

## PROPOSED REVISIONS TO RULES OF THE SUPREME COURT OF VIRGINIA

## PART 6 SECTION IV, PARA 3.

Proposed, February 2020

**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 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 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 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 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.