

**VIRGINIA:**

**IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND**

**IN THE MATTER OF  
SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPHS 3 & 13-23.K**

**PETITION OF THE VIRGINIA STATE BAR**

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**PETITION**

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE  
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar (VSB), by its president and executive director, pursuant to Part 6, § IV of the Rules of this Court, and requests review and approval of the proposed amendments to Paragraphs 3 and 13-23.K of Part 6, § IV of the Rules of Court governing the Organization and Government of the VSB, as set forth below. The proposed amendments were approved by unanimous vote of the Council of the VSB on February 29, 2020.

**I. Overview of the Issues**

The VSB proposes amending Paragraph 3 of Part 6, § IV of the Rules of the Supreme Court of Virginia to clarify requirements for membership statuses; to address the need for separate membership statuses for retired and disabled members; to add an email address of record requirement; and to eliminate ambiguous terminology. The VSB also proposes amending Paragraph 13-23.K of Part 6, § IV to bring it into accord with the proposed amendments to Paragraph 3.

There were various rationale for the three main changes. To begin, Paragraph

3(a) redefines the definition of an active member. This change was borne of a lawyer's observation that the status quo requires a lawyer to be engaged in the practice of law to be an active member of the VSB, but if a lawyer were to be suspended for administrative or disciplinary purposes, the lawyer could not be engaged in the practice of law as defined by the Court's UPL Rules at Part 6, § I (B)(1)-(4).

This identified a practical conundrum regarding lawyer classification. If a lawyer could not be an active member because the lawyer was not engaged in the practice of law, how should the lawyer be classified by the VSB? Must the lawyer abide by the Court's other rules such as completing CLE, paying dues, certifying professional liability insurance? This ill-defined categorization for active members who temporarily are banned from the practice of law necessitated a redefinition. Thus, the recommendation was to interpose the "in good standing/not in good standing" qualifier to active membership.

Consequently, a lawyer who has otherwise been admitted to practice law but is not in good standing because the lawyer has not satisfied membership requirements (e.g., the MCLE requirement), or is under a disciplinary or administrative suspension (e.g., for failing to pay dues), would still be an active member, just not "in good standing." Removing the "engaged in the practice of law" qualifier also provided the ancillary benefit of allowing those who might wish to be active members, but who do not practice law as defined, to voluntarily become active members by satisfying the requirements for good standing and paying the associated active dues. Allowing those

who do not engage in the practice of law (e.g., law school professors) but who seek active membership lifts practical restrictions to these individuals. This broadening of the aperture seemed appropriate and does not offend the statutory requirement that “[a]ll persons engaged in the practice of law in the Commonwealth shall be *active members in good standing of the Virginia State Bar.*” Va. Code § 54.1-3910. (emphasis added).

Second, with respect to the disaggregation of the disabled and retired status, this initiative seemed logical. In short, it was meant to eliminate the connotation and association that resulted by conjoining the two classes into one status. It should not be inferred or implied that a retired lawyer is disabled. Conversely, a disabled lawyer is not necessarily retired and may again return to practice in the future before attaining the age of 70. There is no justification to compel lumping the groups together and, in fact, this conglomeration created complications for lawyers attempting to adhere to the procedures by which a lawyer transfers from either of those statuses to the other or an active, associate or emeritus, status.

As it concerns the email address of record, this was a change that seemed timely and appropriate based on the realities of the modern practice of law. Additionally, many regulatory bars require the registration of an email address of record. These include the bars of our neighboring regions and states and include Kentucky, North Carolina, West Virginia, Florida, New Jersey and Louisiana. More importantly, however, email addresses are ubiquitous, often free for the user and an efficient and

cost savings-means to communicate with members. Requiring an email address of record will facilitate more rapid communication that inures to the benefit of the members and the VSB.

Finally, with regard to eliminating ambiguous terminology, these amendments incorporate the recommendations of the VBA's 2018 Boyd-Graves Conference that the term "shall" be rejected in favor of other more precise terms. Instead of shall, throughout Paragraph 3, these amendments prefer the use of the terms "must," "may," "can," "cannot," "will," "is authorized to," etc. Furthermore, throughout the amendments, the use of the term lawyer (consistently as possible) as opposed to attorney or member, was used where appropriate. As a regulatory body, this revision was meant to disabuse any associational implication with the term "member."

