

## REPORTS OF STANDING COMMITTEES

### STANDING COMMITTEE ON LAWYER DISCIPLINE

*Eric F. Schell, chair*

The Standing Committee on Lawyer Discipline (COLD) is responsible for overseeing the operation of the Virginia State Bar's disciplinary system, including the bar's investigation and prosecution of disciplinary matters and district committees' disposition of complaints. COLD also proposes amendments to the VSB Council regarding Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, which govern the disciplinary process.

COLD held the annual Disciplinary Conference on July 17, 2003, at the bar offices in Richmond. Due to budget constraints, the 2003 conference was an abbreviated session for new district committee members only. Bernard J. DiMuro, past-president of the VSB, welcomed the attendees, and Roscoe B. Stephenson III, chair of the Disciplinary Board, spoke during lunch. The program included an overview of the disciplinary system, a mock trial video and presentation and discussion of case vignettes. The July 2004 Disciplinary Conference was to be for all board members, district committee members and lay volunteers. The conference will be held in Williamsburg.

Members of the Oversight Subcommittee randomly review disciplinary files to ensure that bar counsel are handling files in a procedurally correct fashion. This year the random reviews have not revealed any instances where files were improperly handled. The subcommittee also responds to complaints from complainants and respondents about the disposition and handling of disciplinary matters. Andrew H. Goodman chairs the Oversight Subcommittee.

Howard W. Martin chairs the Rules Subcommittee. The subcommittee proposed, and COLD approved, six amendments to Paragraph 13 that were presented to the VSB Council when it met on February 21, 2004. The subjects of the proposed amendments included show-cause hearing procedures, reconsideration of disciplinary determinations and substituting the term "impairment" for "disability" in the description of certain proceedings. The subcommittee proposed, and COLD approved, three proposed amendments to Paragraph 13 that were presented to the council when it met on June 17, 2004. The subjects of the proposed amendments included reconsideration of actions by district committees, admonitions without terms and pre-hearing matters. The council approved all proposed amendments. The subcommittee is currently reviewing the procedures governing three-judge panel hearings.

On July 16, 2003, the VSB petitioned the Supreme Court of Virginia to adopt amendments to Paragraph 13 that the council approved on June 19, 2003. The Court approved all the amendments in November 2003, and they took effect on January 1, 2004. The amendments include replacing the term "dismissal with terms" with "admonition with terms" in order to clarify that this disposition of a disciplinary matter constitutes a finding of misconduct that becomes a part of an attorney's disciplinary record. The amendments also provide for dismissal of pending disciplinary complaints without prejudice after an attorney's license has been revoked without the attorney's consent or when an attorney dies.

On March 5, 2004, the bar petitioned the Supreme Court of Virginia to adopt amendments to Paragraph 13 that the council approved on February 21, 2004. The proposed amendments include new procedures designed to expedite the three-judge panel hearing process, replacement of the term "disability" with "impairment" throughout Paragraph 13 and the procedure for reconsideration of a Disciplinary Board decision. The petition is still pending.

The professional regulation department has done an exceptional job of addressing complaints against attorneys. The number of complaints carried forward from 2003 was 1,018. By fiscal year-end, the number of complaints carried forward into 2005 was 779. The backlog has been reduced primarily through the efforts of the VSB investigators and bar counsel. COLD will continue to review the department's aspiration guidelines, intake procedures and docket control policies to promote the most efficient handling of disciplinary complaints.

