI)**

The Council may create and abolish sections as it may consider necessary or desirable to accomplish the purposes and serve the interests of the Virginia State Bar and of the sections and shall prescribe the powers and duties of the sections. The bylaws of any section shall be subject to approval of Council.

## **E. VSB Bylaws Establishing Committees (Article V)**

*Sec. 1.* Unless otherwise provided in the Supreme Court Rules, by action of Council, or elsewhere in these by-laws or the bylaws of Council, all committees shall be appointed by the president, who shall have power to determine the size and composition of the committee and to designate the chair thereof and to fill any vacancy therein.

*Sec. 2.* A majority of any committee shall constitute a quorum.

- 
- Sec. 3.* In addition to the Executive Committee, district committees, and standing committees specified in the bylaws of Council, there shall be special committees to carry out the other ongoing work of the bar, and study committees, where appropriate in the judgment of the president, to examine and make recommendations on specific proposals or programs within a reasonably brief and discrete period of time.
- Sec. 4.* Members of special committees shall be appointed to three-year terms, with the exception of the Special Committee on Lawyer Malpractice Insurance whose members shall be appointed to five-year terms. No member shall serve more than two consecutive terms on such a committee. A member appointed to fill an unexpired term shall be eligible to serve two additional full terms. An eligible member wishing to be reappointed to a special committee shall be required to reapply in writing prior to the end of his or her current term under procedures established by Council and administered by the executive director. If any member of a committee fails to attend either three meetings during any bar year or two successive meetings of the committee without providing an explanation satisfactory to the committee chair, or in the case of a lawyer member, is declared not in good standing with the Virginia State Bar, such person's position shall automatically be considered vacated and filled as in the case of other vacancies.
- Sec. 5.* In making initial appointments to new special committees, the president shall appoint members to one, two and three-year terms so as to allow for the retirement or reappointment of one-third of the membership of each special committee at the end of each bar year.
- Sec. 6.* Effective July 1, 1996, the size of special committees shall be as specified by Council. A list of the committees and their respective sizes shall be maintained by the executive director. Changes in the size of special committees may be approved by the Executive Committee.

---

## F. Impact Statement for New Programs/Projects

This statement should be completed, with the assistance of your liaison, whenever a new project is proposed.

1. Name of person or group proposing program/project:
2. Name of VSB staff person working with your group:
3. Name of program/project:
4. Proposed starting date:
5. What is the goal of this program/project?
6. Has any similar program/project been undertaken in the past by the VSB?

Yes No (Circle One)

If yes, what is the status of that program/project?

7. Is any other VSB committee or section currently working on a similar program/project?

Yes No (Circle One)

If yes, please name:

8. Does any other group in Virginia currently have or plan to have a similar program/project?

Yes No (Circle one)

If yes, please name:

---

9. On a separate sheet, please estimate the costs in VSB funds of the proposed program/project. Include all out-of-pocket (new) expenses (such as copying, telephone, postage and supplies). Estimate apportionments of all fixed (current) expenses (such as rent, staff salaries, computer time and office equipment).

10. Please estimate the costs in staff time (include by name the person who would be primarily responsible for implementing the program/project and all support staff needed; please estimate the total number of hours for each person to be devoted to this project/program within the next fiscal year):

11. Please estimate the time in which this program/project will be completed and any *special supply needs*:

12. Are the necessary funds in the current section budget?

Yes    No    (Circle One)

If not, how will it be funded?

**When complete, please file one copy with your liaison and one copy with Susan C. Busch in the Fiscal Office.**

By Chair/President

Date

By Staff Liaison

Date

---

## G. Calendar of Important Dates and Deadlines

### September 1, 2011–June 30, 2012

#### *September 2011*

The board of governors of each section should have met and formulated an agenda for the bar year.