The proposed revisions are included below in Section III.

## **II. Publication and Comments**

Notice of the proposed Paragraph 3 amendments was published on the VSB's website on January 8, 2020 and distributed in the VSB's E-News on January 31, 2020. The comment period for the amendments closed on February 8, 2020.

One comment was received from Ms. Rebecca Larson, a VSB associate member from California. She stated:

The only recommendation I have for the proposed changed (sic) regard a specific opt-out for publishing email addresses. The language already says phone and addresses, but I think it's unclear if that only includes the public address or the secondary address.

As a result of Ms. Larson’s comment, two minor edits (denoted in yellow highlighting)<sup>1</sup> were made to the proposed amendments in Paragraph 3(a):

The alternate address is personal information and ~~shall~~will not be disclosed in response to a request pursuant to Section 2.2- 3704, *Code of Virginia*. Members have a duty promptly to notify the ~~membership department~~Virginia State Bar in writing of any changes in ~~either the~~their address of record, email address of record, or any alternate address. Members, by request, may have their names and addresses removed from the Virginia State Bar's membership list when it is distributed for other than Virginia State Bar official purposes.

These changes serve to clarify the statutory provision that authorizes a citizen or publication to request information from a public body, and to clarify that the VSB will not disseminate an email address of record if a member affirmatively requests that it not be used for other than official VSB business.

At the Council meeting on February 29<sup>th</sup>, there were no questions regarding any of the proposed amendments, and the motion to adopt the amendments passed unanimously.

### **III. Proposed Changes**

Additions are denoted by underlining and deletions by stippling.

#### **A. Paragraph 3**

##### **3. Classes of ~~Membership~~Members—**

Members of the Virginia State Bar ~~shall be~~are divided into ~~five~~six classes, namely: (a) Active Members, (b) Associate Members, (c) Judicial Members, (d) Disabled ~~and~~Members, (e) Retired Members; and (ef) Emeritus Members. Each member

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<sup>1</sup> In case the yellow highlighting cannot be seen, the added language is “in response to a request” and “Virginia State Bar” (prior to “official purposes” at the end of the sentence).

~~shall~~must submit in writing to the ~~membership department of the~~ Virginia State Bar an address of record and email address of record, either of which ~~will~~may be used for ~~all~~official membership ~~and~~or regulatory purposes, ~~including official mailings and~~ by the Virginia State Bar, and the address of record which is to be used for notices of disciplinary proceedings. If a member's address of record is not a physical address where process can be served, the member must also submit in writing to the ~~membership department~~Virginia State Bar an alternate physical address where process can be served. The alternate address is personal information and ~~shall~~will not be disclosed in response to a request pursuant to Section 2.2-3704, *Code of Virginia*. Members have a duty promptly to notify the ~~membership department~~Virginia State Bar in writing of any changes in ~~either the~~their address of record, email address of record, or any alternate address. Members, by request, may have their names and addresses removed from the Virginia State Bar's membership list when it is distributed for other than Virginia State Bar official purposes.

**(a) Active Members**—Those ~~attorneys~~lawyers who are admitted to practice law in ~~this state~~ the Commonwealth of Virginia and who are engaged in the practice of law, either full-time or part-time, salaried or non-salaried, ~~shall be active members of good standing, qualify for active membership in the Virginia State Bar. Those attorneys who are admitted to practice law in this state, but who are not presently so engaged, They may acquire become active status members by paying the dues prescribed for active members and satisfying any~~all other required membership obligations regulatory requirements. Each active member's address of record will establish the judicial circuit in which the member is ~~entitled~~authorized to vote and hold office in the Virginia State Bar. For purposes of this subparagraph, "good standing" means the lawyer has satisfied all requirements for membership as established by these Rules, and has no current disciplinary or administrative suspension.

