

## Proposed Rule Change

### Alternate Sanction For Failure to Complete Terms of Public Reprimand With Terms

*Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, and should be received no later than January 31, 2003.*

On October 1, 2002, the Standing Committee on Lawyer Discipline (COLD) approved proposed amendments to the Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13.A.,

13.G. 5.(1) and (2); 13.H.2.p. and 13.I.4. The proposed amendments provide an alternative disposition for a public reprimand with terms issued by a subcommittee or a district committee. The alternative sanction would be a certification to the Disciplinary Board for determination of whether the respondent's license to practice law in the Commonwealth of Virginia should be suspended or revoked for failure to comply with the terms imposed by a district committee.

#### Part Six, Section IV, Paragraph 13.H.2. of the Rules of the Virginia Supreme Court

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

##### A. Definitions

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“Certification for Sanction Determination” means the document issued by a District Committee to certify to the Board that a sanction within the power of the Board is in order where the District Committee has found that Respondent failed to fulfill the terms of a Public Reprimand with Terms issued either by a Subcommittee on the basis of an Agreed Disposition or by a District Committee.

\* \* \*

##### B. Authority of the Courts, Council, COLD, the Board, District Committees, Bar Counsel, and the Clerk of the Disciplinary System:

##### 5. Authority and Duties of the Board:

##### a. The Board shall have jurisdiction to consider:

\* \* \*

(11) failure of Respondent to fulfill the terms of a Public Reprimand with Terms certified to it by a District Committee for sanction determination.

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##### c. Agreed Disposition

Whenever Bar Counsel and Respondent are in agreement as to a Charge of Misconduct or a Certification for Sanction Determination and desire to enter into an Agreed Disposition of the Charge of Misconduct or Certification for Sanction Determination, the parties may submit a proposed Agreed Disposition to five members of the Board selected by the Chair. The five members so selected will constitute a Panel. If the proposed Agreed Disposition is accepted by a majority of the Panel so selected, the Agreed Disposition will be adopted by order of the Board. If the Agreed Disposition is not accepted by the Panel, the Charge of Misconduct or Certification for Sanction Determination will then be set for hearing before another Panel of the Board at the ear-

liest possible date. No member of the Panel which considered the proposed Agreed Disposition shall be assigned to the Panel which hears the Charge of Misconduct or Certification for Sanction Determination.

\* \* \*

##### G. Subcommittee Action:

##### 5. Enforcement of Terms

##### (1) Procedure in All Terms Cases:

If a Subcommittee imposes Terms, the Subcommittee shall specify the time period within which compliance with the Terms shall be completed. If Terms have been imposed against a Respondent, that Respondent shall deliver a certification of compliance with such Terms to Bar Counsel within the time period specified by the Subcommittee.

If a Subcommittee issues a Dismissal with Terms, a Private Reprimand with Terms, or a Public Reprimand with Terms based on an Agreed Disposition, the Agreed Disposition shall specify the alternative disposition to be imposed if the Terms are not complied with or if the Respondent does not certify compliance with Terms to Bar Counsel. If the Respondent does not comply with the Terms imposed or does not certify compliance with Terms to Bar Counsel within the time period specified, Bar Counsel shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee chair. The burden of proof shall be on the Respondent to show timely compliance and timely certification by clear and convincing evidence. If the District Committee determines that the Respondent failed to comply with the Terms or failed to certify compliance within the stated time period, the alternative disposition shall be imposed. Bar Counsel

*continued on page 10*

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shall be responsible for monitoring compliance with Terms and reporting any noncompliance to the District Committee.

(2) Alternative Disposition for Public Reprimand with Terms:

The alternative disposition for a Public Reprimand with Terms shall be a Certification For Sanction Determination unless the Respondent has entered into an Agreed Disposition for the imposition of an alternative disposition of a specific period of Suspension of license.