- 20**    **Fall Meeting of Section, Conference, and Committee Chairs**—Virginia State Bar Office, 2nd Floor Conference Room, 8th & Main Building, 707 E. Main Street, Richmond, 11:00 a.m. The agenda will include a review of the *Chairs Handbook*; preliminary planning for the 2012 Annual Meeting; and an overview of the budgeting process for the 2012–13 bar year. Section and conference vice chairs and newsletter editors are encouraged to attend this meeting.
- 23**    YLC Professional Development Conference—Richmond

#### *October*

- 20–21**    **VSB Executive Committee and Council Meetings**—Winchester

#### *November*

- 14**    **Deadline for submitting CLE program proposal for section and conference programs scheduled during the 74th Annual Meeting, June 14–17, 2012** (Section CLE programs and the membership meetings of the Young Lawyers Conference, Senior Lawyers Conference, and the Conference of Local Bars will be held on Friday, June 15, 2012.)
- 17**    **Solo & Small-Firm Practitioner Forum**—Stratford

#### *January 2012*

- 6**    Deadline for submitting program proposal for 39th Midyear Legal Seminar to be held in November 2012
- 6**    Deadline for submitting final program information for section and conference CLE programs to be conducted at the Annual Meeting including: (1) precise title; (2) list of participants; and (3) biographical data on participants

#### *February*

- 10**    Deadline for submitting section and conference budget requests, with supporting information, for 2012–13 bar year
- 24–25**    **VSB Executive Committee and Council Meetings**—Richmond

#### *April*

In accordance with section and conference bylaws, chairs should appoint a nominating committee for the purpose of electing new officers and board members at the Annual Meeting in June.

- 4**    **Solo & Small-Firm Practitioner Forum**—Farmville
- 12**    **VSB Executive Committee Meeting**—Millwood
- 27**    **Solo & Small-Firm Practitioner Forum**—Big Stone Gap

---

## *May*

- 4 Deadline for submitting housing needs for CLE program speakers
- 4 Letter requesting annual reports for the 2011–12 bar year will be mailed by the bar office to all section, conference, and committee chairs.
- 7 Deadline for submitting MCLE outlines for CLE programs for 74th Annual Meeting

## *June*

**13–14 VSB Executive Committee and Council Meetings—Virginia Beach**

**14–17 VSB 74th Annual Meeting—Virginia Beach**

- 15 Section and conference CLE programs will be conducted during the Annual Meeting.

Annual business meetings of sections and conferences will be held in conjunction with the 2012 Annual Meeting. The nominating committee of each group will report to the membership, and elections will be held for new officers and new board members.

Section and Conference election results should be recorded on the forms provided at the business meeting and returned to the State Bar office *no later than July 1, 2012*.

- 29 Deadline for submitting section and conference bylaw amendments approved at business meetings during 2012 Annual Meeting (Please send this information to VSB office for approval by Council at its October 2012 meeting.)

Deadline for advising VSB of section dues increase approved at business meeting during 2012 Annual Meeting (Sections may raise their dues up to \$35 without further action by Council. However, any such increase would not become effective until the following fiscal year, 2013–14.)

## *July*

- 2 Deadline for submitting the new listing of the officers and board of governors for each section/conference for the 2012–13 bar year
- 2 Deadline for submitting annual reports from each section, conference, and committee for the 2011–12 bar year ending June 30, 2012. Section, standing and special committee, and special board chairs are requested to write and submit annual reports to the bar before its annual meeting, but no later than July 2, 2012. (This is the last responsibility of the outgoing chair.)

---

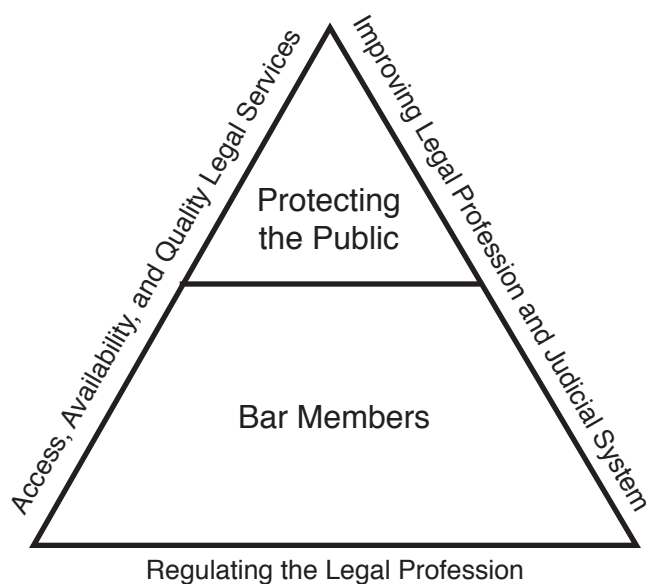
## H. Virginia State Bar Strategic Plan

2011–2015

The Virginia State Bar (VSB) was created in 1938 by the General Assembly as an administrative agency of the Supreme Court of Virginia. The creation of the agency unified Virginia’s lawyers in a mandatory state bar. The VSB is governed by its Council and Executive Committee, whose members are elected or appointed from every judicial circuit in the commonwealth. The mission of the Virginia State Bar, as an administrative agency of the Supreme Court of Virginia, is to regulate the legal profession of Virginia; to advance the availability and quality of legal services provided to the people of Virginia; and to assist in improving the legal profession and the judicial system. (*About the Bar — website — <http://www.vsb.org/site/about/>*)

