

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 2nd day of October, 2019.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective December 1, 2019.

On June 26, 2019, came the Virginia State Bar, by Marni E. Byrum, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Paragraph 13, Part Six, Section IV of the Rules of Court, be amended. The petition is approved and Paragraph 13 is amended to read as follows:

13. Procedure for Disciplining, Suspending, and Disbarring Attorneys.

13-1. DEFINITIONS

As used in this Paragraph, the following terms shall have the meaning herein stated unless the context clearly requires otherwise:

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“Admonition” means a finding that Respondent has committed Misconduct but:

1. No substantial harm to the Complainant or the public has occurred; or
2. The Misconduct is minor and Respondent has taken reasonable precautions against a recurrence or there is otherwise little likelihood of repetition; or
3. There exist exceptional circumstances, which must be set forth in writing.

An Admonition may be imposed as a

1. Private sanction by a Subcommittee *sua sponte*;
2. Private or public sanction based upon an Agreed Disposition approved by a Subcommittee; or
3. Public sanction imposed by a District Committee, the Board, or a three-judge Circuit Court.

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“Clerk” means the Clerk of the Disciplinary System who, together with such assistants as may be required, provides administrative support to the disciplinary system and serves as official custodian of the records of the disciplinary system, unless the context indicates otherwise.

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“Disciplinary Proceeding” means any proceeding governed by this Paragraph except an Impairment Proceeding.

“Disciplinary Record” means any tangible or electronic record of:

1. Any proceeding in which the Respondent has been found to have committed Misconduct, including those proceedings in which (a) the Board’s or three-judge Circuit Court’s finding of Misconduct has been appealed to this Court; (b) the Respondent’s License has been revoked upon consent to revocation or Respondent has been found guilty of a Crime; or (c) the Respondent has received a sanction pursuant to this Paragraph; and

2. Any proceeding in which the Respondent has been found to have committed a violation of CRESPA or RESA; and

3. Any proceeding in this or any other jurisdiction which resulted in a sanction creating a disciplinary record at the time it was imposed.

“Disciplinary Record” does not include administrative, interim, summary, or Impairment Suspensions.

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“Private Discipline” means any form of discipline that is not public.

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“Summary Order” means a bench order entered by the Chair or three-judge Circuit Court following a Disciplinary Proceeding that outlines in summary form the findings as to the allegations of Misconduct, the sanctions to be imposed, if any, the effective date of any sanctions imposed and any notice requirements.

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13-1.1. BURDEN OF PROOF

The burden of proof in all Disciplinary Proceedings and Impairment Proceedings is clear and convincing evidence.

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13-4. ESTABLISHMENT OF DISTRICT COMMITTEES

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B. Panel Quorum. A Panel quorum shall consist of five or more persons. No member of the Subcommittee that considered a Complaint pursuant to subparagraph 13-15 may sit on the Panel that hears the Complaint. One person assigned to a Panel should be a current or former nonlawyer member of a District Committee. If the scheduled nonlawyer is unable to attend, and if an alternate nonlawyer is not reasonably available, participation by a nonlawyer member shall not be required in a proceeding if a quorum is otherwise present. The action of a majority of a quorum shall be the action of the Panel.

* * *

F. Persons Ineligible for Appointment. Any potential appointee shall be ineligible for appointment to a District Committee if such potential appointee has: (1) ever been convicted in any jurisdiction of a Crime; (2) ever committed any criminal act that reflects adversely on the potential appointee's honesty, trustworthiness or fitness as a member of a District Committee; (3) a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, Suspension imposed at any time or Public Reprimand imposed within the ten years immediately preceding the proposed appointment date; or (4) a Disciplinary Record in any jurisdiction, imposed within the five years immediately preceding the proposed appointment date, consisting of Private Discipline or an Admonition, except for a *de minimis* dismissal or a dismissal for exceptional circumstances. The Standing Committee on Lawyer Discipline shall have the sole discretion to

determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances shall disqualify a potential appointee.