\* \* \* \*

H. District Committee Proceedings:

\* \* \*

2. Hearing Procedure:

\* \* \*

p. Enforcement of Terms:

(1) Procedure in All Terms Cases:

In all cases where Terms are included in the disposition, the District Committee shall specify the time period within which both compliance shall be completed and, if required, the Respondent shall deliver a written certification of compliance to Bar Counsel. The District Committee shall specify the alternative disposition if the Terms are not complied with or certified to Bar Counsel. Bar Counsel shall be responsible for monitoring compliance with Terms and reporting any non-compliance to the District Committee. Whenever it appears that the Respondent has not complied with the Terms imposed or certified compliance, Bar Counsel shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee chair. The burden of proof shall be on the Respondent to show compliance by clear and convincing evidence. If the Respondent fails to comply with the Terms within the stated time period or fails to certify compliance, as determined by the District Committee, the alternative disposition shall be imposed.

(2) Alternative Disposition and Procedure for Public Reprimand with Terms:

(a) The alternative disposition for a

Public Reprimand with Terms shall be a Certification For Sanction Determination.

(b) Upon a decision to issue a Certification for Sanction Determination, Bar Counsel shall order the transcript of the show cause hearing and file it and a true copy of the Public Reprimand with Terms determination with the Clerk of the Disciplinary System.

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I. Board Proceedings:

\* \* \*

4. Proceedings Upon Certification for Sanction Determination:

a. Initiation of Proceeding:

Upon receipt of the Certification for Sanction Determination from a District Committee the Clerk of the Disciplinary System shall issue a Notice of Hearing on Certification for Sanction Determination giving Respondent the date, time and place of the proceeding and a copy of the Certification for Sanction Determination.

b. Proceeding upon the Record:

The proceeding shall be conducted upon the record which shall consist of the Public Reprimand with Terms determination issued by either a Subcommittee or a District Committee, the transcript of the District Committee show cause hearing, and the Certification for Sanction Determination.

c. Evidence and Argument:

(1) Evidence only of mitigation and aggravation with respect to compliance or certification shall be permitted in the proceeding.

(2) Argument shall be conducted as in the sanction phase of a Misconduct case.

d. Sanction:

The Board may impose a sanction of Suspension or Revocation of license.

~~4.5.~~ Proceedings Upon First Offender Plea, Guilty Plea or Adjudication of a Crime

~~5.6.~~ Proceedings Upon Disability

~~6.7.~~ Proceedings Upon Disbarment, Revocation, or Suspension in Another Jurisdiction

~~7.8.~~ Reinstatement Proceeding

~~8.9.~~ Reinstatement Hearings

## Proposed Changes Related to Virginia State Bar Matters Under the Consumer Real Estate Settlement Protection Act

*Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and should be received no later than January 31, 2003.*

These proposed changes result from the deliberations of the Disciplinary Board and the Standing Committee on Lawyer Discipline [COLD]. COLD approved the proposal on September 10, 2002.

The proposal would effect the following procedural changes:  
1) Authorize the bar to dismiss unfounded CRESPA complaints;

2) Allow respondents to submit written responses to CRESPA complaints but prevent respondents from initiating hearings on CRESPA complaints; 3) Permit the bar to initiate a hearing on CRESPA violations that were rectified after receipt of a CRESPA complaint; 4) Set forth a concise statement of policy and procedure governing the CRESPA regulations and the conduct of CRESPA violations hearings; 5) Establish clear and convincing evidence as the standard of proof for CRESPA hearings; and 6) Clarify that a respondent's prior disciplinary record and prior record of CRESPA violations shall be furnished to the Disciplinary Board in the sanction stage of a CRESPA hearing.