### Goals for 2011–2015:

- I. Protect the Public
- II. Regulate the Profession
- III. Advance Access to Legal Services
- IV. Improve the Legal Profession and the Judicial System
- V. Operate the Bar



---

## Strategic Plan 2011–2015

The Virginia State Bar’s Executive Committee conducted strategic planning on April 15 and 16, 2010. The committee identified five goals within the mission statement. The goals provide a framework for the aspirations and continuous efforts of the committees, conferences, sections and departments.

Strategies were identified that support the five goals. Many strategies advance multiple goals. To further the strategies, the committees, conferences, sections and departments should implement programmatic tools or tactics.

- I. Protect the Public** — Protect the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court’s Rules of Professional Conduct, all at no cost to Virginia taxpayers.
  - A. Regulation of the Legal Profession** — Efficiently regulate the legal profession to protect the public from lawyer misconduct.
  - B. Unauthorized Practice of Law** — Promptly investigate and act upon allegations of the unauthorized practice of law.
  - C. Early Intervention** — Identify problems early and promptly intervene.
  - D. Client Protection Fund** — Finance and administer the fund to maximize reimbursement of losses caused by the dishonest conduct of lawyers.
  - E. Public Awareness and Communications** — Promote public awareness of rights and remedies through education and communications.
  - F. Transparency** — Promote public confidence in the profession and the regulatory system through continued transparency.
- II. Regulate the Profession** — Regulate the profession through principles that guide lawyer behavior and enforcement proceedings for noncompliance with such principles.
  - A. Discipline** — Strive for timely investigation and prosecution of disciplinary complaints and the imposition of appropriate sanctions.
  - B. Legal Ethics** — Provide legal ethics opinions and confidential advice through the ethics hotline.
  - C. Client Property** — Prevent loss of client property by appropriately reviewing attorney escrow accounts or seeking injunctive relief.
  - D. Practice Audits** — Standardize practice audit template, integrate technology.
- III. Advance Access to Legal Services** — Ensuring public access to quality legal services.
  - A. Legal Services** — Encourage and support pro bono efforts, appointed counsel, and organizations that offer or support civil legal services and indigent defense.
  - B. Outreach** — Develop and implement law-related community education programs and projects.
  - C. Diversity** — Encourage availability of diverse population of lawyers, able to serve the commonwealth’s diverse populations, particularly where language is a barrier
  - D. Technology** — Promote the effective use of technology in the delivery of legal services.
  - E. Lawyer Assistance Programs** — Support organizations with lawyer assistance initiatives.
  - F. Lawyer Referral** — Provide legal referrals at a nominal fee.

---

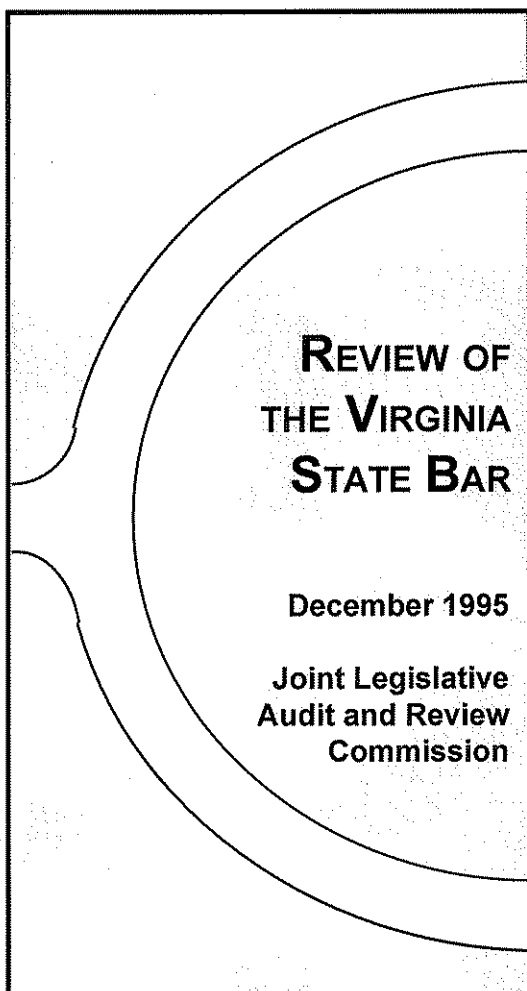
**IV. Improve the Legal Profession and the Judicial System** — Programs and initiatives to improve the legal profession and the administration of justice.

