

# Notice for Comment of Proposed Rule Change

Comments should be directed to Thomas A. Edmonds, Executive Director, VSB, Suite 1500, 707 East Main Street, Richmond, VA 23219 and should be received no later than December 8, 2000.

## **Rules of Court, Part Six, Section IV, Paragraph 13.B.(2); Paragraph 13.C.(1); and Paragraph 13.K.(9)(b) and (e)**

The following proposed changes were approved by the Standing Committee on Lawyer Discipline at its meetings of September 12, 2000, and October 3, 2000.

### **Paragraph 13.B.(2) and 13.C.(1): Eligibility for Appointment of District Committee and Disciplinary Board Members**

District committee members are appointed by Council upon nominations by Council members from the corresponding judicial circuits of the state. Each district committee consists of ten, or a multiple of ten, members in the ratio of seven lawyers to three lay people. Each district committee member “. . . shall be a resident of or have his or her office in the District Committee area for which he or she is appointed.” Paragraph 13.B.(2)b. No other qualifications are stated.

Disciplinary Board members are appointed by the Chief Justice of the Virginia Supreme Court “. . . after consultation with the Council . . .” regarding suggested new members. Paragraph 13.C.(1).

There is no provision in Paragraph 13 with respect to the effect of a prior disciplinary record or a criminal record upon the eligibility of a person to be appointed to a district committee or to be recommended to the Chief Justice for appointment to the Disciplinary Board. The proposed changes would:

- a. require a prospective appointee to execute a waiver of confidentiality with respect to his or her disciplinary record only for the purposes of consideration as an appointee to a district committee or the Disciplinary Board; and
- b. require a prospective appointee to execute an authorization for the Virginia State Bar to obtain a criminal records check with respect to said person; and
- c. consider ineligible for appointment a potential appointee who has any criminal record or any bar discipline of (i) revocation, (ii) suspension, (iii) public reprimand imposed within the ten years immediately preceding the proposed appointment date, or (iv) private discipline or admonition imposed within the five years immediately preceding the proposed appointment date.

Both the waiver and the authorization would allow the disclosure of any prior disciplinary record and any criminal record to all members of Council and the staff of the Virginia State Bar for purposes of the appointment process.

### **Paragraph 13.K.(9)(b) and (e):Recusal and Disqualification of Sitting District Committee and Disciplinary Board Members Due to Investigation and/or Discipline Arising Out of a Bar Complaint**

There is no provision in Paragraph 13 concerning how the investigation and prosecution of a disciplinary complaint affects the service of the respondent who is also a sitting district committee or Disciplinary Board member. The proposed changes would:

- a. recuse a sitting district committee or Disciplinary Board member from all committee or Board participation upon the referral to a district committee of a bar complaint against the member for investigation until the complaint is dismissed without any form of discipline; and
- b. upon the imposition of a private reprimand, a public reprimand, an admonition, a suspension or a revocation, terminate automatically the service of the member on either a district committee or the Disciplinary Board; and
- c. upon the imposition of any other form of attorney discipline, give the Standing Committee on Lawyer Discipline the sole discretion to determine whether the member shall be terminated from further service on either a district committee or the Disciplinary Board.

\* \* \* \* \*

13. B. Authority and Duties of the Council, the Standing Committee, Subcommittees, District Committees and Bar Counsel; Investigation and Prosecution of Complaints:
  - 1) . . .
  - 2) Appointment of Committees, Panels and Subcommittees:
    - (a) **Effect of prior disciplinary record or criminal record on eligibility for appointment:**
      - (i) **In order to be considered as a potential appointee to a District Committee, each potential appointee shall execute the following:**
        - (A) **A waiver of confidentiality with respect to his or her prior disciplinary record and any pending complaints which allows production of any prior disciplinary record and any pending complaints from any jurisdiction to the members of Council and the staff of the Virginia State Bar for purposes of the appointment process; and**

(B) An authorization for the Virginia State Bar to conduct a criminal records check of all jurisdictions for any convictions of any crimes and provide the results to the members of Council and the staff of the Virginia State Bar for purposes of the appointment process.