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13-5. AUTHORITY AND DUTIES OF COLD

All powers and duties of Council, with respect to the Disciplinary System, except the power to appoint District Committee members, may be exercised by COLD, subject to the direction and control of Council. Notwithstanding any rule to the contrary, any member of COLD may attend proceedings of the Subcommittees, District Committees or the Board. Service by an Attorney on COLD shall be deemed to be a professional relationship within the meaning of Rules of Professional Conduct 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Rules of Professional Conduct 1.11 and 1.12. Consent under Rules of Professional Conduct 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar. The membership of COLD shall consist of twelve persons, ten of whom shall be active members of the Bar and two shall be nonlawyers. In addition, a vice chair of the Board shall be an ex-officio, nonvoting member.

13-6. DISCIPLINARY BOARD

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B. Persons Ineligible for Appointment. Any potential appointee shall be ineligible or appointment to the Board if such potential appointee has: (1) ever been convicted in any jurisdiction of a Crime; (2) ever committed any criminal act that reflects adversely on the potential appointee's honesty, trustworthiness or fitness as a member of a District Committee; (3) a Disciplinary Record in any jurisdiction consisting of a Disbarment, Revocation, Suspension imposed at any time or Public Reprimand imposed within the ten years immediately preceding the proposed appointment date; or (4) a Disciplinary Record in any jurisdiction, imposed within the five years immediately preceding the proposed appointment date, consisting of Private Discipline or an Admonition, except for a *de minimis* dismissal or a dismissal for exceptional circumstances. The Standing Committee on Lawyer Discipline shall have the sole discretion to

determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances shall disqualify a potential appointee.

* * *

D. Meetings and Quorum. The Board shall meet on reasonable notice by the Chair or a Vice Chair. A Panel of five members shall constitute a quorum, and the action of a majority of a Panel shall constitute action of the Board. One of the five persons assigned to any Panel shall be a present or former nonlawyer member unless the scheduled nonlawyer is unable to attend and an alternate nonlawyer member or former member is not reasonably available. In such event, participation by a nonlawyer shall not be required in any proceeding if a quorum is otherwise present.

E. Roster. The Clerk shall establish a roster of Board members sufficient to constitute a quorum for action on the matter to which they are being assigned. Former members of the Board may serve on a Panel of the Board or participate in Board matters whenever the Chair, Vice Chair or Clerk determines that such service is necessary for the orderly administration of the Board's work.

F. Jurisdiction. The Board shall have jurisdiction to consider: (1) Appeals from Public or Private Reprimands, with or without Terms, or Admonitions, with or without Terms, imposed by District Committees or Dismissals that otherwise create a Disciplinary Record; (2) Complaints and Certifications submitted to it by a Subcommittee or a District Committee; (3) Misconduct by reason of conviction of a Crime; (4) Impairment Proceedings; (5) Revocation or Suspension in another jurisdiction; (6) Petitions from Bar Counsel or the Chair of a District Committee seeking summary Suspension upon a belief that an Attorney is engaging in Misconduct likely to result in injury to or loss of property of a client or other entity or alleging an Attorney poses imminent danger to the public; (7) Petitions for Reinstatement referred to the Board for its recommendation to this Court ; (8) Violations of RESA or any regulations adopted pursuant thereto; (9) Failure of Respondent to make a complete transcript part of the Record, as provided in this Paragraph; (10) Failure of an Attorney to comply with an order, summons or subpoena issued in connection with a Disciplinary Proceeding or Impairment Proceeding; and (11) Failure of Respondent to fulfill

the terms of a Public Reprimand with Terms certified to it by a District Committee for sanction determination.

G. Additional Board Powers. The Board shall have the following powers in addition to all other powers granted to the Board:

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2. On its own motion or upon request by Bar Counsel or the Respondent, to summon and examine witnesses under oath or affirmation administered by any member of the Board and to compel the attendance of witnesses and the production of documents necessary or material to any proceeding. Any summons or subpoena may be issued by any Board member or the Clerk and shall have the force of and may be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail at the Respondent's last address of record for membership purposes with the Bar or, if service cannot be effected at the Respondent's last address on record, or the Respondent is a Foreign Lawyer, or a lawyer engaged pro hac vice in the practice of law in Virginia, or a lawyer not admitted in Virginia, by first class mail to the Clerk of this Court.

