

**Rules of Court, Part Six, Section IV, Paragraph 13
Amendments Regarding Multijurisdictional Practice**

On June 2, 2010, the Standing Committee on Lawyer Discipline (COLD) approved the following amendments to Rules of Court, Part Six, Section IV, Paragraph 13, Procedure for Disciplining, Suspending, and Disbarring Attorneys. The amendments address multijurisdictional practice.

The Virginia State Bar is seeking public comment on this proposal. Comments should be sent in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219, no later than end of business on September 15, 2010.

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-1 DEFINITIONS

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“Attorney” means a member of the Bar, a Corporate Counsel Registrant, Foreign Lawyer, Foreign Legal Consultant, and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia.

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“Corporate Counsel Registrant” means a person who has been recorded by the Virginia State Bar as a Corporate Counsel Registrant pursuant to Rule 1A:5.

“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; 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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“Crime” means:

1. Any offense declared to be a felony by federal or state law;
2. Any other offense, ~~whether federal or state~~, involving theft, fraud, forgery, extortion, bribery, or perjury; ~~or~~
3. An attempt, solicitation or conspiracy to commit any of the foregoing; or
4. Any of the foregoing found by a foreign jurisdiction.

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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 ~~to practice law~~ has been ~~surrendered with charges pending~~ 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

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“Disciplinary Rules” means:

1. the Virginia Rules of Professional Conduct and Virginia Code of Professional Responsibility, as applicable; and
2. the disciplinary rules of any other jurisdiction applicable under Rule 8.5 of the Virginia Rules of Professional Conduct.

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“Foreign Lawyer” means a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Court or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

“Foreign Legal Consultant” means a person who has been issued a foreign legal consultant certificate by the Virginia Board of Bar Examiners pursuant to Rule 1A:7.

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“License” means the license or authority to practice law granted by this Court.

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“Reinstatement” means the restoration by this Court of an Attorney’s License ~~to practice law~~ in the manner provided in this Paragraph.

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“Revocation” means any revocation of an Attorney’s License; and, ~~to practice law and includes a revocation of such License as the result of a voluntary surrender by an Attorney of the Attorney’s License to practice law as provided in this Paragraph.~~ when applied to a lawyer not admitted or authorized to practice law in Virginia, means the exclusion from the admission to, or the exercise of any privilege to, practice law in Virginia.

* * *

“Suspension” means the temporary suspension of an Attorney’s License ~~to practice law~~ for either a fixed or indefinite period of time and, when applied to a lawyer not admitted or authorized to practice law in Virginia, means the temporary or indefinite exclusion from the admission to, or the exercise of any privilege to, practice law in Virginia.

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13-4 ESTABLISHMENT OF DISTRICT COMMITTEES

A. Creation of District Committees. Council shall appoint a sufficient number of District Committees to carry out the purposes of this Paragraph. District Committees shall be

established in geographical areas consisting of one or more judicial circuits. In creating the District Committee areas, Council shall give due consideration to Attorney population and the community of interest among different judicial circuits within a District Committee area. Each District Committee shall consist of ten, or in the discretion of Council, 20, 30 or 40 members. Three members of a ten-member District Committee, six members of a 20-member District Committee, nine members of a 30-member District Committee, and 12 members of a 40-member District Committee shall be nonlawyers. All other members shall be active members of the Bar. Former members of a District Committee may serve on a District Committee Subcommittee or participate in a District Committee hearing whenever the District Committee Chair determines that such service is necessary for the orderly administration of the District Committee's work.

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E. Qualification of Members. Before nominating any individual for membership on a District Committee, the Council members making such recommendation shall first determine that the nominee is willing to serve on the District Committee and will conscientiously discharge the responsibility as a member of the District Committee. Council members making the nominations shall also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the District Committee, if elected. In order to be considered as a potential appointee to a District Committee, each potential appointee shall execute the following: (1) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and any pending Complaints from any jurisdiction for purposes of the appointment process; and an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process. No member of Council shall be a member of a District Committee.

13-5 AUTHORITY AND DUTIES OF COLD

All powers and duties of Council, with respect to the Disciplinary System, except the power to appoint District Committee members, may be exercised by COLD, subject to the direction and control of Council. Notwithstanding any rule to the contrary, any member of COLD may attend proceedings of the Subcommittees, District Committees or the Board. Service by an Attorney on COLD shall be deemed to be a professional relationship within the meaning of Disciplinary Rules 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Disciplinary Rules 1.11 and 1.12. Consent under Disciplinary Rules 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar. The membership of COLD shall consist of twelve persons, ten of whom shall be active members of the Bar and two shall be nonlawyers. In addition, a vice chair of the Board shall be an ex-officio, nonvoting member.

