

# Reconsideration of District Committee Decisions

On February 4, 2004, COLD approved an amendment to the procedures for reconsideration of a decision of a district committee. The amendment makes no substantive change to the existing procedures. However, the amendment improves the language of the existing rule.

## 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

##### 3. Reconsideration of Action by District Committees

~~a. No Charge of Misconduct dismissed by a District Committee shall be reconsidered except upon a unanimous vote of the Panel that heard the matter, unless the basis for reconsideration is material evidence not known or available when the matter was dismissed, in which case it may be reconsidered upon a simple majority vote of the Panel.~~

a. A Charge of Misconduct dismissed by a District Committee may be reconsidered only upon:

(1) a finding by a majority vote of the Panel that heard the matter originally that material evidence not known or available when the matter was originally presented has been discovered; or

(2) a unanimous vote of the Panel that heard the matter originally.

- b. No action by a District Committee imposing a sanction or certifying a matter to the Board shall be reconsidered unless a majority of the Panel that heard the matter votes to reconsider the sanction.
- c. No member shall vote to reconsider a District Committee action unless it appears to such member that reconsideration is necessary to prevent an injustice or warranted by specific exceptional circumstances militating against adherence to the initial action of the District Committee.
- d. District Committee members may be polled on the issue of whether to reconsider an earlier District Committee action.
- e. Any reconsideration of an earlier District Committee action must occur at a District Committee meeting, whether in person or by any means of communication which allows all members participating to simultaneously hear each other.

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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 **May 1, 2004**. The Virginia State Bar Council will consider the proposed amendments when it meets on June 17, 2004, in Virginia Beach, Virginia.*

## Admonition Without Terms Imposed by a Subcommittee *Sua Sponte*

In a rule change, which became effective on January 1, 2004, the phrase “admonition without terms” was adopted to describe one of the actions a subcommittee can take after considering a report of investigation and bar counsel’s recommended disposition of a complaint. The amended rule erroneously characterizes an “admonition without terms” as a dismissal rather than a disciplinary sanction. On February 4, 2004, COLD approved another amendment to the rule correcting this error.

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#### G. Subcommittee Action

- 1. Following receipt of the report of Investigation and Bar Counsel’s recommendation, the Subcommittee may refer the matter to Bar Counsel for further Investigation. Once the

Investigation is complete to the Subcommittee’s satisfaction, it shall take one of the following actions.

- a. Dismiss the Complaint when:
  - (1) as a matter of law the conduct questioned or alleged does not constitute Misconduct; or
  - (2) the evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged, or there is no credible evidence to support any allegation of Misconduct by Respondent, or the evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard; or
  - (3) the Subcommittee concludes that a Dismissal *De Minimis* should be imposed; or

- ~~(4)~~ the Subcommittee concludes that an Admonition without Terms should be imposed; or
- ~~(5)~~(4) the Subcommittee concludes that a Dismissal for Exceptional Circumstances should be imposed; or
- ~~(6)~~(5) the action alleged to be Misconduct is protected by superseding law.

In making the determination in subparagraphs (3) and (4) ~~or (5)~~, the Subcommittee shall have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of a dismissal which creates a Disciplinary Record ~~or an Admonition without Terms~~, may request a hearing before the District Committee.

- b. Impose an Admonition without Terms. In making this determination, the Subcommittee shall have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of an Admonition Without Terms, may request a hearing before the District Committee.
- ~~b.c.~~ Certify the Complaint to the Disciplinary Board pursuant to this Paragraph or file a complaint in a Circuit Court, pursuant to Va.

Code § 54.1-3935. Certification shall be based on a reasonable belief that the Respondent has engaged or is engaging in Misconduct that, if proved, would justify a Suspension or Revocation. In making this determination, the Subcommittee shall have access to Respondent's prior Disciplinary Record.

- ~~e.d.~~ Approve an Agreed Disposition imposing one of the following conditions or sanctions:
  - (1) Admonition, with or without Terms; or
  - (2) Private Reprimand, with or without Terms; or
  - (3) Public Reprimand, with or without Terms.
- ~~e.e.~~ Set the Complaint for hearing before the District Committee. In making this determination, the Subcommittee shall have access to Respondent's prior Disciplinary Record.

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