

**STANDING COMMITTEE ON LAWYER DISCIPLINE**

*Robert E. Scully, Chair*

The Standing Committee on Lawyer Discipline (COLD) has general oversight responsibility for the operation of the bar's disciplinary system. Specific responsibilities include monitoring the performance of the office of bar counsel in the investigation and prosecution of disciplinary matters, monitoring district committees' disposition of complaints, recommending, to council, amendments to the rules providing the procedure for disciplining, suspending, and disbaring attorneys, and generally seeking to enhance the efficient and effective administration of the disciplinary system.

COLD is composed of ten active members of the bar and two nonlawyers. In addition, the vice-chair of the disciplinary board serves as an *ex-officio*, non-voting member. The committee meets monthly at the bar offices in Richmond. Each lawyer member of COLD serves as a liaison to one or more district committees. Each COLD liaison meets at least quarterly with the district committee's leadership, as well with the bar counsel assigned to the committee, to review the committee docket and discuss general administrative matters.

During fiscal year 2000–2001, John C. Johnson chaired COLD. I served as vice-chair and chair of the oversight subcommittee, which continued its random review of disciplinary files, as well as addressing complaints about the disposition of specific disciplinary matters when requested to do so by a party to the proceedings in question. In its random review of files and particular disciplinary matters, the oversight subcommittee determined whether bar counsel and district committees had followed the proper procedures in disposing of complaints and imposing discipline.

Steven G. Test chaired the rules subcommittee, which had an exceptionally heavy work load last fiscal year. The rules subcommittee was assigned the task of drafting rules implementing the recommendation of the Task Force on Public Access to the Attorney Disciplinary Process, constituted by President Joseph A. Condo and chaired by Bernard J. DiMuro. The task force recommended opening district committee hearings to the public and limiting the number of private sanctions an attorney can receive. John C. Johnson presented the proposed rule amendments, drafted by the rules subcommittee and approved by COLD, to council at its annual meeting in June. Council passed the amendments with some modifications. If the Supreme Court of Virginia adopts the proposed rule amendments, district committee hearings will be open to the public, and there will be a rebuttable presumption that an attorney should not receive more than two private sanctions within a ten year period.

In addition to the rules opening the disciplinary process further to the public, COLD proposed and council approved several other rule amendments, which the bar petitioned the Supreme Court of Virginia to adopt. By order dated April 13, 2001, the court amended Paragraph 13.B.(2) and c.(1) to specify how a prior disciplinary record or a criminal record affects a prospective candidate's eligibility for service on a district committee or the disciplinary board. The court also amended Paragraph 13.K.(9)(b) and (e) to address how the investigation and prosecution of a bar complaint affect an attorney's service on a district committee or the disciplinary board.

COLD proposed, but council tabled, amendments to paragraph 13.E. clarifying that the disciplinary board can suspend on a summary basis an attorney who pleads guilty to a crime as defined by Paragraph 13, or who enters a plea wherein the facts found by a court would justify a finding of guilty, as well as attorneys who are convicted of crimes.

Council approved proposed amendments to Paragraph 13.F. that, if adopted by the Supreme Court of Virginia, will facilitate the bar's investigation of attorneys who are apparently suffering from a disability.

The Special Committee to Rewrite the Procedural Rules, chaired by Frank B. Miller, continued its work on the mammoth task of consolidating Paragraph 13, the council rules of disciplinary procedure, and the disciplinary board rules of procedure into a unified, user-friendly, indexed set of rules. COLD members Steven G. Test and Rhysa A. South assisted the special committee with its work.