### VIRGINIA STATE BAR REGULATIONS UNDER THE VIRGINIA CONSUMER REAL ESTATE SETTLEMENT PROTECTION ACT

#### 15 VAC 5-80-10. Authority; Applicability; Scope.

These Regulations are issued, effective July 1, 1997, by the Virginia State Bar pursuant to and under the authority of the Virginia Consumer Real Estate Settlement Protection Act, Title 6.1, Chapter 1.3, Code of Virginia, as enacted by the 1997 session of the General Assembly of Virginia. The Act does not apply to licensed attorneys who provide escrow, closing or settlement services solely for public bodies, as defined in §§ 11-37, Code of Virginia; thus, such attorneys are exempt from the registration, certification and separate fiduciary trust account requirements set forth in these Regulations.

CRESPA, and therefore these Regulations, applies to transactions involving the purchase of or lending on the security of real estate located in Virginia containing not more than four residential units. In addition, effective July 1, 1999, a lay settlement agent may provide escrow, settlement and closing services for transactions involving any real property located in Virginia, provided the agent is registered under and in compliance with CRESPA. See Real Estate Settlement Agent Registration Act, Va. Code §§ 6.1-2.30 through 6.1-2.32 (1999). Lawyer settlement agents are not required to register under CRESPA unless the transaction involves the purchase of or lending on the security of real estate located in Virginia containing not more than four residential dwelling units.

#### 15 VAC 5-80-20. Definitions.

The following words and terms, when used in these Regulations, shall have the following meaning unless the context clearly indicates otherwise:

~~“CRESPA” means the Virginia Consumer Real Estate Settlement Protection Act. Unless otherwise defined herein, all terms in these Regulations shall have the meanings set forth in CRESPA.~~

“Attorney” means a person licensed as an attorney under Chapter 39 ( §§ 54.1-3900 et. seq.), of Title 54.1 of the Code of Virginia, and who is an active member of the Virginia State Bar in good standing under the Rules of the Virginia Supreme Court.

“Bar” means the Virginia State Bar.

“Board” means the Virginia Real Estate Board.

“CRESPA” means the Virginia Consumer Real Estate Settlement Protection Act. Unless otherwise defined herein, all terms in these Regulations shall have the meanings set forth in CRESPA.

“Disciplinary Board” means the Virginia State Bar Disciplinary Board.

“Financial Institution” has the meaning set forth in §§ 6.1-2.1, Code of Virginia.

“First dollar coverage” means an insurance policy which obligates the company issuing the policy to pay covered claims in their entirety, up to the policy limits, regardless of the presence of a deductible amount to which the company may be entitled as a reimbursement from the insured.

“SCC” means the Virginia State Corporation Commission.

“These regulations” means 15 VAC 5-80-10 et seq., Regulations under the Virginia Consumer Real Estate Settlement Protection Act.

#### 15 VAC 5-80-30. Registration; Reregistration; Required Fee.

Every licensed attorney, title insurance company, title insurance agent or real estate broker, as well as every financial institution authorized to do business in Virginia under any of the provisions of Title 6.1, Code of Virginia, or under federal law, and every subsidiary or affiliate of any such financial institution, now providing or offering, or intending to provide or offer, escrow, closing or settlement services as a settlement agent with respect to real estate transactions in Virginia shall register with the Bar on or before September 29, 1997, using the registration form available from the Bar for that purpose. Settlement agents beginning to provide or offer such services after July 1, 1997, shall register with the Bar prior to doing so. The registration requirement in this paragraph shall not apply to attorney settlement agents unless they provide or offer to provide escrow, settlement and closing services for real estate subject to CRESPA, i.e., real estate containing not more than four residential dwelling units. Thus, for example, attorneys who handle only commercial real estate transactions are not subject to these Regulations.

~~Every settlement agent shall thereafter re-register after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty~~

~~to advise the Bar of any change in name, address or other pertinent registration data that occurs between registrations.~~

Every settlement agent shall thereafter reregister after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty to advise the Bar of any change in name, address or other pertinent registration data that occurs between registrations.

