

Inside the Office of Bar Counsel

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Upon a finding of ethical misconduct, or that an attorney has been found guilty of certain crimes by a judge or jury, or that an attorney has been suspended or disbarred in another jurisdiction, the Disciplinary Board may suspend an attorney's license for a stated period of time not in excess of five years. See Part IV, Paragraph 13 of the Rules of the Virginia Supreme Court. By statute, a three-judge circuit court can also suspend an attorney's license pursuant to the rules and procedures set out in Paragraph 13. See Va. Code § 54.1-3935.B. (1998 Repl. Vol.).

This column addresses some common questions about attorney suspensions. What does a suspension imposed through the attorney disciplinary process mean? What is an administrative suspension? How are attorney suspensions publicized? What must a suspended lawyer do in order to be reinstated to practice? How many lawyers receive disciplinary or administrative suspensions each year? Who keeps track of disciplinary and administrative suspensions?

The term "suspension" is not defined in Paragraph 13 of the Rules of the Virginia Supreme Court, which describes the procedures for disciplining, suspending and disbarring attorneys. However, by statute, to practice law in the Commonwealth of Virginia, a person must "hold a license or certificate to practice law under the law of the Commonwealth, and have paid the license tax prescribed by law." Va. Code § 54.1-3900 (1998 Repl. Vol.). Consequently, when an attorney's license is suspended, the attorney can no longer lawfully hold himself or herself out as an attorney licensed to practice law in Virginia or engage in the practice of law here.

Rule 5.5 of the Rules of Professional Conduct provides that a lawyer shall not practice law where doing so violates a regulation of the legal profession in that jurisdiction. The rule also precludes a lawyer, law firm or professional corporation from employing "**in any capacity** a lawyer whose license has been suspended or revoked for professional misconduct," while the lawyer is suspended or revoked, "if the disciplined lawyer was associated with the lawyer, law firm or professional corporation at any time on or after committing the acts that resulted in the discipline" (emphasis added). Finally, Rule 5.5 bars a lawyer, law firm or professional corporation that employs a suspended or revoked lawyer as a consultant, law clerk or legal assistant from representing "**any client represented by the disci-**

plined lawyer or by any lawyer with whom the disciplined lawyer practiced, on or after the date of the acts which resulted in suspension or revocation" (emphasis added). These strictures severely limit a suspended attorney's ability to continue to reap profits from his or her former law practice.

How are members of the public and the legal community advised that an attorney has been suspended from the practice of law for disciplinary rule violations? When the Disciplinary Board, or a three-judge circuit court, enters an order imposing a disciplinary suspension, the Clerk of the Disciplinary System notifies the Clerk of the Virginia Supreme Court and distributes copies of the suspension order to other state and federal courts, and press releases to newspapers or broadcast media in the area where the suspended lawyer's office is located. In small communities, a lawyer's suspension on disciplinary grounds may be front page news; in metropolitan areas, the media usually only reports disciplinary suspensions if the suspended lawyer is well-known.

Disciplinary suspensions are published in the *Virginia Lawyer Register* and summarized on the bar's Web site at www.vsb.org. The Clerk of the Disciplinary System routinely provides notices of suspensions to attorney regulatory agencies in North Carolina, Maryland and the District of Columbia, as well as to the ABA National Discipline Data Bank and *Martindale-Hubbell*. If the lawyer is known to be licensed to practice law in another jurisdiction not covered by the standard distribution list, the clerk will also notify the other jurisdiction of the suspension so that appropriate reciprocal action can be taken.

Disciplinary suspensions become part of an attorney's permanent disciplinary and membership records and can be disclosed upon request. Written and telephone inquiries regarding whether an attorney's license to practice law is, or has ever been, suspended for ethical misconduct should be directed to the Clerk of the Disciplinary System or the membership department.

Paragraph 13.K.(1) of the Rules of the Virginia Supreme Court requires an attorney who receives a disciplinary suspension to notify all clients for whom he or she is currently handling matters, and all opposing attorneys and judges in pending litigation, of the suspension, by certified mail, within fourteen

days of the effective date of the suspension order. Within forty-five days of the effective date of the suspension order, the attorney must make appropriate arrangements for the disposition of all client matters in conformity with the clients' wishes. Finally, within sixty days of the effective date of the suspension order, the attorney must furnish proof to the bar that the requisite notices have been timely given and appropriate arrangements made for the disposition of all cases.

The Disciplinary Board decides issues concerning the adequacy of a suspended attorney's compliance with the requirements of Paragraph 13.K.(1). The Clerk of the Disciplinary System, as well as members of the public and the judiciary, frequently bring non-compliance issues to bar counsel's attention, whereupon a show cause order may be issued to the suspended attorney. After a show cause hearing, the Disciplinary Board can impose additional sanctions, including revocation or further suspension of the suspended attorney's license, for failure to comply with Paragraph 13.K.(1).