3. To impose an interim Suspension if an Attorney fails to comply with a summons or subpoena issued by any member of the Board, the Clerk, Bar Counsel or any lawyer member of a District Committee for trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm. In the event of alleged noncompliance, Bar Counsel may file with the Board and serve on the Attorney a notice of noncompliance requesting the Board to suspend the Attorney's License. The noncompliance notice must advise the Attorney that he or she may petition the Board within 10 days of service of the notice to withhold entry of a Suspension order and to hold a hearing, at which time the Attorney shall have the burden of proving good cause for the alleged noncompliance. If 10 days after service of the notice of noncompliance the Attorney has not petitioned the Board to withhold entry of an interim Suspension order, the Board shall enter an Order suspending the Attorney's License until such time as the Attorney fully complies with the summons or subpoena or a determination is made as to whether the Attorney's noncompliance violated the Disciplinary

Rules. An Attorney suspended pursuant to this subparagraph G.3. is subject to the provisions of subparagraph 13-29;

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H. Agreed Disposition. Whenever Bar Counsel and Respondent are in agreement as to the disposition of a Disciplinary Proceeding, the parties may submit a proposed Agreed Disposition to five members of the Board selected by the Chair. The five members so selected will constitute a Panel. If the proposed Agreed Disposition is accepted by a majority of the Panel so selected, the Agreed Disposition will be adopted by order of the Board. No appeal will lie from any sanction to which Respondent has agreed. If the Agreed Disposition is not accepted by the Panel, the Disciplinary Proceeding will then be set for hearing before another Panel of the Board at the earliest possible date. No member of the Panel which considered the proposed Agreed Disposition shall be assigned to the Panel which hears the Disciplinary Proceeding.

13-7. DISTRICT COMMITTEES.

A. Powers. Each District Committee and Section thereof shall have the power to:

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4. Issue, through any of its Attorney members or through Bar Counsel, any summons or subpoena necessary to compel the attendance of witnesses and the production of documents or evidence necessary or material to any Investigation or Disciplinary Proceeding. Any such summons or subpoena issued to a non-Attorney shall have the force of and be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail at the Respondent's last address of record for membership purposes with the Bar or, if service cannot be effected at the Respondent's last address on record, or if the Respondent is a Foreign Lawyer, or a lawyer engaged pro hac vice in the practice of law in Virginia, or a lawyer not admitted in Virginia, by first class mail to the Clerk of this Court.

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G. Preferred Venue. If preferred venue does not lie with any District Committee able to adjudicate the Complaint against a Respondent, such Complaint may be filed with and adjudicated by a District Committee designated by the Clerk. In determining to which District Committee a Complaint should be referred, the Clerk shall consider the volume of Complaints pending before the District Committee and the inconvenience imposed upon the Respondent and the witnesses by the location of the District Committee.

H. Objections to Venue. Either the Respondent or Bar Counsel may object to venue by filing a notice of objection with the Clerk within ten days of notification of the referral of the Complaint to a District Committee. Objections to venue shall be deemed waived unless made within this ten-day time period. Upon receipt of a timely filed notice of objection, the Clerk shall forward the notice of objection to the Chair of the Board for decision.

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J. Service by a Member of the Bar and Professional Relationship. Service by a member of the Bar on a District Committee shall be deemed to be a professional relationship within the meaning of Rules of Professional Conduct 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Rules of Professional Conduct 1.11 and 1.12.

K. Consent by Bar Counsel. Consent under Rules of Professional Conduct 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar.

L. Recusal or Disqualification of District Committee Members. In the event of recusal or disqualification of so many District Committee members that the District Committee is unable to discharge its responsibilities under this Rule, the District Committee may supplement its membership with members from other District Committees to achieve a quorum. If every member of a District Committee is recused or is disqualified from considering Charges of Misconduct, the Clerk shall assign the Charges of Misconduct to another District Committee.

13-8. BAR COUNSEL

A. Authority. Bar Counsel shall have the authority, to the extent provided in this Paragraph and subject to the general supervision of COLD, to:

1. Initiate, investigate, present or prosecute Complaints or other proceedings before Subcommittees, District Committees, the Board and Circuit Courts. Bar Counsel may represent the Bar in matters pending in this Court. In the course of performing such functions, Bar Counsel shall act independently and exercise prosecutorial autonomy and discretion;

* * *

B. Acting Bar Counsel. In the event of disqualification or recusal of Bar Counsel in any proceeding, the allegation of Misconduct shall be prosecuted by a District Committee member designated by the District Committee Chair if the Proceeding is before a District Committee, or by the Attorney General or his designee if the Proceeding is before the Board or a three-judge Circuit Court.

