

COLD Proposed Amendments to Part Six, Section IV, Paragraph 13

The Virginia State Bar's Committee on Lawyer Malpractice Insurance is proposing the following amendments to Part 6, Section IV, Paragraph 13 of the *Rules of the Supreme Court of Virginia*.

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 15, 2005. The Virginia State Bar Council will consider the proposed amendments when it meets on **June 17, 2005**, in Virginia Beach, Virginia.

Notification to Clients

On February 2, 2005, COLD approved a proposed amendment requiring disbarred and suspended attorneys to notify the Clerk of the Disciplinary System when they have no clients to notify of their revocations or suspension pursuant to Paragraph 13.M. The subparagraph has also been reformatted.

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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M. Duties of Disbarred or Suspended Respondent


~~After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.~~

1. A Respondent whose License has been suspended or revoked shall within:
 - a. 14 days after the effective date of such Suspension or Revocation give written notice of his or her Suspension or Revocation to:
 - (1) all clients for whom he or she was handling legal matters and all attorneys and the presiding Judge or Judges or third party neutral in any pending legal matter in which the Respondent was counsel for a party on the effective date of the Suspension or Revocation; or

- (2) advise the Clerk of the Disciplinary System in writing that the Respondent had no clients for whom he or she was handling legal matters on the effective date of the Suspension or Revocation;
 - b. 45 days after the effective date of such Suspension or Revocation make appropriate arrangements for the disposition of legal matters then in his or her care in conformity with the wishes of his or her clients; and.
 - c. 60 days after the effective date of such Suspension or Revocation file with the Clerk of the Disciplinary System proof that such notices have been timely given, and such arrangements have been timely made for the disposition of matters.
2. For purposes of applying or interpreting this subparagraph M, the following rules apply:
 - a. Unless a stay of a Suspension is granted by this Court, the effective date of a Suspension or Revocation shall be the effective date of the order.
 - b. If a stay of a Suspension is granted by this Court the effective date of the Suspension shall be as finally determined upon termination of the appeal.
 - c. Only for purposes of this subparagraph M, the term "order" means the Summary Order or Memorandum Order imposing the Revocation or Suspension issued by the Board or a three-Judge Circuit Court pursuant to Va. Code Section 54.1-3935.
 3. The Board or a three-judge Circuit Court shall decide all issues concerning the adequacy and timeliness of the notices and arrangements required by subparagraph M and may impose a Revocation or additional Suspension for failure to comply with the requirements of subparagraph M.
 4. Procedure to Show Cause Upon Alleged Failure to Comply
 - a. Whenever it appears that the Respondent has failed to comply with the requirements of subparagraph M, Bar Counsel shall serve notice requiring the Respondent to show cause why the Board should not impose a Revocation or additional Suspension for said alleged failure.
 - b. Within 15 days after service of the notice to show cause, the Respondent shall:

- (1) file an answer that shall be conclusively deemed to be a consent to the jurisdiction of the Board; or
- (2) file an answer and a demand that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code §54.1-3935; and simultaneously provide available dates for a hearing to be scheduled not less than 30 nor more than 120 days from the demand.

Upon such answer, demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the Complaint required by Va. Code §54.1-3935.

- c. If the Respondent fails to file an answer, or file an answer, a demand and available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.
- d. The Board shall set a date, time, and place for the hearing, and the Clerk of the Disciplinary System shall serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing. 

Motion to Dismiss Improper During Investigation

On February 2, 2005, COLD approved a proposed amendment describing when a Respondent can present a motion to dismiss.

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E. Substantial Compliance, Notice, Evidentiary Rulings, Certain Motions to Dismiss Not Permitted

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- 6. A motion to dismiss a Complaint or Investigation by a Respondent shall not be permitted. Except for a motion to strike at the conclusion of the Bar's evidence or at the conclusion of all of the evidence in a hearing, a motion to dismiss Charges of Misconduct by a Respondent shall not be permitted. 