After a disciplinary suspension of one year or less ends, assuming that the subject attorney has complied with the notice requirements, paid the costs assessed in connection with the underlying disciplinary proceeding and satisfied all administrative requirements, he or she is automatically reinstated to the practice of law in Virginia. Pursuant to Paragraph 13.J., an attorney suspended after July 1, 1990, for more than one year, must move the Disciplinary Board for reinstatement and present proof that he or she has attended twelve hours of continuing legal education for every year or fraction thereof that the attorney's license was suspended; taken and received an adjusted score of 75 or higher on the Multistate Professional Responsibility Examination; and reimbursed the Clients' Protection Fund for any sums of money that may have been paid as a result of the attorney's misconduct.

At the Annual Meeting held in June 1999, the Virginia State Bar Council voted to petition the Virginia Supreme Court to amend Paragraph 13.J. to include several additional requirements applicable to attorneys who have been suspended for more than one year: at least two hours of continuing legal education in the area of legal ethics or professionalism for every year or fraction thereof that the attorney's license was suspended; an adjusted scaled score of 85 or higher on the Multistate Professional Responsibility Examination; and payment to the bar of all costs assessed against him or her, plus interest. If adopted, the proposed rule changes will apply to all reinstatements initiated after the amended rule's adoption.

While Paragraph 13 authorizes disciplinary suspensions for ethical lapses, certain criminal convictions or attorney discipline in another jurisdiction, Paragraph 19 of the Virginia Supreme Court Rules provides for administrative suspension of an attor-

ney's license for failure to pay dues, complete the mandatory professionalism course and comply with continuing legal education requirements ("MCLE"). If an attorney is an active member of the bar, the attorney may also be administratively suspended for failure to certify his or her professional liability status, by marking on the annual dues statement whether the lawyer has professional malpractice insurance and if there are any unsatisfied judgments against him or her. A Virginia lawyer administratively suspended from the practice of law may no longer practice law in the Commonwealth or in any way hold himself or herself out as a member of the Virginia State Bar. Failure to heed administrative suspensions, which can be cured by satisfying the applicable administrative requirements and paying certain fees, can result in attorney discipline.

For example, last year the Disciplinary Board revoked the license of an attorney who had been administratively suspended after the suspended attorney appeared in court as counsel in a criminal proceeding. In response to a question from the court as to whether he was suspended from the practice of law, the attorney represented that although he had been suspended for failing to pay a fee, he had mailed the requisite payment the previous day. The evidence showed that the attorney's check was not in the mail when he made that representation. The bar administratively reinstated the attorney's license to practice law when the payment was finally received, but the Disciplinary Board subsequently revoked the attorney's license based upon his violation of the administrative suspension, misrepresentation to the court and prior disciplinary record.

Less severe disciplinary penalties may be imposed for violations of administrative suspensions, based upon the facts of the particular case and the respondent's prior disciplinary record. The Disciplinary Board imposed a ninety day suspension on a lawyer, who appeared in circuit court representing a criminal client, notwithstanding the fact that the lawyer was administratively suspended for non-payment of dues. The lawyer told the judge that his dues check must have crossed in the mail with the suspension notice but, when requested by the bar, could not produce any evidence that he had written such a check. The Fifth District Committee publicly reprimanded another lawyer, who took a slightly different tack from the usual "the check is in the mail" defense. When questioned by the trial judge, the lawyer admitted that he was administratively suspended from the practice of law, but argued that his court appearance and submission of signed pleadings filed with the court was not improper because he was representing his client on a pro bono basis.

In fiscal year 1999, nine Virginia attorneys received disciplinary suspensions. In fiscal year 1998, there were 13 disciplinary suspensions, 14 the prior fiscal year and 16 the year before that. On the other hand, 120 active members of the Virginia bar

were administratively suspended last year for failure to pay dues and/or certify their professional liability status. 104 active bar members were administratively suspended for failure to comply with MCLE requirements. Sixty-two of the attorneys administratively suspended in fiscal year 1999 were "dual suspendees," meaning that they were suspended for nonpayment of dues and/or failure to indicate professional liability status, plus failure to comply with MCLE requirements.

Associate members of the bar can be administratively suspended for non-payment of dues; last year 191 associate members were administratively suspended.

Administrative suspensions of active and associate members of the Virginia State Bar are published in the ***Virginia Lawyer Register*** and tracked by the bar's membership and mandatory continuing legal education departments.

Most attorneys who receive disciplinary suspensions of more than one year, and most attorneys who are administratively suspended, if they elect to seek reinstatement, are readmitted to the practice of law in the Commonwealth of Virginia. However, a small number of lawyers never seek to be reinstated after having been suspended, either for disciplinary or administrative reasons. And, a few suspended lawyers seek reinstatement but fail because they are unable to prove that they have complied with the requirements of Paragraph 13 or 19.

Keeping track of disciplinary and administrative suspensions is a laborious task, since an attorney's membership status may change from one moment to the next. While suspended lawyers constitute a small fraction of the more than thirty thousand lawyers who comprise the Virginia bar, without an integrated computer system, and diligent maintenance of disciplinary and membership records, it would be very difficult to state with a high degree of certainty at any given time whether a particular attorney is licensed to practice law in Virginia and/or lawfully engaged in the practice of law in this Commonwealth. 