13-9. CLERK OF THE DISCIPLINARY SYSTEM

A. Current Dockets. The Clerk shall maintain a docket of current Attorney discipline and RESA matters pending before the District Committees, the Board or courts of this Commonwealth.

B. Records Retention. The Clerk shall retain all Files with respect to any Disciplinary Record for a period of at least five years from the date of the final Order in the Disciplinary Proceeding that created that Disciplinary Record. The Clerk may destroy all other Files upon the expiration of one year after the Dismissal.

* * *

D. Preservation of Determinations and Orders. The Clerk shall preserve a copy of all District Committee Determinations and Board or court orders in which an Attorney has been found to have engaged in Misconduct, to be impaired, to have committed a violation of RESA or requested Reinstatement.

E. Costs. The Clerk shall assess Costs against the Respondent in the following cases:

* * *

G. Public Notification of Sanctions. The Clerk shall issue a statement to the communications media and individuals and entities listed below summarizing each public Admonition, Public Reprimand, Suspension, or Revocation upon receipt of a Summary Order, District Committee Determination, or Memorandum Order approving an Agreed Disposition:

1. The Clerk of this Court;
2. Clerks of the Circuit and District Courts in each judicial circuit in the Commonwealth where the Attorney resides or maintains an office; and
3. Disciplinary authorities for jurisdictions, federal or state, wherein it is reasonable to expect that the Attorney may be licensed.

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13-12. SUBSTANTIAL COMPLIANCE, NOTICE AND EVIDENTIARY RULINGS, AND ADDRESS NOTIFICATION

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B. Time Deadlines. Where specific time deadlines are provided, such deadlines shall be jurisdictional, except when the Clerk, Bar Counsel, a District Committee or the Board is granted specific authority herein to extend or otherwise modify any such deadline.

C. Service. Whenever any notice or other writing directed to the Respondent is required or permitted under this Rule, such notice or other writing shall be deemed effective and served when mailed by certified mail to the Respondent at the Respondent's last address on record for membership purposes with the Bar or, if service cannot be effected at the Respondent's last address on record, or if the Respondent is a Foreign Lawyer, or a lawyer engaged pro hac vice in the practice of law in Virginia, or a lawyer not admitted in Virginia, by first class mail to the Clerk of this Court.

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13-14. DISQUALIFICATION OF DISTRICT COMMITTEE MEMBER OR BOARD MEMBER

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E. Ineligibility. Any member or former member of a District Committee or the Board shall be ineligible to serve in a Disciplinary Proceeding or Impairment Proceeding in which:

* * *

5. The District Committee or Board member, upon reasonable notice to the Clerk or to the Chair presiding over a matter, disqualifies himself or herself from participation in the matter, because such member believes that he or she is unable to participate objectively in consideration of the matter or for any other reason.

13-15. SUBCOMMITTEE ACTION

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B. Other Actions. Once the Investigation is complete to the Subcommittee's satisfaction, it will take one of the following actions.

1. Dismiss. It shall dismiss the Complaint when:

a. As a matter of law the conduct questioned or alleged does not constitute Misconduct; or
b. The evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged, or there is no credible evidence to support any allegation of Misconduct by Respondent, or the evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard; or

c. The evidence available shows that the conduct questioned or alleged was *de minimis*, there is little or no injury to any of the following: a client, the public, the legal system or profession, and there is no or very little likelihood of repetition by the Respondent; or

d. There exist exceptional circumstances mitigating against further proceedings, which circumstances shall be set forth in writing, unless they relate to Respondent's health or other information that the Subcommittee determines should remain confidential; or

e. The action alleged to be Misconduct is protected by superseding law.