**(b) Associate Members**— Associate members are entitled to all the privileges of active members except that they cannot practice law, vote nor hold office (other than as members of committees) in the Virginia State Bar. Those attorneys~~lawyers~~ who have been admitted to practice law in the ~~courts of this state but who are not presently so engaged~~Commonwealth of Virginia, and all persons on the law faculties of any law schools ~~of~~located in this state that have been approved by the American Bar Association, may become associate members of the Virginia State Bar upon application to the-

~~secretary~~ Virginia State Bar and payment of the required dues. ~~Associate members shall be entitled to all the privileges of active members except that they may not practice law, vote or hold office (other than as members of committees) in the Virginia State Bar.~~

(c) **Judicial Members**—All full-time judges ~~of~~ presiding in the State Commonwealth of Virginia (including federal judges), other officers qualified but forbidden by statute to practice law, and all retired judges who are receiving retirement benefits and are prohibited from appearing as counsel in any case in any court of the Commonwealth under section 51.1-309 of the *Code of Virginia* ~~shall constitute the Judicial Membership~~ are judicial members of the Virginia State Bar. They ~~shall~~ are not required to pay no dues but shall be entitled to all of the privileges of active members except that they may not cannot vote or nor hold office in the Virginia State Bar, and shall must comply with any statutory limitations regulating their practice of law.

(d) **Disabled and Retired Members**—Any member of the Virginia State Bar, ~~upon attaining the age of 70 or on the basis of a permanent disability,~~ may submit to the ~~executive director of the~~ Virginia State Bar a written request to be transferred to the disabled ~~and retired~~ class of membership. Members who ~~are electing~~ seek this status ~~based on a permanent disability~~ must submit adequate medical and/or psychological documentation with the request. Members ~~qualifying~~ approved for transfer to the disabled ~~and retired~~ class ~~shall~~ are not be entitled required to pay dues, are not authorized to practice law. Further, such members shall not be eligible to, and cannot vote or hold office in the Virginia State Bar.

(1) ~~A disabled or retired member who has not filed a declaration (endorsed by the member and member's counsel or guardian ad litem, as applicable) with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department affirming that the member will not seek a transfer from the Disabled and Retired~~ disabled class of membership ~~pursuant to Paragraph 13-23 may not seek reinstatement to any other class of membership.~~

(2) A disabled member who has not filed a declaration as described in subparagraph (d)(1) may submit a petition to the executive director in writing for reinstatement transfer to active or, associate, retired or emeritus membership and state in the petition each circumstance that

has changed since the member elected disabled ~~or retired~~ status membership. Adequate medical and/or psychological documentation must be submitted with the petition ~~showing~~ demonstrating that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending in any jurisdiction when the executive director receives a petition for reinstatement, or if ~~the member appears~~ there is any concern regarding the member's fitness or capacity to suffer from a disability practice law, the executive director ~~shall~~ must defer consideration of the petition until the misconduct or disability issues ~~are~~ issue is resolved. ~~The~~ Once reviewed by the executive director, the Executive Committee of the Virginia State Bar ~~shall consider~~ will review and act on any such petition, taking into account the recommendation of the executive director. The Executive Committee may deny a petition for reinstatement if the member ~~is~~ has been publicly disciplined in any jurisdiction or is determined to have a disability raising a serious question as to the member's fitness or capacity to practice law. If the Executive Committee approves the petition, the member ~~shall~~ will be ~~returned~~ transferred to active ~~or~~, associate, ~~retired~~ or emeritus status conditioned upon payment of the appropriate dues, satisfaction of any other ~~required membership obligations~~ regulatory requirements, and payment of any outstanding financial obligations to the Virginia State Bar. Medical and/or psychological information provided pursuant to this subparagraph (d) is confidential and ~~shall~~ will not be disclosed by the Virginia State Bar.

~~(d) Emeritus Members—Those attorneys~~ **(e) Retired Members**—Any member of the Virginia State Bar, upon attaining 70 years of age, may submit to the Virginia State Bar a written request to be transferred to the retired class of membership. Members approved for transfer to the retired class are not required to pay dues, are not authorized to practice law, and cannot vote or hold office in the Virginia State Bar.

(1) A retired member who has filed a declaration (endorsed by the member and member's counsel or guardian ad litem, as applicable) with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department affirming that the member will not seek a transfer from the retired class of membership may not seek reinstatement to any other class of membership.