13-6 DISCIPLINARY BOARD

A. Appointment of Members. This Court shall appoint, upon recommendation of Council, 20 members of the Board, 16 of whom shall be active members of the Bar and four of whom shall be nonlawyers. One Attorney member shall be designated by the Court as Chair and two Attorney members as Vice Chairs, upon recommendations of Council. Before nominating any individual for membership on the Board, the Bar's nominating committee shall first determine that the nominee is willing to serve on the Board and will conscientiously discharge the responsibilities as a member of the Board. The Bar nominating committee shall also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the Board, if

elected and appointed. In order to be considered as a potential appointee to the Board, each potential appointee shall execute the following: (1) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and pending Complaints from any jurisdiction for purposes of the appointment process; and (2) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process.

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G. Additional Board Powers. The Board shall have the following powers in addition to all other powers granted to the Board:

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2. On its own motion or upon request by Bar Counsel or the Respondent, to summon and examine witnesses under oath or affirmation administered by any member of the Board and to compel the attendance of witnesses and the production of documents necessary or material to any proceeding. Any summons or subpoena may be issued by any Board member or the Clerk of the Disciplinary System and shall have the force of and may be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar or, if the Respondent is a Foreign Lawyer, a lawyer engaged, *pro hac vice* in the practice of law in Virginia, or a lawyer not admitted in Virginia, when mailed by first class mail to the Clerk of the Supreme Court of Virginia. ~~in the same manner as other notices served upon Respondents under this Paragraph;~~

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13-7 DISTRICT COMMITTEES

A. Powers. Each District Committee and Section thereof shall have the power to:

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4. Issue, through any of its Attorney members or through Bar Counsel, any summons or subpoena necessary to compel the attendance of witnesses and the production of documents or evidence necessary or material to any Investigation or Disciplinary Proceeding. Any such summons or subpoena issued to a non-Attorney shall have the force of and be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar or if the Respondent is a Foreign Lawyer, a lawyer engaged, *pro hac vice* in the practice of law in Virginia, or a lawyer not admitted in Virginia, when mailed by first class mail, to the Clerk of the Supreme Court of Virginia. ~~in the same manner as other notices served upon Respondents under this Paragraph;~~

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B. Creation of Subcommittees. The Chair shall appoint one or more Subcommittees of each District Committee. Where a District Committee is divided into two or more Sections, there shall be one or more Subcommittees of each Section, as determined by the respective District Committee Section Chair. Each Subcommittee shall consist of three members of that District Committee or that Section of the District Committee. Two members of a Subcommittee shall be ~~Attorneys~~ members of the Bar, one of whom shall be appointed by the District Committee or Section Chair to act as Chair of that Subcommittee, and one member of the Subcommittee shall be a ~~non-attorney~~ lawyer member.

* * *

J. Service by ~~an Attorney~~ a Member of the Bar and Professional Relationship. Service by ~~an Attorney~~ a member of the Bar on a District Committee shall be deemed to be a professional relationship within the meaning of Disciplinary Rules 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Disciplinary Rules 1.11 and 1.12.

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13-8 BAR COUNSEL

A. Authority. Bar Counsel shall have the authority, to the extent provided in this Paragraph and subject to the general supervision of COLD, to:

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4. Examine the accounts described in the preceding subparagraph A.3. at any time when Bar Counsel reasonably believes that such accounts may not be in compliance with the Disciplinary Rules. In every instance in which Bar Counsel initiates examination of accounts or issues any summons or subpoena in the conduct of an examination or an Investigation concerning accounts, other than on the basis of a Complaint against the Attorney, Bar Counsel shall file a written statement as part of the record setting forth the reasons supporting the belief that the accounts may not comply with the Disciplinary Rules. A copy of this written statement shall be ~~delivered to~~ served upon the Attorney who is the subject of the Investigation when an examination has begun or any summons or subpoena has been issued;

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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:

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2. All cases against a Respondent who ~~surrenders his or her License to practice law at a time when charges are pending;~~ consents to revocation;

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13-12 SUBSTANTIAL COMPLIANCE, NOTICE AND EVIDENTIARY RULINGS, AND ADDRESS NOTIFICATION

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C. Service. Whenever any notice or other writing directed to the Respondent is required or permitted under this Rule, such notice or other writing shall be deemed effective and served when mailed by certified mail, ~~return receipt requested,~~ to the Respondent at the Respondent's last address on record for membership purposes with the Bar, or if the Respondent is a Foreign Lawyer, a lawyer engaged, *pro hac vice* in the practice of law in Virginia, or a lawyer not admitted in Virginia, when mailed by first class mail, to the Clerk of the Supreme Court of Virginia.