In dismissing cases under Paragraph 13-15.B.1.c. or d., the Subcommittee shall have access to Respondent's prior Disciplinary Record and any prior dismissals issued pursuant to Paragraph

13-15.B.1.c. or d. When any Respondent has received a dismissal under Paragraph 13-15.B.1.c. or d. during the ten-year period immediately preceding the Bar's receipt of the oldest Complaint that the Subcommittee is considering, it shall be presumed that another dismissal on the same basis is not an appropriate disposition, unless there are sufficient facts and circumstances to rebut such presumption.

* * *

E. Notice of Action of the Subcommittee. If a Subcommittee has dismissed the Complaint, the Chair shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor. If a Subcommittee determines to issue an Admonition with or without Terms, or a Private or Public Reprimand with or without Terms, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the Subcommittee's determination. If a Subcommittee elects to certify a Complaint to the Board, the Subcommittee Chair shall promptly mail a copy of the Certification to the Clerk, Bar Counsel, the Respondent and the Complainant.

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13-16. DISTRICT COMMITTEE PROCEEDINGS

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B. Response by Respondent Required. After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct:

1. File an answer to the Charge of Misconduct with the Clerk, which answer shall be deemed consent to the jurisdiction of the District Committee; or
2. File an answer to the Charge of Misconduct and a demand with the Clerk that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the District Committee shall terminate, and Bar Counsel shall file the complaint required by VA. Code §

54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30- to 120-day time frame shall not constitute a deadline for the hearing to be held.

* * *

D. Pre-Hearing Orders. The Chair may, *sua sponte* or upon motion of the Respondent or Bar Counsel, enter such pre-hearing order as is necessary for the orderly conduct of the hearing before the District Committee. Such order may establish time limits and:

1. Direct Bar Counsel and Respondent to file with the Clerk and provide to each other and the Chair, a list of and copies of all exhibits proposed to be introduced at the Misconduct stage of the hearing;
2. Encourage Bar Counsel and Respondent to confer and discuss stipulations; and
3. Direct Bar Counsel and Respondent to file with the Clerk and provide to each other and the Chair, lists setting forth the name of each witness the party intends to call.

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I. Oral Testimony and Exhibits. Oral testimony shall be taken and preserved by a Court Reporter. All exhibits or copies thereof received in evidence or refused by the District Committee shall be filed with the Clerk.

* * *

X. Sanctions. If the District Committee finds that Misconduct has been shown by clear and convincing evidence, then the District Committee shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has a Disciplinary Record in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence in aggravation or mitigation, as well as argument. In determining what disposition of the Charge of Misconduct is warranted, the District Committee shall consider the Respondent's Disciplinary Record. A District Committee may:

1. Conclude that an Admonition, with or without Terms, should be imposed;
2. Issue a Public Reprimand, with or without Terms; or

3. Certify the Charge of Misconduct to the Board or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935.

Y. Summary Orders and District Committee Determinations. Upon conclusion of a hearing, the Chair must issue a Summary Order. If the District Committee finds that the evidence shows the Respondent engaged in Misconduct by clear and convincing evidence, then the Chair shall issue the District Committee's Determination, in writing, setting forth the following:

* * *

Z. Notices.

If the District Committee:

1. Issues a Dismissal, the Chair shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor.

2. Issues a Public Reprimand, with or without Terms, or an Admonition, with or without Terms, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the District Committee's Determination.

3. Finds that the Respondent failed to comply with the Terms imposed by the District Committee, the Chair shall notify the Complainant, the Respondent and Bar Counsel of the imposition of the alternative disposition.

4. Has elected to certify the Complaint, the Chair of the District Committee shall promptly mail to the Clerk a copy of the Certification. A copy of the Certification shall be sent to Bar Counsel, Respondent and the Complainant.

AA. District Committee Determination Finality. Upon the expiration of the ten-day period after service on the Respondent of a District Committee Determination, if either a notice of appeal or a notice of appeal and a written demand that further Proceedings be conducted before a three-judge Circuit Court pursuant to Va. Code § 54.1-3935 has not been filed by the Respondent, the District Committee Determination shall become final.

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CC. Alternative Disposition and Procedure for Public Reprimand with Terms. The alternative disposition for a Public Reprimand with Terms shall be a Certification for Sanction

Determination. Upon a decision to issue a Certification for Sanction Determination, Bar Counsel shall order the transcript of the show cause hearing and file it and a true copy of the Public Reprimand with Terms determination with the Clerk.

