

On March 7, 2012, the Committee on Lawyer Discipline (COLD) approved the proposed amendments. New language adds a cross-reference to Rule 5:28 of the Rules of Court which allows the Virginia State Bar to file assignments of cross-error in the event that a respondent appeals a disciplinary action to the Supreme Court of Virginia. Also added is a cross-reference to Rule 5:21(b) of the Rules of Court which sets forth specific procedures for perfecting and prosecuting appeals from the Disciplinary Board and three-judge circuit courts. Because Supreme Court Rule 5:21(b) overrides existing language in Paragraph 13-26, that language has been removed.

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-26 APPEAL FROM BOARD DETERMINATIONS

A. Right of Appeal. 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 using the procedures outlined in Rule 5:21(b) of the Rules of the Supreme Court of Virginia. 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. If a Respondent appeals to the Supreme Court, then the Bar may file assignments of cross-error pursuant to Rule 5:28 of the Rules of the Supreme Court of Virginia.

~~B. 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.~~

~~C. 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.~~

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

E. 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.

~~F. 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 has been revoked by either the Summary or Memorandum Order of the Board.~~

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Comments or questions should be submitted in writing to Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than May 31, 2012. The Virginia State Bar Council will consider the proposed amendments when it meets on June 14, 2012.