

Notice for Comment of Proposed Rule Change

Comments should be directed to Thomas A. Edmonds, Executive Director, VSB, Suite 1500, 707 East Main Street, Richmond, VA 23219 and should be received no later than November 1, 1998.

Part Six, Section IV, Paragraph 13.B(10)

Due to changes enacted by the 1998 session of the General Assembly, Va. Code Section 54.1-3935 [Procedure for revocation of license] now requires a three judge circuit court to adopt the rules and procedures of the bar's disciplinary system found in Rules of Court, Part Six, Section IV, Paragraph 13.

The proposed rule change results from consideration of the implementation of the statutory provision. The proposal was approved by the Standing Committee on Lawyer Discipline June 4, 1998.

The proposed rule change deals with appeals to a three judge court from a district committee decision. It adopts language which clarifies the appellate process and conforms the three judge court appellate procedure to that of the Disciplinary Board. Highlights of the proposal are the following:

1. A jurisdictional requirement for the filing of a transcript with the Clerk of the Disciplinary System is applied to an appeal to a three judge court. A failure to file the transcript shall result in the dismissal of the appeal by the Disciplinary Board and the end of the appeal. This is similar to the current process for an appeal to the Disciplinary Board from a district committee.
2. An appeal to a three judge court from a district committee shall be on the record just as in appeals to the Disciplinary Board.
3. The role of the Clerk of the Disciplinary System in an appeal to a three judge court is clarified.
4. The proceeding shall be public.

Amendments to ¶13.B(10) — Appeal Rules Subcommittee Docket No. 115

[13.B.(10)]

(10) Appeal from District Committee's Determination:

- (a) A Respondent as to whom a District Committee has determined to issue a private or public reprimand or to impose Terms, within ten days after notice thereof, may demand an appeal by filing with the Clerk of the Disciplinary System either a notice of appeal or a written demand that further proceedings be conducted pursuant to Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia. In either case, a copy shall be sent to the District Committee Chairman and to Bar Counsel.
- (b) When proceeding by notice of appeal or a written demand that further proceedings be conducted pursuant to Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia, the Respondent shall certify in the notice of appeal or written demand that he or she has ordered from the court reporter the transcript of the proceedings before the District Committee, at the Respondent's cost. Upon receipt

of such notice or written demand by the Clerk of the Disciplinary System, the imposition of any reprimand or term shall be stayed. No appeal shall lie from any sanction to which the Respondent has agreed. Upon receipt of the notice of appeal or written demand, Bar Counsel shall forward those portions of the Record in his or her possession to the Clerk. The transcript is part of the Record when it is received in the office of the Clerk of the Disciplinary System within 40 days after filing of the notice of appeal or written demand. The Clerk shall retain the Record until the transcript has been received or for 40 days after the notice of appeal or written demand has been received, whichever first occurs, and shall then dispose of the Record as provided in subparagraph D of this rule in case of an appeal to the Disciplinary Board and as provided by statute subparagraph (c) below in case of an appeal to a three-judge court the Court. Failure of the Respondent to make the transcript a part of the Record as specified herein shall result in dismissal of the appeal by the Disciplinary Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed by the District Committee. Bar Counsel shall initiate

the three-judge court process for the appeal only after receipt of the transcript by the Clerk of the Disciplinary System.

- (c) When proceeding by written demand that further proceedings be conducted pursuant to Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia, such proceeding shall be conducted before a duly convened three-judge court as an appeal on the Record pursuant to the same procedure for an appeal before the Board under subparagraph D herein, except that all such proceedings shall be public. The Clerk of the Disciplinary System shall forward the Record to the Clerk of the designated Circuit Court only upon receipt of the transcript as provided in subparagraph D of this rule to "Clerk" or "Clerk of the Disciplinary System" shall mean the Clerk of the designated Circuit Court when appropriate, and to "Board" shall mean the three-judge court.

Recommended by the Rules Subcommittee and approved by COLA on June 4, 1998.