

Proposed Rule Change Requiring Respondent to File an Answer When a Demand is Made for a Three Judge Circuit Court Pursuant to Virginia Code Section 54.1-3935

On May 5, 2004, the Standing Committee on Lawyer Discipline approved a proposed amendment requiring a Respondent to file an answer when making a demand that proceedings before a district committee or the Disciplinary Board be terminated and conducted pursuant to Virginia Code Section 54.1-3935.

Part 6, Section IV, Paragraph 13 of the Rules of the Virginia Supreme Court

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS.

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H. District Committee Proceedings

1. Pre-Hearing Matters

a. Charge of Misconduct

- (1) If the Subcommittee determines that a hearing should be held before a District Committee, Bar Counsel shall, at least 42 days prior to the date fixed for the hearing, serve upon the Respondent by certified mail the Charge of Misconduct, a copy of the Investigative Report considered by the Subcommittee and any exculpatory materials in the possession of Bar Counsel.
- (2) After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct:
 - (a) file an answer to the Charge of Misconduct, which answer ~~that~~ shall be ~~conclusively~~ deemed ~~to be a~~ consent to the jurisdiction of the District Committee; or
 - (b) file an answer to the Charge of Misconduct and a demand that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935, whereupon further proceedings before the District Committee shall terminate, and Bar Counsel shall file the Complaint required by Va. Code § 54.1-3935.

- (3) If the Respondent fails to file an answer, or an answer and a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the District Committee.

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I. Board Proceedings

1. Pre-Hearing Matters

a. Procedure on Certification to the Board

- (1) After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent shall, within 21 days after service of the Certification:
 - (a) file an answer to the Certification, which answer ~~that~~ shall be ~~conclusively~~ deemed ~~to be a~~ consent to the jurisdiction of the Board; or
 - (b) file an answer to the Certification and a demand that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935, whereupon further proceedings before the Board shall terminate, and Bar Counsel shall file the Complaint required by Va. Code § 54.1-3935.
- (2) If the Respondent fails to file an answer, or an answer and a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.
- (3) The Board shall set a date, time, and place for the hearing, and shall serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing.

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*Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than **June 11, 2004**. The Virginia State Bar Council will consider the proposed amendments when it meets on June 17, 2004, in Virginia Beach, Virginia. ■*