The fee for each registration and re-registration shall be \$35.00 for an individual settlement agent and \$100 for a settlement agent which is a corporation or other legal entity authorized to register in that capacity. The Bar reserves the right to adjust the fee as necessary within the statutory limit of \$100. The prescribed fee shall accompany each registration or re-registration in the form of a check made payable to the Treasurer of Virginia.

Registration is subject to revocation or suspension if the Bar or other appropriate licensing authority finds the settlement agent out of compliance with CRESPA or Regulations issued thereunder.

**15 VAC 5-80-40. Unauthorized Practice of Law Guidelines; Investigation of Complaints.**

The Bar will issue guidelines under CRESPA and in consultation with the SCC and the Board to assist settlement agents in avoiding and preventing the unauthorized practice of law in connection with the furnishing of escrow, closing or settlement services. In conformity with CRESPA, the Rules of the Virginia Supreme Court and the Bar's UPL opinions, these guidelines will delineate activities which can and cannot be carried out by registered non-attorney settlement agents in conducting settlements. The guidelines will be revised from time to time as necessary.

A copy of the guidelines will be provided by the Bar to each registered settlement agent at the time of initial registration and at each reregistration. The guidelines will also be published by the Bar in the Virginia Lawyer Register and furnished to the SCC, the Board, and all other state and federal agencies that regulate financial institutions, as well as to members of the general public upon request. The guidelines may be photocopied as necessary.

The Bar will continue to receive and investigate unauthorized practice of law complaints in the real estate settlement area, as well as in other fields, under its unauthorized practice of law rules and procedures.

If the Bar receives complaints against non-attorney settlement agents that do not allege the unauthorized practice of law, it will refer the complaints to the appropriate licensing authority that has jurisdiction over the subject of the complaint. If the complaint involves noncompliance with 15 VAC 5-80-30. (Registration; Reregistration; Required Fee) of these Regulations, the Bar will conduct an informal investigation. If the Bar believes a violation has occurred, it will notify the settlement agent in writing. If the apparent violation is not rectified within thirty (30) days, the Bar will refer the matter to the appropriate licensing authority for further enforcement action.

**15 VAC 5-80-50. Attorney Settlement Agent Compliance.**

**A. Attorney Settlement Agent Certification.**

Each attorney settlement agent shall, at the time of initial registration and each subsequent re- registration, certify on the form avail-

able from the Bar for that purpose, that the attorney settlement agent has in full force and effect the following insurance and bond coverages, and that such coverages will be maintained in full force and effect throughout the time the attorney settlement agent acts, offers or intends to act in that capacity:

1. A lawyer's professional liability insurance policy issued by a company authorized to write such insurance in Virginia providing first dollar coverage and limits of at least \$250,000 per claim covering the licensed attorney acting, offering or intending to act as a settlement agent. The policy may also cover other attorneys practicing in the same firm or legal entity.
2. A blanket fidelity bond or employee dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia providing limits of at least \$100,000 covering all other employees of the attorney settlement agent or the legal entity in which the attorney settlement agent practices.
3. A surety bond issued by a company authorized to write such bonds in Virginia, on a form approved by the Virginia State Bar, providing limits of at least \$100,000 covering the licensed attorney acting, offering or intending to act as a settlement agent. A copy of the approved bond form is available from the Bar. The bond may also cover other attorney settlement agents practicing in the same firm or legal entity. The original surety bond must be attached to the attorney settlement agent's certification form and furnished to the Bar; a surety bond on which a law firm is named as principal may be furnished by the firm or any one attorney settlement agent in the firm, with other such attorney settlement agents in the same firm attaching a copy to their forms.

The Bar reserves the right to require other evidence of the above insurance and bond coverages beyond the attorney's certification and surety bond, at its discretion.

An attorney settlement agent who has no employees other than the attorney settlement agent or other licensed owner(s), partner(s), shareholder(s), or member(s) of the legal entity in which the attorney settlement agent practices may apply to the Bar for a waiver of the coverage required in subsection A.2. above, using the waiver request form available from the Bar. Such waiver requests will be acted on by the Executive Committee of the Bar, whose decision shall constitute final action by the agency.

