

# REPORTS OF STANDING COMMITTEES

## 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 amendments to the rules on 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, with the vice chair of the Disciplinary Board serving as an ex-officio, non-voting member. The committee meets monthly at the bar offices in Richmond. Each lawyer member serves as liaison to one or more district committees. Each liaison meets at least quarterly with the district committee's leadership and with the bar counsel assigned to the committee in order to review the docket and discuss general administrative matters.

In fiscal year 2001–2002, President Michael A. Glasser requested COLD to create a Subcommittee on Disciplinary Efficiency. Dr. Michael Pratt, an economist at Virginia Commonwealth University, and Dr. Cyril Miller, a statistician with the Virginia Supreme Court, assisted the subcommittee with its work. The subcommittee's final report concluded that the attorney disciplinary system is reasonably efficient given the available resources but that greater efficiency is required to satisfy the expectations of the public and the bar. Therefore, the subcommittee recommended continued study of several topics, including: 1) the aspirational timelines; 2) continued use of special assistant bar counsel; 3) limited use of district committee members to conduct investigations; 4) the feasibility of mandatory fee dispute mediation; 5) the feasibility of requiring inmates to exhaust legal remedies before the bar will investigate a related bar complaint; and 6) the need for additional staff in the office of the bar counsel. These recommendations were presented to COLD, then to the council, and the topics identified were approved for further study.

Rhysa G. South, COLD vice chair, chaired the Oversight Subcommittee. It reviewed disciplinary files and addressed complaints about the disposition of specific disciplinary matters when requested to do so by a party to the proceeding in question. The random reviews required the Oversight Subcommittee to determine whether bar counsel and the district committees followed proper procedures in resolving complaints and imposing discipline.

The Rules Subcommittee, chaired by Eric F. Schell, drafted a number of proposed changes to Part Six, Section IV, Paragraph 13 of the Rules of Court that Council approved. The Supreme Court of Virginia subsequently adopted the following rule changes: 1) revisions to ¶13.B(2)(a)(iii), C(1)(c) and K(9)(b)(iii), setting out the criteria for eligibility for service on a district committee or the Disciplinary Board and termination of such service; 2) revisions to ¶13.E, that would allow a Respondent found guilty of a crime under a first offender statute to appear to show cause why his license to practice law should not be suspended; and 3) revisions to ¶13.I and J, that deal with procedures for an attorney's resignation when disciplinary charges are pending and reinstatement following a resignation with charges pending.

The Supreme Court of Virginia rejected the following proposed rule changes: 1) revisions to ¶13.B(10) and D. allowing limited appeal from district committee determinations by Bar Counsel; and 2) revisions to ¶13.B(7) allowing a district committee to suspend a lawyer's license for up to one year when the attorney failed to comply with the terms of a Public Reprimand With Terms.

The Supreme Court of Virginia is considering the following proposed rule changes: 1) revisions to ¶13.N, that deals with confidentiality and what records in the disciplinary system are public; 2) revision of the Rule 8.1 of the Rules of Professional Conduct to require attorneys to report criminal convictions, misconduct in other jurisdictions and their current address; 3) revisions to ¶13.B.5.a.(10); b.(1) and (3); 7.a.(1), (2), (4), (5), (6) and C.(5)(b) and (c), to allow the Disciplinary Board to suspend an attorney who fails to respond to a subpoena issued by the bar; 4) revisions to ¶13.H.2.(1)(c) and I.2.f.(3) calling for a dismissal of bar complaint if a panel of a district committee or the Disciplinary Board fails to reach a majority decision; and 5) revisions to ¶13. G.1., allowing a district committee subcommittee access to a Respondent's prior disciplinary record.

The Rules Subcommittee discussed a proposal requiring inmates to exhaust legal remedies before a disciplinary file could be opened, but the proposal was tabled for further consideration. The subcommittee also proposed, and Council approved, increasing the administrative fee assessed in connection with the prosecution of district committee cases from \$300 to \$500, and adding a fee of \$200 for district committee cases resolved by an agreed disposition.

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The Special Committee to Rewrite the Procedural Rules, chaired by Frank B. Miller, completed the consolidation of Paragraph 13 of Part 6, Section IV of the Rules of Court, the Council Rules of Disciplinary Procedure and the Disciplinary Board Rules of Procedure. Rhysa G. South served as the COLD liaison to the Special Committee. In February 2002, Council voted to petition the Supreme Court of Virginia to adopt the consolidated rules. Council approved additional proposed rule changes, and a revised petition, incorporating the new rule changes and revisions to the previously proposed rules was submitted to the Court on July 15, 2002.

COLD hosted a Disciplinary Conference for new and returning volunteers in Roanoke on July 12, 2001, and in Norfolk on July 19, 2001. 120 volunteers attended one of the conferences. Members of the press were also invited to attend the conferences, and the luncheon speakers were press corps members who spoke about the public's perception of the attorney disciplinary process.