(2) A retired member who has not filed a declaration as described in subparagraph (e)(1) may submit a petition to the executive director in writing for transfer to active, associate, disabled or emeritus membership and state in the petition each circumstance that has changed since the member elected retired membership.

Adequate documentation must be submitted with the petition showing that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending in any jurisdiction when the executive director receives a petition for reinstatement, the executive director must defer consideration of the petition until the misconduct issue is resolved. Otherwise, the executive director will consider and act on any such petition.

(3) The executive director may deny a petition for reinstatement if the member has been publicly disciplined in any jurisdiction or, if in the discretion of the executive director, the member is determined to have a disability raising a serious question as to the member's fitness or capacity to practice law. If the executive director denies the petition, the Executive Committee of the Virginia State Bar must review the decision of the executive director. If the executive director approves the petition, the member will be transferred to active, associate, disabled or emeritus status conditioned upon payment of the appropriate dues, satisfaction of any other regulatory requirements, and payment of any outstanding financial obligations to the Virginia State Bar.

(e) **Emeritus Members**— Those lawyers who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become emeritus members and provide exclusively pro bono legal services to the poor and working poor as emeritus members subject to the terms and conditions stated in this subparagraph. ~~They shall~~ Emeritus members are not required to pay no-dues, may not cannot practice law except in the limited manner specified in this subparagraph, and may not cannot vote or hold office in the Virginia State Bar.

(1) Definitions.

(A) Active practice of law, for the purposes of this

subparagraph, means that ~~an attorney~~ a lawyer has been engaged in the practice of law, which includes private practice, corporate practice as authorized by Part One A, Rule 1A:5, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.

(B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the active practice of law, and who intends to provide exclusively pro bono services under this subparagraph; and

(i) ~~Intends~~ intends to provide *pro bono* legal services as defined by Rule 6.1(a) of the Virginia Rules of Professional Conduct and its comments, subject to the terms and conditions of this subparagraph; and

(ii) ~~Is~~ is, at the time of requesting emeritus member status, an active, associate, or retired member in good standing of the Virginia State Bar who has practiced law for 20 years or more in any U.S. jurisdiction; and

(iii) ~~Is~~ is, at the time of requesting emeritus status, an active, associate, or retired member who has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and

(iv) ~~Has~~ has been engaged in the active practice of law in any U.S. jurisdiction for a minimum of five out of the seven years immediately preceding the application to become an emeritus member; and

(v) ~~Agrees~~ agrees to neither ask for nor receive any compensation of any kind from the client, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.

(C) Qualified legal services provider, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not-for-profit entity organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia.

(2)Activities.

(A)An emeritus member, in association with a qualified legal services provider, may perform only the following activities:

(i)~~The emeritus member may~~ appear in ~~any~~ court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a qualified legal services provider.

(ii) ~~The emeritus member may~~ prepare and sign pleadings and other documents to be filed in ~~any~~ court or with ~~any~~an administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.

(iii)~~The emeritus member may~~ render legal advice and perform other appropriate legal services.

(iv)~~The emeritus member may~~ engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.

(3)Limitations.

(A)The prohibition against compensation for the emeritus member contained in ~~Section~~section (1)(B)(v) of this subparagraph ~~shall~~will not prevent the qualified legal services provider from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor ~~shall~~will it prevent the qualified legal services provider from charging for its services as it may otherwise properly charge. The qualified legal services provider ~~shall be entitled~~is authorized to receive all court awarded attorney's fees for any representation rendered by an emeritus member.

(4)Certification. Permission for an emeritus member to perform services under this subparagraph ~~shall become~~becomes effective upon:

(A) ~~A~~a determination by the Virginia State Bar that the

emeritus member has fulfilled the requirements of such membership and has ~~a clear~~no disciplinary record as required by ~~Section~~section (1)(B) of this subparagraph; and

(B) ~~The~~the filing with the Virginia State Bar each year of an affidavit of affiliation with a qualified legal services provider by the emeritus member. The emeritus member ~~shall~~must also certify in this affidavit whether such member is currently covered by professional liability insurance.