- A. Advocacy** — Increase public and member understanding of legal process and the role of the legal profession. Use the Speakers' Bureau.
- B. Candidate Review** — Maintain judicial evaluation processes.
- C. Professional Conduct and Ethics** — Continue incorporating professionalism and civility into continuing education.
- D. Mandatory Continuing Legal Education** — Promote competence and professionalism through high-quality continuing education programs and requirements. **Lawyer Population** — Promote diversity in the legal profession and the judiciary.
- E. Judicial Independence** — Support judicial independence and educate members and the public about its importance.
- F. Communications** — Provide information through publications, the website, and other media.
- G. Leadership** — Provide leadership opportunities and training to local and state bar leaders and coordinate and recognize volunteers to maximize involvement and minimize attrition.
- H. Lawyer Assistance Programs** — Support organizations with lawyer assistance initiatives.

**V. Operate the Bar** — Maintaining an effective Virginia State Bar.

- A. Mission Statement** — Consider inclusion of a fourth element in the mission statement: “protecting the public.”
- B. Executive Committee** — Plan strategic meetings to eliminate redundancy of reporting and focus primarily on strategy and action items.
- C. Strategic Plan** — Monitor progress of the strategic plan through the Executive Committee.
- D. Five-Year Plans** — Integrate section, conference and committee 5-year plans into the strategic plan.
- E. Sections, Conferences and Committees** — Review the purpose, function and return on investment of sections, conferences and committees to ensure they best serve the VSB's mission.
- F. Technology** — Utilize technology to serve the members and the public through enterprise content management (ECM) and enhanced and expanded web applications. Ensure that we have informed and efficient decision making when making technology decisions.

# JLARC Report Summary



The Virginia State Bar (VSB) was created in 1938 by the General Assembly as an administrative agency of the Supreme Court of Virginia. The creation of the agency unified Virginia's lawyers in a mandatory State Bar to provide for the regulation of lawyers practicing in the Commonwealth. Since that time, Virginia State Bar activities have grown to support a broad mission which includes efforts to regulate, improve,

and educate members of the legal profession; and to promote the administration of justice and quality of legal services provided to Virginians.

Virginia is one of 32 states and the District of Columbia that have unified, mandatory bar organizations. Currently, the VSB is made up of 20,408 active members who each pay \$185 in annual fees for the privilege of practicing law in Virginia. Annual attorney fees are used to fund most of the Bar's operations and totaled \$4.3 million in FY 1995. Total Bar operating expenditures in FY 1995 were almost \$5.3 million.

This review of the Virginia State Bar is one in a series of studies on the administration of justice in Virginia. Senate Joint Resolution (SJR) 263 specifically directed JLARC to conduct an analysis of the VSB and evaluate the efficiency, economy, and effectiveness of the VSB in carrying out its mission.

This review found that while the VSB shares a number of characteristics with other unified state bars, the agency is unique when compared to agencies that regulate other professions and occupations in Virginia. The VSB is different because it combines activities to regulate the profession with non-regulatory activities that are similar to those usually conducted by professional associations. This unusual mix of activities raises questions about how to best allocate resources and prioritize activities to carry out the Bar's mission.

Analysis of State Bar operations indicates that:

- lawyers may be paying more in annual fees than is necessary to fund the Bar's operations, as evidenced by the growing cash balances maintained in VSB special funds,

- the system to discipline lawyers in Virginia works relatively well, although, some steps need to be taken to better ensure public protection and build public confidence, and
- most activities of the VSB are consistent with the mission established for the Bar by statute and the *Rules of Virginia Supreme Court*, but the association-like nature of the Bar's non-regulatory activities exposes the Bar to potential conflicts, diverts resources from the Bar's most important activity — lawyer discipline — and raises concerns about public accountability.