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13-17. PERFECTING AN APPEAL OF A DISTRICT COMMITTEE DETERMINATION BY THE RESPONDENT

A. Notice of Appeal; Demand. Within ten days after service on the Respondent of the District Committee Determination, the Respondent may file with the Clerk either a notice of appeal to the Board or a notice of appeal and a written demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935. In either case, the Respondent shall send copies to the District Committee Chair and to Bar Counsel. Upon such demand, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. If the Respondent fails to file a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

B. Staying of Discipline. If the Clerk receives a timely notice of appeal from a Public Reprimand, with or without Terms, or an Admonition, with or without Terms, the sanctions shall be stayed during the pendency of the appeal.

* * *

C. Filing the Transcript and Record on Appeal. The Respondent shall certify in the notice of appeal or written demand that he or she has ordered from the Court Reporter a complete transcript of the proceedings before the District Committee, at the Respondent's cost. Upon receipt of the notice of appeal or written demand, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk. The transcript is a part of the record when it is received in the office of the Clerk within 40 days after filing of the notice of appeal or written demand. The Clerk shall retain the records until the transcript has been received or for 40 days after the notice of appeal or written demand has been received, whichever occurs first, and shall then dispose of the record as prescribed in the records retention policy set forth in this Paragraph.

Failure of the Respondent to make the complete transcript a part of the Record as specified herein shall result in Dismissal of the appeal by the Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed by the District Committee. Bar Counsel shall initiate the three-judge Circuit Court process for the appeal only after receipt of the transcript by the Clerk.

D. Appeal to a Circuit Court. An appeal to a Circuit Court pursuant to Va. Code § 54.1-3935 shall be conducted before a duly convened three-judge Circuit Court as an appeal on the record using the same procedure prescribed for an appeal of a District Committee Determination before the Board under this Paragraph. The Clerk shall forward the record to the clerk of the designated Circuit Court only upon receipt of the transcript as provided in the preceding subparagraph C.

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13-18. BOARD PROCEEDINGS UPON CERTIFICATION

A. Filing by Respondent. After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent shall, within 21 days after service of the Certification:

1. File an answer to the Certification with the Clerk, which answer shall be deemed consent to the jurisdiction of the Board; or file an answer to the Certification and a demand with the Clerk that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

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D. Expedited Hearings.

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5. At least five days prior to the date set for hearing, the Respondent shall either file an answer to the petition with the Clerk, which answer shall be conclusively deemed consent to the jurisdiction of the Board; or file an answer and a demand with the Clerk, which answer shall be conclusively deemed consent to the jurisdiction of the Board; or file an answer and a demand

with the Clerk that proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 days nor more than 120 days from the date of the Board order. Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30- to 120-day time frame shall not constitute a deadline for the hearing to be held. If any order of summary Suspension has been entered, such Suspension shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it. If the Respondent fails to file an answer, or an answer and a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

E. Pre-Hearing Orders. The Chair may, *sua sponte* or upon motion of the Respondent or Bar Counsel, enter such pre-hearing order as is necessary for the orderly conduct of the hearing before the Board in Misconduct cases. Such order may establish time limits and:

1. Direct Bar Counsel and the Respondent to provide to each other, with a copy to the Clerk, a list of and copies of all exhibits proposed to be introduced at the Misconduct stage of the hearing;
2. Encourage Bar Counsel and the Respondent to confer and discuss stipulations; and
3. Direct Bar Counsel and the Respondent to provide to each other, with a copy to the Clerk, lists setting forth the name of each witness the party intends to call.

F. Continuance of a Hearing. Absent exceptional circumstances, once the Board has scheduled a hearing, no continuance shall be granted unless, in the judgment of the Chair, the continuance is necessary to prevent injustice. No continuance will be granted because of a conflict with the schedule of the Respondent or the Respondent's counsel unless such continuance is requested in writing by the Respondent or the Respondent's counsel within 14 days after mailing of a notice of hearing. Any request for a continuance shall be filed with the Clerk.