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G. English Required. All communication with the Bar, whether written or oral, shall be in English.

13-13 PARTICIPATION AND DISQUALIFICATION OF COUNSEL

A. Attorney for Respondent. A Respondent may be represented by a member of the Bar, or any member of the bar of any other jurisdiction while engaged *pro hac vice* in the practice of law in Virginia, at any time with respect to a Complaint.

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13-21 BOARD PROCEEDINGS UPON A FIRST OFFENDER PLEA

A. Action Upon Receipt of Notification. Whenever the Clerk of the Disciplinary System receives written notification from any court of competent jurisdiction stating that an Attorney has entered a plea to a Crime under a first offender statute, and that the court has found facts that would justify a finding of guilt and ordered that the Attorney be put on probation, the Board shall forthwith enter an order requiring the Attorney to appear at a specified time and place for a hearing before the Board to determine whether the Attorney's License ~~to practice law~~ should be revoked or suspended or, if not, whether the Attorney should be required to give notice, by certified mail, of the plea and probation ordered by the court, including the terms and duration of the probation, to all clients for whom the Attorney is currently handling matters, and to all opposing attorneys and the presiding judges in pending litigation. A copy of the written notification from the court shall be served with the order fixing the time and place of the hearing. The hearing shall be set not less than 14 or more than 30 days after the date of the Board's order.

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D. Attorney Compliance with Notice Requirements. If the Board or court suspends or revokes the Attorney's License ~~to practice law,~~ the Attorney must comply with the notice

requirements set out in subparagraph 13-29. If the Board or court orders the Attorney to give notice of the plea and court ordered probation, the Attorney shall give such notice within 14 days after the effective date of the Board's order and furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given. Issues concerning the adequacy of the notice shall be determined by the Board, which may suspend or revoke the Attorney's License for failure to comply with the above notice requirements.

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13-25 BOARD PROCEEDINGS FOR REINSTATEMENT

A. Waiver of Confidentiality. The filing by a former Attorney of a petition for ~~reinstatement~~ Reinstatement shall constitute a waiver of all confidentiality relating to the petition, and to the Complaint or Complaints that resulted in, or were pending at the time the former Attorney resigned or his or her License was revoked.

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C. Petition for Reinstatement After Revocation. After a Revocation, a Petitioner may petition this Court for Reinstatement, setting forth in that petition the reasons why his or her License to ~~practice law in Virginia~~ should be reinstated.

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D. Evidence Required for Reinstatement After Revocation. After a Revocation, Petitioner's License to ~~practice law~~ shall not be reinstated unless the Petitioner proves by clear and convincing evidence that Petitioner:

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J. Reinstatement Hearings. The Clerk of the Disciplinary System shall advise the Petitioner in writing upon receipt of a petition for Reinstatement from the clerk of this Court and arrange a hearing date with the Petitioner and Bar Counsel.

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4. Investigation. Bar Counsel shall conduct such Investigation and make such inquiry as it deems appropriate. On request of Bar Counsel, the Petitioner shall promptly sign such forms and give such permission as are necessary to permit inquiry of the Petitioner's background through ~~IRS~~ the Internal Revenue Service, NCIC the National Criminal Information Center, NCIN the National Criminal Information Network and any other similar information network or system.

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6. Bill of Particulars. On written request by Bar Counsel, served by certified mail, return receipt requested, a Petitioner seeking Reinstatement shall file with the Clerk of the Disciplinary System within 21 days after ~~receipt~~ service of the request, an original and six copies of a bill of particulars setting forth the grounds for Reinstatement.

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13-26 APPEAL FROM BOARD DETERMINATIONS

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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~~ 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 to ~~practice law~~ has been revoked by either the Summary or Memorandum Order of the Board.

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13-28 CONSENT TO REVOCATION

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C. Procedure. The Clerk of the Disciplinary System shall submit the affidavit to Bar Counsel, who shall investigate the affidavit and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the affidavit with the Clerk of the Disciplinary System, the Board shall hold a hearing on whether the affidavit and consent to Revocation should be accepted. If Bar Counsel does not file an objection, the Board shall enter an order revoking the Attorney's License to ~~practice law~~ by consent without a hearing.

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