### Three Special Funds Are Maintained to Pay for VSB Activities

The VSB is authorized to maintain three distinct special funds to pay for its regulatory and non-regulatory activities. The State Bar fund is authorized by the *Code of Virginia* and is composed primarily of the mandatory annual fees paid by lawyers to be members of the VSB. The administration and finance (A&F) fund is authorized by the *Rules of Virginia Supreme Court (Court Rules)* and was created to pay for conference, meeting, and related VSB expenses for which State funds cannot be used. The clients' protection fund is also authorized by the *Court Rules* and is used to compensate persons who have experienced financial losses due to the dishonest conduct of a lawyer. Member dues also finance this fund.

The State Bar fund is one of many special funds within the State Treasury, and as such, is monitored through the Commonwealth's Cost Accounting and Reporting System (CARS). The A&F fund and the clients' protection fund are maintained and administered solely by the VSB and are not tracked by CARS. The VSB is responsible for investing the revenue of these funds

and paying their associated expenses. While not monitored through CARS, the Auditor of Public Accounts does conduct periodic audits to ensure that expenditures are properly documented and that these expenses are not charged to the State Bar fund.

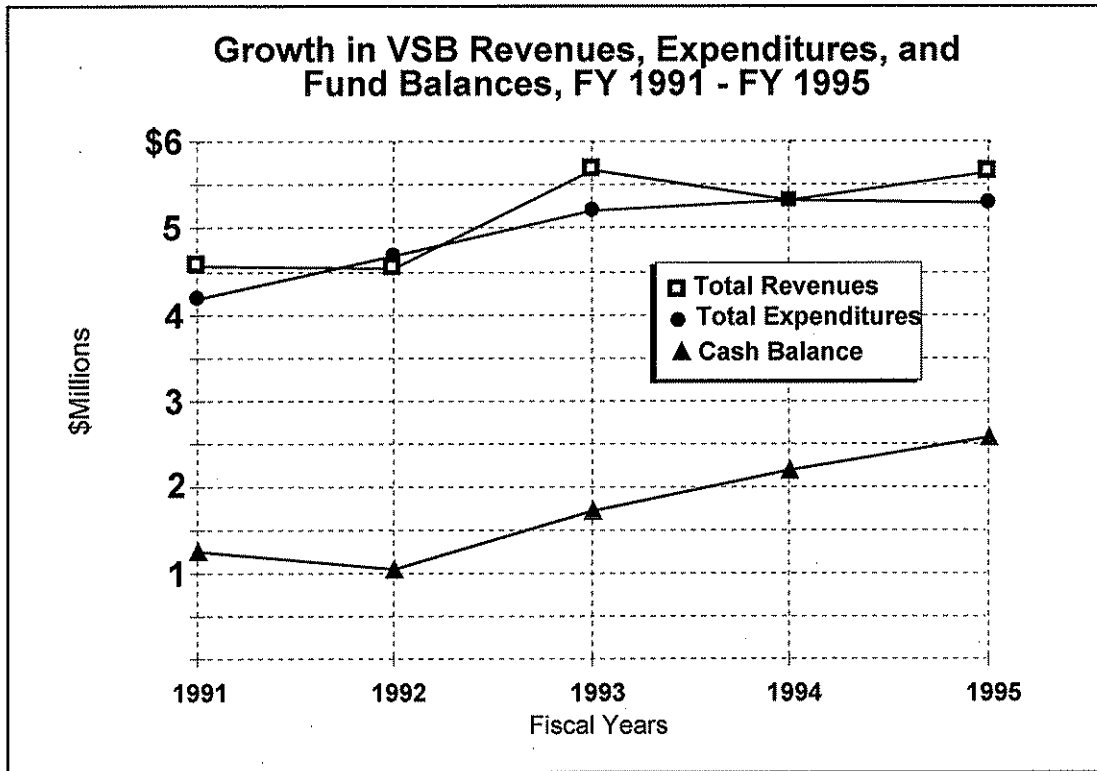
### While A Majority of VSB Expenditures Pay for Lawyer Regulation, Lawyers May Be Charged Excessive Fees

Analysis of VSB funding indicates that about 54 percent of total State Bar expenditures are used to regulate lawyers through the disciplinary system and other regulatory activities carried out by the Virginia State Bar. Nevertheless, Virginia lawyers may be paying more than is necessary to fund the activities of the VSB. Growing cash balances in two of the VSB's special funds form a large cash reserve that could have paid for about one-half of the agency's operating expenditures in FY 1995.