**B. Separate Fiduciary Trust Account.**

Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer

trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

C. Settlement Statements.

All settlement statements for escrow, closing and settlement services governed by CRESPA and these Regulations shall be in writing and identify, by name and business address, the settlement agent.

D. Complaints Against Attorney Settlement Agents.

The Bar shall receive complaints and investigate alleged violations of CRESPA and/or these Regulations by attorney settlement agents.

If, after investigation, the Bar does not have reasonable cause to believe that one or more violations of CRESPA and/or these Regulations have occurred, the Bar may dismiss the complaint as unfounded.

If, after investigation, the Bar has reasonable cause to believe that one or more violations have occurred, the following procedures shall apply:

1. The attorney settlement agent shall be notified in writing of the alleged violation(s).
2. The attorney settlement agent shall have thirty (30) days from the date of such notification to ~~rectify the violation(s) and/or to request a hearing~~ respond in writing to the alleged violations. If, after receipt of the response, the Bar no longer has reasonable cause to believe that one or more violations of CRESPA and/or these Regulations have occurred, the Bar may dismiss the complaint as unfounded.
3. ~~If any violation is not rectified within thirty (30) days and/or~~ If the Bar believes the alleged violation presents or presented a risk to consumers protected under CRESPA, the Bar may request a hearing and issue an order requiring the attorney settlement agent to appear at the hearing, whether or not the attorney settlement agent has responded in writing to the notice of alleged violation(s) or the thirty day response time period has lapsed.
4. In conducting investigations of alleged violations of CRESPA and/or these Regulations by attorney settlement agents the Bar, by Bar Counsel, shall have the authority to issue summonses or subpoenas to compel the attendance of witnesses and the production of documents necessary and material to any inquiry.
4. The following shall be applicable to hearings on alleged violations of CRESPA and/or these Regulations: ~~hearing shall be held before the Bar's Disciplinary Board within sixty (60) days of the request by the attorney settlement agent or issuance of the Bar's order to appear.~~
  - a. Hearings shall be held before the Disciplinary Board within sixty (60) days of the issuance of the Bar's order to appear.
  - b. The standard of proof of violations of CRESPA or these regulations shall be clear and convincing evidence.

- c. Hearings shall be conducted in the same manner as attorney misconduct hearings as set out in Rules of Court, Part Six, Section IV, Paragraph 13.
- d. Agreed dispositions may be entered into in the same manner as agreed dispositions at the Disciplinary Board in attorney misconduct cases.
- e. The attorney settlement agent's prior disciplinary record and prior record of violations of CRESPA and/or these Regulations shall be made available to the Disciplinary Board during the sanction stage of a hearing. The prior record of violations of CRESPA and/or these Regulations may be made available to Bar subcommittees, district committees, the Disciplinary Board or a three-judge circuit court prior to the imposition of any sanction for attorney misconduct.
- f. ~~5. If, after the hearing,~~ the attorney settlement agent is found to have violated CRESPA and/or these Regulations, the attorney settlement agent may be subject to the following penalties, at the Disciplinary Board's discretion:
  - (1) ~~a.~~ A penalty not exceeding \$5,000 for each violation;
  - (2) ~~b.~~ Revocation or suspension of the attorney settlement agent's registration; and
  - (3) Any other sanction available to the Disciplinary Board in attorney disciplinary proceedings under the ~~R~~rules of the Virginia Supreme Court, including, but not limited to, revocation or suspension of the attorney settlement agent's license to practice law.
6. The Disciplinary Board shall assess costs in accordance with the same rules and procedures which apply to the imposition of costs in attorney misconduct cases.
7. All matters and proceedings pertaining to alleged violations of CRESPA and/or these Regulations are public. Related attorney misconduct cases shall be heard by the Disciplinary Board together with alleged violations of CRESPA and/or these Regulations. Any related disability issues shall be heard by the Disciplinary Board separately.
8. The Clerk of the Disciplinary System of the Bar shall maintain files and records pertaining to ended cases involving alleged violations of CRESPA and/or these Regulations. The Clerk shall follow the same file destruction policies which are utilized in attorney misconduct cases.
9. The Bar may proceed against an attorney settlement agent for alleged violations of CRESPA and/or these Regulations notwithstanding the attorney settlement agent has resigned from the practice of law, surrendered his or her license to practice law in the Commonwealth of Virginia or had his or her license to practice law in the Commonwealth of Virginia revoked.
10. An appeal from an order of the Disciplinary Board imposing sanctions under CRESPA and/or these Regulations shall be conducted in accordance with the provisions of Rules of Court, Part Six, Section IV,

