

PROPOSED ADDITION TO RULES OF THE SUPREME COURT OF VIRGINIA

PART 6 SECTION IV, PARA 25.

Proposed, June 2020

Regulations Governing Virginia Legal Aid Societies

(a) Function and Operation of Legal Aid Societies. [formerly 15VAC5-10-10.]

1. The Bar recognizes the need to provide equal access to the system of justice in the Commonwealth for individuals and groups who seek redress of grievances, to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel, to be responsive to the needs of low income communities and of clients, to create long-term sustainable change in communities experiencing poverty, to preserve attorney-client relationships, and to protect the integrity of the adversary process.
2. A non-profit organization qualifying as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code may apply to be a licensed legal aid society in the Commonwealth if its primary purpose is to provide a range of free legal services exclusively to those requiring such assistance but who are unable to pay for it. Legal services include, but are not limited to, the methods and delivery of services set forth in the standards for the provision of civil legal aid adopted by the Legal Services Corporation of Virginia (LSCV).
3. No person, organization, or corporation shall define itself or hold itself out to the public as a legal aid society in the Commonwealth without being licensed by the Secretary-Treasurer of the Virginia State Bar.
4. Upon application of a nonprofit organization seeking to become a licensed legal aid society, with supporting documents, the Secretary-Treasurer of the Virginia State Bar shall issue a license if:
 - (A) The State Corporation Commission has issued a certificate of incorporation to the applicant.
 - (B) The governing body of a legal aid society and its individual members must not interfere directly or indirectly in the representation of any client of the legal aid society.
 - (C) One-third of the members of the applicant's board of directors must be active or retired members of the Virginia State Bar.
 - (D) No member of the Virginia State Bar devoting his full time to or receiving any compensation from the applicant shall be a voting member of its board.

- (E) ~~The provisions of subdivisions 3(B) and 3(C) of this subparagraph shall be included in the bylaws of the applicant at all times.~~
 - (F) The applicant has submitted a copy of its Internal Revenue Service determination letter.
 - (G) The applicant provides for the prior fiscal year, if applicable, an acceptable audit conducted under standards set by the American Institute of Certified Public Accountants.
 - (H) The applicant provides proof of acceptable professional liability insurance coverage for its operations that meets or exceeds an aggregate sum determined annually by the Virginia State Bar inclusive of coverage in the amount of ~~\$250,000~~ \$500,000 per claim for lawyers who provide client legal services under the auspices of the program.
5. No fee for the provision of legal assistance shall be requested or received from clients by the licensed legal aid society or its employees, except for necessary expenses or costs.
 6. Guidelines and procedures shall be established and maintained to ensure that legal services are provided only to those who are unable to pay for them. Legal services to persons meeting standards of eligibility under authorizing legislation or as approved by LSCV is deemed consistent with this requirement.
 7. A licensed legal aid society may appear before and practice in all the courts, administrative agencies, and legislative bodies of the Commonwealth and all political subdivisions thereof only through attorneys who are members of the Virginia State Bar or other persons who are permitted by law to so appear and practice.
 8. A legal aid society holding a license issued by the Secretary-Treasurer of the Virginia State Bar is deemed to be an approved licensee. Each licensee shall make an annual report and file it with the Secretary-Treasurer of the Virginia State Bar within 90 days of the conclusion of the Bar's fiscal year, except those legal aid societies funded by LSCV. LSCV funded legal aid societies shall report annually to LSCV (LSCV will then report the activities of its grantees to the Virginia State Bar) in the manner required by LSCV. LSCV shall require its grantees to include in their reports at least those items provided in 8 (a) through (j) and may require additional information in its discretion. The annual report shall contain the following information:
 - (A) Source of funding;
 - (B) Cost of operation;
 - (C) Number of cases handled;
 - (D) Type of cases handled;

- (E) Staffing, providing the number and title of all employees and the number of volunteer attorneys assisting within the period covered by the report;
 - (F) Change in the articles of incorporation or bylaws made since the last annual report;
 - (G) Current roster of the members of the board of directors indicating vacancies, names of appointing authorities, and each member's Bar or lay statuses;
 - (H) Audit conducted in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants, which shall be submitted within 180 days of the conclusion of the licensee's fiscal year;
 - (I) Proof of required professional liability coverage and timely notice to ~~the bar~~ LSCV during the course of the year of any lapse or denial in coverage; and
 - (J) Client eligibility guidelines.
9. A license ~~shall~~ may be revoked by the Secretary-Treasurer of the Virginia State Bar on her own motion or on the motion of any other person if it is found, after investigation and after giving the licensee reasonable notice and an opportunity to be heard, that the licensee (i) has committed a substantial and material violation of law, its charter or bylaws, or this chapter; or (ii) has been inactive for a period of one year or more.
10. From any decision of the Secretary-Treasurer of the Virginia State Bar in (i) granting, (ii) refusing; (iii) revoking, or (iv) refusing to revoke a license, any interested person may appeal to the Council of the Virginia State Bar under procedures established by the Council for such purpose..