

# Highlights of the June 14, 2018, Virginia State Bar Council Meeting

At its meeting on June 14, 2018, in Virginia Beach, the Virginia State Bar Council heard the following significant reports and took the following actions, all of which are subject to approval by the Supreme Court of Virginia:

## Rule 1.1, Competence

By a vote of 52-8, the council approved a proposed new comment 7 to Rule 1.1, which calls attention to the fact that maintaining well-being is an aspect of maintaining competence to represent clients. The comment arises from the August 2017 report of the National Task Force on Lawyer Well-Being, which compiled extensive data on the extent of substance abuse, mental health issues, and other wellness issues in the legal profession. The proposed changes will be presented to the Supreme Court of Virginia for approval.

## Legal Ethics Opinion 1889

The council unanimously approved LEO 1889 – Scope of representation – Duty of court-appointed lawyer to appeal termination of parental rights order. The proposed opinion addresses whether a court-appointed lawyer has a duty to appeal or continue representing a parent when that parent’s parental rights have been terminated by a Juvenile and Domestic Relations District Court if the attorney has lost contact with the parent, the parent has not directed the attorney to appeal the matter, and the parent fails to appear in court or

otherwise participate with the attorney in the course of the representation. The proposed LEO will be presented to the Supreme Court of Virginia for approval.

## Paragraphs 13-1 and 13-9

The council unanimously approved amendments to Part 6, Section IV, Paragraph 13-1 and Paragraph 13-9. These amendments allow the Disciplinary Board to assess fees and costs of a Guardian Ad Litem to be paid by the Respondent when the Guardian Ad Litem was appointed by the Disciplinary Board. The proposed changes will be presented to the Supreme Court of Virginia for approval.

## Paragraphs 3 and 13-23

The council unanimously approved amendments to Part 6, Section IV, Paragraph 3 and Paragraph 13-23. The amendments are motivated by the report of the National Task Force on Lawyer Well-Being and will facilitate retirement for a lawyer suffering from a permanent impairment, such as an irreversible cognitive decline, by allowing retirement with dignity instead of having the lawyer’s license suspended on impairment grounds. With these amendments, the impaired lawyer could transfer to the Disabled and Retired class of membership as described in proposed Paragraph 13-23.K. The proposed language in Paragraph 3(d) conforms to the requirements of amended Paragraph 13-23. The proposed changes

will be presented to the Supreme Court of Virginia for approval.

## Paragraphs 13-1 and 13-30

The council unanimously approved amendments to Part 6, Section IV, Paragraph 13-1 and Paragraph 13-30. The amendment to Paragraph 13-1 defines a Lawyer Assistance Program. The amendment to Paragraph 13-30 addresses the provision of confidential information by Bar Counsel to a Lawyer Assistance Program. These amendments are responsive to the report of the National Task Force on Lawyer Well-Being, which recommends that when information of mental health or substance abuse issues is discovered during investigation or prosecution of lawyer regulation matters, confidentiality rules will allow sharing of such information with lawyer assistance programs. The proposed changes will be presented to the Supreme Court of Virginia for approval.

## Budget

The council approved a \$14.1 million budget for FY 2018–19. This is a decrease of \$800,000 from the 2017–18 operating budget, primarily due to a reduction in the Clients’ Protection Fund (CPF) transfer, the decreased CPF assessment, and a decrease of two staff positions. A 2 percent bonus for staff has been included in this budget.

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