(5)Membership Requirements. In order to practice law under this rule, a retired member must comply with the petition and approval requirements for reinstatement as an active member prescribed in Paragraph 3(d) of Part 6, Section IV of the Rules of the Supreme Court of Virginia. Also, associate members must satisfy any outstanding MCLE deficiencies before assuming emeritus status. Additionally, emeritus members must comply with all rules and requirements set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia with the exception that they are not required to pay dues and ~~the client protection fund fee as set forth in Paragraphs 11 and 16~~other fees, nor comply with the professional liability certification requirements in Paragraph 18.

(6)Change of Membership Status. An emeritus member may petition for reinstatement to active or associate membership under the procedure prescribed in subparagraph ~~(d)~~(e) of this rule for ~~disabled~~and retired members.

## **B. Paragraph 13-23.K**

### **13-23. Board Proceedings Upon Impairment**

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K. Transfer of Membership Status. Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled ~~and~~or Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the Respondent will not seek transfer from the Disabled ~~and~~or Retired class of membership. The declaration

shall be endorsed by the Respondent and the Respondent's counsel or Guardian Ad Litem. Termination of the Impairment Proceeding shall not be considered a final order in an Impairment Proceeding under Paragraph 13-30. The Respondent's transfer to the Disabled ~~and~~ or Retired class of membership and filing of the declaration pursuant to this subparagraph may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of transfer to the Disabled ~~and~~ or Retired class of membership, militating against further proceedings, which shall be set forth in the Dismissal.

#### **IV. Proposed Rule Changes with Modifications Made**

If the Court approves the proposed rule changes, Paragraph 3 and Paragraph

13-23.K would read as follows:

#### **3. Classes of Members—**

Members of the Virginia State Bar are divided into six classes, namely: (a) Active Members, (b) Associate Members, (c) Judicial Members, (d) Disabled Members, (e) Retired Members; and (f) Emeritus Members. Each member must submit in writing to the Virginia State Bar an address of record and email address of record, either of which may be used for official membership or regulatory purposes by the Virginia State Bar, and the address of record which is to be used for notices of disciplinary proceedings. If a member's address of record is not a physical address where process can be served, the member must also submit in writing to the Virginia State Bar an alternate physical address where process can be served. The alternate address is personal information and will not be disclosed in response to a request pursuant to Section 2.2-3704, *Code of Virginia*. Members have a duty promptly to notify the Virginia State Bar in writing of any changes in their address of record, email address of record, or any alternate address. Members, by request, may have their names and addresses removed from the Virginia State Bar's membership list when it is distributed for other than Virginia State Bar official purposes.

**(a) Active Members—**Those lawyers who are admitted to practice law in the Commonwealth of Virginia and who are in good standing, qualify for active membership in the Virginia State Bar. They may become active members by paying the dues prescribed for active members and satisfying all other regulatory requirements. Each active member's address of record will establish the judicial circuit in which the member is authorized to vote and

hold office in the Virginia State Bar. For purposes of this subparagraph, “good standing” means the lawyer has satisfied all requirements for membership as established by these Rules, and has no current disciplinary or administrative suspension.

**(b) Associate Members**— Associate members are entitled to all the privileges of active members except that they cannot practice law, vote nor hold office (other than as members of committees) in the Virginia State Bar. Those lawyers who have been admitted to practice law in the Commonwealth of Virginia, and all persons on the law faculties of any law schools located in this state that have been approved by the American Bar Association, may become associate members of the Virginia State Bar upon application to the Virginia State Bar and payment of the required dues.

**(c) Judicial Members**—All full-time judges presiding in the Commonwealth of Virginia (including federal judges), other officers qualified but forbidden by statute to practice law, and all retired judges who are receiving retirement benefits and are prohibited from appearing as counsel in any case in any court of the Commonwealth under section 51.1-309 of the *Code of Virginia* are judicial members of the Virginia State Bar. They are not required to pay dues but are entitled to all of the privileges of active members except that they cannot vote nor hold office in the Virginia State Bar and must comply with any statutory limitations regulating their practice of law.

