

Notice of Proposed Rule Change

Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond, Virginia 23219, and should be received no later than May 26, 2000.

The proposed amendment to Paragraph 13.B.(3) states, what has always been understood, that as allowed by the Rules of the Virginia Supreme Court and subject to the general supervision of the Standing Committee on Lawyer Discipline, Bar Counsel shall act independently and exercise prosecutorial autonomy and discretion in initiating, investigating, presenting or prosecuting bar complaints and other proceedings before subcommittee, district committees, the Disciplinary Board and three-judge circuit courts appointed by the Supreme Court of Virginia.

The rule seeks to insulate Bar Counsel from pressure by the public, members of the bar and others who seek to influence the outcome of attorney disciplinary actions, disability proceedings, reinstatement petitions and other matters relating to enforcement of the rules of professional conduct.

Part Six, Section IV, Paragraph 13.B.(3)

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

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B. Authority and Duties of the Council, the Standing Committee, Subcommittees, District Committees and Bar Counsel; Investigation and Prosecution of Complaints:

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3) Authority and Duties of Bar Counsel:

To the extent provided in this rule and subject to the general supervision of the Standing Committee, Bar Counsel shall initiate, investigate, present or prosecute Complaints or other proceedings before Subcommittees, District Committees, the Board and the Circuit Courts. In the course of performing these functions, Bar Counsel shall act independently and exercise prosecutorial autonomy and discretion. This includes the authority to examine the financial books and records maintained by an attorney for the practice of law, including, without limitation, any and all trust accounts, estate accounts, fiduciary accounts and operating accounts maintained by the attorney or his/her law firm. Bar Counsel may also examine an attorney's trust account whenever Bar Counsel reasonably believes that the trust account may not be in compliance with the Rules of Professional Conduct or the Code of Professional Responsibility. In the exercise of this authority, Bar Counsel may issue such summons or subpoenas as he/she may reasonably deem necessary for the effective conduct of an investigation or an examination of an attorney's trust account. In every case in which Bar Counsel initiates examination of an attorney's trust account or issues any summons or subpoena in the conduct of an examination of or an investigation concerning an attorney's trust account, other than on the basis of a Complaint against the attorney, Bar Counsel shall file a written statement as part of the record in the case setting forth the reasons supporting his/her belief that the subject trust account may not be in compliance with the Rules of Professional Conduct or the Code of Professional Responsibility. A copy of this written statement shall be delivered to the attorney whose trust account is the subject of the investigation when an examination is begun or any summons or subpoena is issued.

Ethics Counsel —

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from advertising specific or cumulative case results. Va. Standing Comm. Law. Advertising Op. A-0106 (Rev. 1998).

³² Va. Standing Comm. Law. Advertising Op. A-0102 (1993).

³³ Va. Standing Comm. Law. Advertising Op. A-0111 (1999) (lawyers should avoid the use of the terms "specialist" and "specializes in" relative to an area of practice unless such attorney is a "certified" or "recognized" specialist by an organization or entity, and the advertisement or public communication is accompanied by a disclaimer that there is no procedure in Virginia for approving such certifying organizations).

³⁴ Va. R. Prof. Cond., Rule 7.3 (f).

³⁵ Va. R. Prof. Cond., Rule 7.3 (a).

³⁶ Va. St. Bar Comm. on Lawyer Advertising Op. A-0111 (1999) (Lawyers who communicate on the Internet in "real time" chat rooms must abide by the restrictions on solicitation set forth in DR 2-103 [now Rule 7.3 (f)]. "In-person" communication in personal injury and wrongful death cases is prohibited, subject to certain exceptions, by DR 2-103(F) [now rule 7.3 (f)]. "In-person" communications include not only face to face communication but also "telephonic communication." The Committee believes that a lawyer who solicits employment in a "real time" chat room may not solicit employment in personal injury or wrongful death cases by communicating with the victim or their immediate family). ●