In three of the past five fiscal years, VSB revenue exceeded expenditures (see figure on next page). Excess revenues, combined with growing cash balances in the Bar's special funds have provided the Bar with a large cash reserve. Currently, the VSB has more than \$2.5 million in combined reserve amounts from the State Bar fund and the A&F fund. Some of this reserve can be attributed to the VSB implementation of two increases in member dues over the past five years.

Recommendations are made in this report to:

- amend the *Code of Virginia* to ensure that mandatory member dues are not increased if the reserve levels in VSB special funds exceed ten percent of total operating expenditures, and
- reduce the amount of VSB member dues.



#### Transfers of Funds from the State Bar Fund to the Clients' Protection Fund Raise Questions about Fund Integrity

The clients' protection fund was established in 1985 by *Court Rules* to further the administration of justice by reimbursing clients for financial losses caused by the dishonest conduct of Virginia lawyers. Since its inception, the fund has been capitalized by lawyers' annual fees to the VSB. To date, the fund has received more than \$1.5 million in transfers from the State Bar fund and has paid out more than \$1.3 million to petitioners. The Bar's council has provided revenues to the fund in two ways: (1) approval of fund transfers from the State Bar fund, and (2) loans from the State Bar fund for the express purpose of accruing interest income to capitalize the fund. These loans were later forgiven.

The practice of routinely transferring revenue from the State Bar fund to capitalize

the clients' protection fund raises concerns about the integrity of the State Bar fund. This fund was established to pay for the cost of lawyer regulation, primarily lawyer discipline. Further, the current method of funding the clients' protection fund is inconsistent with the methods used for budgeting other VSB expenditures, even though these expenses accounted for eight percent of the VSB's expenditures in FY 1995.

While the Bar has made contributions to the clients' protection fund since 1976 from the State Bar fund, this contribution was not formally budgeted until recently in FY 1995. The Bar's 1994 long range plan included a goal of contributing \$200,000 annually to the clients' protection fund for a period of at least five years beginning in FY 1995. Nevertheless, the Bar's budget for FY 1995 included only \$130,000 as a line item for the clients' protection fund, which represented a portion of that recommended by

the long range plan and a portion of the \$400,000 which the Bar actually contributed to the fund. Consequently, capitalizing the fund appears to continue to be a discretionary expenditure depending on the financial position of the State Bar fund at the year's end.

Continued growth in demand for payments from the clients' protection fund to persons who have experienced financial losses due to the dishonest conduct of lawyers may necessitate a more straightforward funding mechanism to ensure fund integrity and protect the public. Because it is unclear whether the General Assembly intended for the fund to be capitalized by Bar member dues, recommendations are contained in this report to address these concerns by having the VSB:

- discontinue the current practice of making State Bar fund transfers to the clients' protection fund without specific statutory authority, and
- request General Assembly authorization to maintain and finance the clients' protection fund through a specific funding mechanism.

#### **Certain Revenues Received by the Bar May Have Been Erroneously Retained**

Since at least FY 1987 and possibly earlier, the VSB has received revenues from its sponsored insurance plans. From FY 1988 to FY 1995, the Bar received approximately \$727,000 in insurance proceeds for various reasons. The majority of these funds appear to be from refunds for favorable claims experience on the part of VSB policyholders. These funds were eventually deposited in the VSB's administration and finance fund and have collected more than \$88,000 in interest income. It appears that some of these insurance refund amounts should have been treated as unclaimed in-

tangible property and returned to the State Treasury.

Recommendations are made to:

- identify and determine if portions of the VSB's insurance revenue should be designated and treated as unclaimed property, and
- ensure that all future refunds involving intangible property are treated as unclaimed property by the VSB when the owner cannot be identified.

#### **Some Bar A&F Fund Expenditures Do Not Appear Consistent with the Purpose of the Fund**

The Bar's administration and finance fund was created in 1987 by the Supreme Court of Virginia to pay for:

expenses related to meetings of the Council, meetings of the Executive Committee, the Annual and Midyear Meetings, and other official functions of the State Bar . . . .  
*(Court Rules)*

Analysis of the A&F fund indicates that certain expenditures may not be consistent with the purpose of the fund as established by the Supreme Court. Further, the cash balance in the A&F fund has accumulated to a level more than three times the amount expended from the fund in FY 1995. The Supreme Court may not have intended that the Bar maintain such a large cash balance when it originally set up the fund.