(ii) Any potential appointee who has ever been convicted of a crime in any jurisdiction shall be ineligible for appointment to a District Committee. For purposes of this subparagraph (ii), "crime" means (A) any offense declared to be a felony by federal or state law; (B) any other offense, whether federal or state, involving theft, fraud, forgery, extortion, bribery, or perjury; (C) an attempt, solicitation or conspiracy to commit any of the foregoing; or (D) any other criminal act which reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

(iii) Any potential appointee who has any attorney disciplinary record, in any jurisdiction, consisting of (A) revocation, (B) suspension, or (C) public reprimand imposed within the ten (10) years immediately preceding the proposed appointment date, or (D) private discipline or admonition imposed within the five (5) years immediately preceding the proposed appointment date, shall be ineligible for appointment to a District Committee.

- ~~(a)~~ (b) ...
- ~~(b)~~ (c) ...
- ~~(c)~~ (d) ...
- ~~(d)~~ (e) ...

3) ... \* \* \* \* \*

13.C. The Board and Procedure Before the Board:

(1) Effect of prior disciplinary record or criminal record on eligibility for appointment:

- (a) In order to be considered as a potential appointee to the Board, each potential appointee shall execute the following:
  - (i) A waiver of confidentiality with respect to his or her prior disciplinary record and any pending complaints which allows production of any prior disciplinary record and any pending complaints from any jurisdiction to the members of Council and the staff of the Virginia State Bar for purposes of the appointment process; and

(ii) An authorization for the Virginia State Bar to conduct a criminal records check of all jurisdictions for any convictions of any crimes and provide the results to the members of Council and the staff of the Virginia State Bar for purposes of the appointment process.

(b) Any potential appointee who has ever been convicted of a crime in any jurisdiction shall be ineligible for appointment to the Board. For purposes of this subparagraph (b), "crime" means (i) any offense declared to be a felony by federal or state law; (ii) any other offense, whether federal or state, involving theft, fraud, forgery, extortion, bribery, or perjury; (iii) an attempt, solicitation or conspiracy to commit any of the foregoing; or (iv) any other criminal act which reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

(c) Any potential appointee who has any attorney disciplinary record, in any jurisdiction, of (i) revocation, (ii) suspension, (iii) public reprimand imposed within the ten (10) years immediately preceding the proposed appointment date, or (iv) private discipline or admonition imposed within the five (5) years immediately preceding the proposed appointment date, shall be ineligible for appointment to the Board.

- ~~(1)~~ (2) ...
  - ~~(2)~~ (3) ...
  - ~~(3)~~ (4) ...
  - ~~(4)~~ (5) ...
  - ~~(5)~~ (6) ...
  - ~~(6)~~ (7) ...
- \* \* \* \* \*

13.K.(9) Disqualification:

- a) ...
- b) District Committee or Board Member:
  - (i) A member of a District Committee or the Board shall be disqualified from adjudicating any matter with respect to which the member has any personal or financial interest that might affect or reasonably be perceived to affect the member's ability to be impartial.
  - (ii) Upon the referral of any Complaint against a sitting member of a District Committee or the Board to a District Committee for investigation, the member shall be recused from any service on the District Committee or the Board until the dismissal of the Complaint without the imposition of any form of discipline.

(iii) Effective July 1, 2001, upon the final imposition of a private reprimand, a public reprimand, an admonition, a suspension or a revocation against a sitting member of a District Committee or the Board, the member shall automatically be terminated from membership on the District Committee or Board. Upon the final imposition of any other form of attorney discipline, the Standing Committee on Lawyer Discipline shall have sole discretion to determine whether the member shall be terminated from further service on the District Committee or the Board.

c) . . .

d) . . .

e) Interpretation:

All questions of interpretation under this Paragraph 13.K.(9) shall be decided by the tribunal before which the proceeding is pending. except with respect to the discretionary termination determination by the Standing Committee on Lawyer Discipline.