Paragraph 13 pertaining to an appeal of an order of the Disciplinary Board imposing sanctions upon findings of attorney misconduct.

### Proposed Changes to Va Code §6.1-2.25

**The proposal would clarify the ability to include subpoena power for the bar in the Virginia State Bar CRESPA Regulations.**

**§6.1-2.25. Rules and regulations.** Except as provided in §6.1-2.26, the appropriate licensing authority may issue rules, regulations and orders, including educational requirements and summons and subpoena power, consistent with and necessary to carry out the provisions of this chapter. A title insurance company domiciled in this Commonwealth or acting in the capacity of a settlement agent pursuant to this chapter shall account for funds held and income derived from escrow, closing or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the National Association of Insurance Commissioners when filing the annual statements and reports required under Chapter 13.

### Proposed Changes to Paragraph 13.B.8.

**The proposal will allow the Clerk of the Disciplinary System to assess costs in cases in which sanctions are imposed for violations of CRESPA and the bar's CRESPA Regulations.**

Paragraph 13.B.8. Authority and Duties of the Clerk of the Disciplinary System

c. Costs

The Clerk of the Disciplinary System shall assess Costs against the Respondent in the following cases.

- (1) \* \* \*
- (2) \* \* \*

- (3) \* \* \*
  - (4) \* \* \*
  - (5) \* \* \*
  - (6) All cases before the Disciplinary Board in which sanctions were imposed for violations of CRESPA and/or the bar's CRESPA regulations.
- \* \* \*

### Proposed Changes to §54.1-3910.1

**The proposal will conform the citation regarding cost assessments to revised Paragraph 13.**

**§54.1-3910.1. Enforcement, etc., of costs.** Orders of the Disciplinary Board regarding unpaid costs assessed by the Clerk of the Disciplinary System pursuant to Part Six, Section IV, Paragraph 13, ~~(5)(10)~~ B.8.c. of the Rules of the Supreme Court may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order by the Disciplinary Board.

### Proposed Changes to §6.1-2.27

**The proposal will give the imposition of CRESPA fines by the Disciplinary Board the effect of a judgment.**

**§6.1-2.27. Penalties and liabilities.**

- A. \* \* \*
- B. \* \* \*
- C. \* \* \*
- D. A final order of the licensing authority imposing a penalty may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such order by the licensing authority.



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## Proposed Rule Change Requiring Respondent to Respond to Complaint

*Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and should be received no later than January 31, 2003.*

On October 1, 2002, the Standing Committee on Lawyer Discipline (COLD) approved proposed amendments to the Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13.A.,

13.G. 5.(1) and (2); 13.H.2.p. and 13.I.4. The proposed amendments provide an alternative disposition for a public reprimand with terms issued by a subcommittee or a district committee. The alternative sanction would be a certification to the Disciplinary Board for determination of whether the respondent's license to practice law in the Commonwealth of Virginia should be suspended or revoked for failure to comply with the terms imposed by a district committee.