The three primary events that are funded through the A&F fund are the VSB annual meeting, the annual Cambridge seminar, and the midyear legal seminar. Receipts from these events are deposited with the State Treasurer in the State Bar fund. The money is then transferred to the A&F fund to pay for associated expenses. However, in FY 1995 the fund is also used to pay for:

- alcoholic beverage expenses for social meetings of the council, executive committee, specialty law sections, and committees;
- travel expenses for spouses of Bar officers; and
- staff activities and expenses such as coffee, soda, a staff holiday party, and other items.

These types of expenses are not normally approved by the Commonwealth for reimbursement. In addition, they do not appear to relate directly to “official” business of the Bar.

Reimbursement of the above types of expenses appears inconsistent with what the Supreme Court intended in setting up the fund. Further, these expenditures raise questions about the focus and priorities of the VSB in carrying out its mission. The expenditures resemble those more typical of a professional or trade association. The VSB was not set up primarily as a professional association, but rather as a regulatory agency with a mission that includes upholding and elevating the standards of honor and integrity in the legal profession. As such, all of its discretionary expenditures should be made prudently and should be able to withstand public scrutiny.

Recommendations are made to:

- lower the A&F fund balance to a reasonable level, and
- discontinue payment of certain expenses from the A&F fund.

### **The Disciplinary System Works Well Although Some Changes Are Needed to Improve Public Protection and Build Public Confidence**

The primary mission of the VSB is to regulate the legal profession to protect the

public from lawyer misconduct. In doing so, the VSB has developed a complex disciplinary system that strives to balance the need to protect the public with the need to ensure that the limited resources of the Bar are used efficiently. The Bar is also faced with the challenge of maintaining public trust, being accountable, and protecting the public while ensuring the system protects the rights of those accused and treats them fairly.

This review found that the disciplinary system works relatively well in achieving balance between the competing demands on the system. Nevertheless, some problems were identified which need to be addressed to improve public protection, build public trust in the system, and increase accountability to the public. Moreover, some minimal steps could be taken to improve fairness in the system.

***Process for Dismissing Complaints Needs Strengthening.*** Protection of the public is the most important goal of Virginia’s disciplinary system. The disciplinary process begins with the filing of complaints by members of the public regarding the conduct of members of the Virginia State Bar. However, the majority of complaints against members of the Bar are dismissed before a hearing ever takes place on the complaint. Bar counsel appear to have sufficient basis to screen out most of these complaints. However, review of VSB disciplinary files indicated some weaknesses in: (1) the documentation of case dismissal decisions, (2) the provision of an opportunity for complainants to comment on the accused attorney’s response to allegations, and (3) the scope of bar counsel’s authority to dismiss cases. Recommendations are made to:

- improve documentation of dismissed cases and limit bar counsel’s authority to dismiss cases after a preliminary investigation, and

- provide complainants with an opportunity to rebut the accused attorney's response prior to dismissal.

***Additional Improvements Could Be Made to Protect the Public.*** This review also identified several changes to the disciplinary system that could be made to enhance the VSB's ability to protect the public. Currently, complainants do not have the right to appeal dismissals by bar counsel. In addition, bar counsel cannot appeal decisions to dismiss cases after adjudication by Bar committees or the disciplinary board. However, attorneys accused of violating ethical standards (respondents) have the right to appeal case decisions in most instances. In addition, citizen complainants do not have the same rights to immunity from civil suits in filing complaints against lawyers, as lawyers currently have.

While the system has changed to involve lay persons in the adjudication of complaints against lawyers, lay member participation is not mandatory in all parts of the process. Further, it is not clear that the VSB has taken steps to ensure that adjudicatory decisions are consistent across the Commonwealth. This report includes recommendations to:

- provide complainants with the right to appeal dismissals,
- provide complainants with absolute immunity from civil suits for all disciplinary complaints made to the VSB,
- require lay member participation in district committee and disciplinary board actions, and
- have the VSB take steps to assess consistency in outcomes of committee decisions.