**(d) Disabled Members**—Any member of the Virginia State Bar, on the basis of a disability, may submit to the Virginia State Bar a written request to be transferred to the disabled class of membership. Members who seek this status must submit adequate medical and/or psychological documentation with the request. Members approved for transfer to the disabled class are not required to pay dues, are not authorized to practice law, and cannot vote or hold office in the Virginia State Bar.

(1) A disabled member who has filed a declaration (endorsed by the member and member’s counsel or guardian ad litem, as applicable) with the Clerk of the Disciplinary System and the Virginia State Bar’s Membership Department affirming that the member will not seek a transfer from the disabled class of membership may not seek reinstatement to any other class of membership.

(2) A disabled member who has not filed a declaration as described in subparagraph (d)(1) may submit a petition to the executive director in

writing for transfer to active, associate, retired or emeritus membership and state in the petition each circumstance that has changed since the member elected disabled membership. Adequate medical and/or psychological documentation must be submitted with the petition demonstrating that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending in any jurisdiction when the executive director receives a petition for reinstatement, or if there is any concern regarding the member's fitness or capacity to practice law, the executive director must defer consideration of the petition until the misconduct or disability issue is resolved. Once reviewed by the executive director, the Executive Committee of the Virginia State Bar will review and act on any such petition, taking into account the recommendation of the executive director. The Executive Committee may deny a petition for reinstatement if the member has been publicly disciplined in any jurisdiction or is determined to have a disability raising a serious question as to the member's fitness or capacity to practice law. If the Executive Committee approves the petition, the member will be transferred to active, associate, retired or emeritus status conditioned upon payment of the appropriate dues, satisfaction of any other regulatory requirements, and payment of any outstanding financial obligations to the Virginia State Bar. Medical and/or psychological information provided pursuant to this subparagraph (d) is confidential and will not be disclosed by the Virginia State Bar.

**(e) Retired Members**—Any member of the Virginia State Bar, upon attaining 70 years of age, may submit to the Virginia State Bar a written request to be transferred to the retired class of membership. Members approved for transfer to the retired class are not required to pay dues, are not authorized to practice law, and cannot vote or hold office in the Virginia State Bar.

(1) A retired member who has filed a declaration (endorsed by the member and member's counsel or guardian ad litem, as applicable) with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department affirming that the member will not seek a transfer from the retired class of membership may not seek reinstatement to any other class of membership.

(2) A retired member who has not filed a declaration as described in subparagraph (e)(1) may submit a petition to the executive director in

writing for transfer to active, associate, disabled or emeritus membership and state in the petition each circumstance that has changed since the member elected retired membership. Adequate documentation must be submitted with the petition showing that the member is fit and capable of practicing law. If there are any misconduct complaints or proceedings pending in any jurisdiction when the executive director receives a petition for reinstatement, the executive director must defer consideration of the petition until the misconduct issue is resolved. Otherwise, the executive director will consider and act on any such petition.

(3) The executive director may deny a petition for reinstatement if the member has been publicly disciplined in any jurisdiction or, if in the discretion of the executive director, the member is determined to have a disability raising a serious question as to the member's fitness or capacity to practice law. If the executive director denies the petition, the Executive Committee of the Virginia State Bar must review the decision of the executive director. If the executive director approves the petition, the member will be transferred to active, associate, disabled or emeritus status conditioned upon payment of the appropriate dues, satisfaction of any other regulatory requirements, and payment of any outstanding financial obligations to the Virginia State Bar.

**(f) Emeritus Members**— Those lawyers who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become emeritus members and provide exclusively *pro bono* legal services to the poor and working poor as emeritus members subject to the terms and conditions stated in this subparagraph. Emeritus members are not required to pay dues, cannot practice law except in the limited manner specified in this subparagraph, and cannot vote or hold office in the Virginia State Bar.

(1) Definitions.

(A) Active practice of law, for the purposes of this subparagraph, means that a lawyer has been engaged in the practice of law, which includes private practice, corporate practice as authorized by Part One A, Rule 1A:5, public employment as a lawyer, or

full-time teaching at an American Bar Association approved law school.