### Part Six, Section IV, Paragraph 13.B.5.b.(6) and 13.C.4., 13.C.7. of the Rules of the Virginia Supreme Court

13. PROCEDURE FOR DISCIPLINING, SUSPENDING AND DISBARRING ATTORNEYS.

\* \* \*

B. Authority of the Courts, Council, COLD, the Board, District Committees, Bar Counsel, and the Clerk of the Disciplinary System

\* \* \*

5. Authority and Duties of the Board

\* \* \*

b. The Board shall have the following powers in addition to all other powers granted to the Board:

\* \* \*

(6) upon petition by Bar Counsel, to impose an interim Suspension if an Attorney fails to respond to any lawful demand for information of Bar Counsel and/or Bar Investigator(s) during an Investigation. In the event of alleged failure to respond, Bar Counsel may file with the Board and serve on the Attorney a petition requesting the Board to issue a rule to the Attorney to show cause why a suspension of the license of the Attorney should not be imposed until the Attorney responds to the inquiry. Upon issuance of the rule to show cause, the Attorney shall file with the Clerk of the Disciplinary System a written response to the rule within 15 days. If the Attorney does not file a written response to the rule within 15 days, the Board shall impose an interim Suspension of the Attorney's license until such time as the Attorney responds to the demand for information. Upon a timely filing of a written response to the rule, the Board shall conduct a hearing to determine whether the Attorney failed to respond to a lawful demand for information from Bar Counsel and/or Bar Investigator(s) and whether to

impose a Suspension of the Attorney's license for such failure.

\* \* \*

C. Initial Processing of Complaints by Bar Counsel

\* \* \*

4. Preliminary Investigation and Required Response

A preliminary Investigation may consist of obtaining a response, in writing, from the Respondent to the Complaint. The bar may share the response with the Complainant, so the Complainant may have an opportunity to provide additional information.

A Respondent shall respond in writing to a Complaint within 21 days from the date of the request from Bar Counsel, unless an extension has been granted. Failure to respond in writing shall constitute a violation of Rule 8.1(c) and may constitute a violation of Rule 8.1(d). A general denial of the allegations in the Complaint shall not constitute an acceptable response to a Complaint.

\* \* \*

7. Respondent's Duty to Respond During Investigation

a. A Respondent shall respond to all lawful demand for information of Bar Counsel during an Investigation. Failure to respond shall constitute a violation of Rule 8.1(c) and may constitute a violation of Rule 8.1(d). A general denial of Bar Counsel's demands for information shall not constitute an acceptable response.

b. Enforcement

Upon the failure of a Respondent to respond to a lawful demand for information of Bar Counsel during an Investigation, Bar Counsel shall petition the Board to issue a rule to show cause why an interim suspension should not be imposed until Respondent responds to the demand for information.

78. Report to Subcommittee

## Proposed Rule Change Service of Subpoenas Duces Tecum by Certified Mail

*Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and should be received no later than January 31, 2003.*

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### Part Six, Section IV, Paragraph 13.B.5.b(2) and 13.B.6.a.(4), of the Rules of the Virginia Supreme Court

13. PROCEDURE FOR DISCIPLINING, SUSPENDING AND DISBARRING ATTORNEY

\* \* \*

B. Authority of the Courts, Council, COLD, the Board, District Committees, Bar Counsel and the Clerk of the Disciplinary System

\* \* \*

5. Authority and Duties of the Board

\* \* \*

b. The Board shall have the following powers in addition to all other powers granted to the Board:

\* \* \*

(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 in the same manner as other notices served upon Respondents under this Paragraph.

\* \* \*

6. Authority and Duties of District Committee

a. Each District Committee and Section thereof shall have the power:

\* \* \*

(4) to 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 in the same manner as other notices served upon Respondents under this Paragraph.

VIRGINIA STATE BAR

# 2002 Professional Guidelines

The 2002 edition of the *Professional Guidelines*  
is available online only at  
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