***Steps Could Be Taken to Improve Public Confidence in the System.***

This review found that the VSB has taken a number of important steps to improve public trust in the system to discipline lawyers in recent years. However, several aspects of the current system continue to reduce confidence in the system and perhaps raise suspicions that the system is designed to protect lawyers instead of the public. These include maintaining a committee system that is closed to public access and allowing certain practices which create appearances of impropriety. Further, lack of understanding about the system and its purposes could be improved to facilitate a higher degree of public trust. Review of disciplinary files indicated that the Bar could more clearly explain reasons for case dismissals to complainants.

Recommendations are made to:

- further open the disciplinary process to the public;
- prevent members of the Bar's council from representing respondents in disciplinary proceedings and clarify participation by other Bar officers, committee members, and board members;
- prohibit Bar members from having access to confidential disciplinary information, other than Bar staff and members of the standing committee on lawyer discipline;
- require disclosure of potential conflicts of interest in disciplinary cases; and
- provide more detailed explanations for dismissals to complainants.

**Minor Changes Could Be Made to Further Improve System Fairness.** Analysis of the VSB disciplinary system found that, on the whole, attorneys accused of violating ethical standards are treated fairly. However, some minor changes could be made to improve the fairness of the system. Currently, respondents are only entitled to receive very limited information from bar counsel about their case in order to prepare for a hearing. Further, respondents and their counsel are not allowed to be present for subcommittee meetings in which decisions are made to impose discipline and approve or disapprove proposed agreed dispositions. And, subcommittee members who consider whether to set a case for hearing may also sit on the committee panel that hears the case.

Recommendations are made to improve system fairness by:

- providing respondents with limited discovery in disciplinary cases and the right to appeal dismissals which create a disciplinary record, and
- excluding certain subcommittee members from the adjudicatory process, and allowing respondents and their counsel to be present for subcommittee meetings.

**Changes Could Be Made to Improve the Efficiency of the Disciplinary System.** Currently, the VSB assesses the efficiency of the disciplinary system by monitoring time guidelines it has established for the various steps in the disciplinary process. Analysis of VSB performance in reaching its guidelines indicates that most complaints are not processed within the goals established for the system. Several changes could be made to assist the Bar in achieving its goals and strengthening the efficiency of the system. Recommendations are made to improve efficiency by:

- improving the monitoring of performance in meeting time guidelines,
- reclassifying at least one position as an additional bar counsel position,
- better monitoring of staff productivity and assessing the need for paralegal support, and
- developing a training program for investigative staff.

### **The VSB's Current Mission and Role Raises Concerns about Its Regulatory Focus**

This review found that, with one minor exception, most VSB activities appear consistent with the mission established for it by the General Assembly and the Supreme Court of Virginia. Nevertheless, there appears to be a need for better prioritization of activities to ensure that the Bar's regulatory activities remain its primary focus. Findings in this report indicate that the Bar may need to reallocate existing resources to address resource needs in this area.

The association-like nature of some programs and activities conducted by the Bar raises questions about whether the Bar is properly focused on its regulatory mission. In addition, the expansion of the Bar into commercial activities is unusual for a State agency and exposes the Bar to potential conflicts, especially with its regulatory function. Further, these types of activities divert resources from the Bar's most important activity — lawyer discipline — and raise concerns about public accountability.

### **Implications for the Future Role of the Virginia State Bar**

Concerns about the unusual mission and role that the unified bar has as a state governmental agency are not new. One legal scholar who studied unified bars in the 1980s has argued that the unified bar as an

institution has three contradictory images which affect its governance and accountability — that of a public agency, a compulsory membership organization, and a private voluntary association. Clearly, these images are reflective of the role of the unified bar in Virginia and as such, raise concerns about how these contradictory roles can be appropriately balanced to ensure continued protection of the public and enhance public confidence in Virginia’s legal system.

Without a more thorough examination and delineation of the role of the Virginia State Bar in the future, striking the proper balance between the Bar’s regulatory and non-regulatory activities will continue to be

problematic. The Bar will most likely continue to experience pressure to change the scope of its activities from its members, other statewide voluntary bar associations, complainants, and members of the General Assembly.

The Supreme Court of Virginia and the General Assembly may wish to consider several options for the future to refocus the Bar’s activities and improve its public accountability. These could include structural changes to the Bar’s governance, transfer of certain activities to other entities, or implementing a more structured system of oversight.