(B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the active practice of law, and who intends to provide exclusively *pro bono* services under this subparagraph; and

(i) intends to provide *pro bono* legal services as defined by Rule 6.1(a) of the Virginia Rules of Professional Conduct and its comments, subject to the terms and conditions of this subparagraph; and

(ii) is, at the time of requesting emeritus member status, an active, associate, or retired member in good standing of the Virginia State Bar who has practiced law for 20 years or more in any U.S. jurisdiction; and

(iii) is, at the time of requesting emeritus status, an active, associate, or retired member who has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and

(iv) has been engaged in the active practice of law in any U.S. jurisdiction for a minimum of five out of the seven years immediately preceding the application to become an emeritus member; and

(v) agrees to neither ask for nor receive any compensation of any kind from the client, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.

(C) Qualified legal services provider, for the purposes of this subparagraph, is a Virginia licensed legal aid society or other not-for-profit entity organized in whole or in part, to provide legal services to the poor and/or working poor in Virginia.

## (2) Activities.

(A) An emeritus member, in association with a qualified legal services provider, may perform only the following activities:

(i) appear in court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a qualified legal services provider.

(ii) prepare and sign pleadings and other documents to be filed in court or with an administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.

(iii) render legal advice and perform other appropriate legal services.

(iv) engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.

### (3) Limitations

(A) The prohibition against compensation for the emeritus member contained in section (1)(B)(v) of this subparagraph will not prevent the qualified legal services provider from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor will it prevent the qualified legal services provider from charging for its services as it may otherwise properly charge. The qualified legal services provider is authorized to receive all court awarded attorney's fees for any representation rendered by an emeritus member.

### (4) Certification. Permission for an emeritus member to perform services under this subparagraph becomes effective upon:

(A) a determination by the Virginia State Bar that the emeritus member has fulfilled the requirements of such membership and has no disciplinary record as required by section (1)(B) of this subparagraph; and

(B) the filing with the Virginia State Bar each year of an affidavit of affiliation with a qualified legal services provider by the emeritus member. The emeritus member must also certify in this affidavit whether such member is currently covered by professional liability insurance.

(5) Membership Requirements. In order to practice law under this rule, a retired member must comply with the petition and approval requirements for reinstatement as an active member prescribed in Paragraph 3(d) of Part 6, Section IV of the Rules of the Supreme Court of Virginia. Also, associate members must satisfy any outstanding MCLE deficiencies before assuming emeritus status. Additionally, emeritus members must comply with all rules and requirements set forth in Part 6, Section IV of the Rules of the Supreme Court of Virginia with the exception that they are not required to pay dues and other fees, nor comply with the professional liability certification requirements in Paragraph 18.

(6) Change of Membership Status. An emeritus member may petition for reinstatement to active or associate membership under the procedure prescribed in subparagraph (e) of this rule for retired members.

### **13-23. Board Proceedings Upon Impairment**

...

K. Transfer of Membership Status. Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled or Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the Respondent will not seek transfer from the Disabled or Retired class of membership. The declaration shall be endorsed by the Respondent and the Respondent's counsel or Guardian Ad Litem. Termination of the Impairment Proceeding shall not be considered a final order in an Impairment Proceeding under Paragraph 13-30. The Respondent's transfer to the Disabled or Retired class of membership and filing of the declaration pursuant to this subparagraph may be utilized by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of transfer to the Disabled or Retired class of membership, militating against further proceedings, which shall be set forth in the Dismissal.

### **V. Conclusion**

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia, and "[a]ll persons engaged in the practice of law in the

Commonwealth shall be active members in good standing of the Virginia State Bar.”  
Va. Code § 54.1-3910. Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the Virginia State Bar. After notice to the VSB membership and a comment period publicized through VSB publications, the proposed amendments were then approved by the Executive Committee and Council on February 28 and 29, 2020, respectively.

THEREFORE, the Virginia State Bar, by its president and executive director, respectfully requests the Court to adopt the foregoing amendments to Part 6, § IV, Paragraphs 3 and 13-23.K for the reasons set forth above.

Respectfully submitted,  
VIRGINIA STATE BAR



By: Marni E. Byrum, President



By: Karen A. Gould, Executive Director

Dated this 9th day of March, 2020.