* * *

K. Deliberations. As soon as practicable after the conclusion of the evidence and arguments as to the issue of Misconduct, the Board shall deliberate in private. If the Board finds by clear and convincing evidence that the Respondent has engaged in Misconduct, the Board shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has a Disciplinary Record in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence and arguments in aggravation or mitigation. The Board shall deliberate in private on the issue of sanctions. The Board may address any legal questions to the Office of the Attorney General.

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R. Reconsideration of Board Action. No motion for reconsideration or modification of the Board's decision shall be considered unless it is filed with the Clerk within 10 days after the hearing before the Board. The moving party shall file the motion and all supporting exhibits with the Clerk. Such motion shall be granted only to prevent manifest injustice upon the ground of:

* * *

3. If such a motion is timely filed, the Clerk shall promptly forward copies to each member of the hearing panel. The panel may deny the motion without response from Bar Counsel. No relief shall be granted without allowing Bar Counsel an opportunity to oppose the motion in writing. If no relief is granted, the Board shall enter its order disposing of the case.

13-19. BOARD PROCEEDINGS UPON APPEAL

A. Docketing An Appeal. Upon receipt of notice from the Clerk that a Respondent has filed an appeal from a District Committee Determination the Board shall place such matter on its docket for review.

B. Notice to the Appellant. The Clerk shall notify the appellant when the entire record of the Proceeding before the District Committee has been received or when the time for appeal has expired.

* * *

D. Briefing. Thereafter, briefs shall be filed in the office of the Clerk, as follows:

1. The appellant shall file an opening brief within 40 days after the mailing of the notice to the appellant regarding the record by the Clerk. Failure of the appellant to file an opening brief within the time specified herein shall result in the Dismissal of the appeal and affirmance of the decision by the District Committee.

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13-20. BOARD PROCEEDINGS UPON CERTIFICATION FOR SANCTION DETERMINATION

A. Initiation of Proceedings. Upon receipt of the Certification for Sanction Determination from a District Committee, the Clerk shall issue a notice of hearing on the Certification for Sanction Determination giving Respondent the date, time and place of the Proceeding and a copy of the Certification for Sanction Determination.

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13-21. BOARD PROCEEDINGS UPON A FIRST OFFENDER PLEA

A. Action Upon Receipt of Notification. Whenever the Clerk receives written notification from any court of competent jurisdiction stating that an Attorney has entered a plea to a Crime under a first offender statute, and that the court has found facts that would justify a finding of guilt and ordered that the Attorney be put on probation, the Board shall forthwith enter an order requiring the Attorney to appear at a specified time and place for a hearing before the Board to determine whether the Attorney's License should be revoked or suspended or, if not, whether the Attorney should be required to give notice, by certified mail, of the plea and probation ordered by the court, including the terms and duration of the probation, to all clients for whom the Attorney is currently handling matters, and to all opposing attorneys and the presiding judges in pending litigation. A copy of the written notification from the court shall be served with the order fixing the time and place of the hearing. The hearing shall be set not less than 14 or more than 30 days after the date of the Board's order.

* * *

C. Demand for Three Judge Court. If the Attorney elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Attorney shall file a demand with the Clerk not later than ten days prior to the date set for the Board hearing, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30- to 120-day time frame shall not constitute a deadline for the hearing to be held. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

* * *

13-22. BOARD PROCEEDINGS UPON A GUILTY PLEA OR AN ADJUDICATION OF A CRIME

A. Action Upon Receipt of Notification. Whenever the Clerk receives written notification from any court of competent jurisdiction stating that an Attorney (the “Respondent”) has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily enter an order of Suspension requiring the Respondent to appear at a specified time and place for a hearing before the Board to show cause why the Respondent’s License to practice law should not be further suspended or revoked. A copy of the written notification from the court shall be served upon the Respondent with the Board’s order of Suspension.

* * *

F. Procedure. The procedure applicable to Proceedings related to Misconduct shall apply to Proceedings relating to guilty pleas or Adjudication of a Crime. If the Respondent elects to have further Proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent shall file a demand with the Clerk not later than ten days prior to the date set for the hearing before the Board, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30- to 120-day time frame shall not constitute a deadline for the hearing to be held. The order of Suspension issued by the Board shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

13-23. BOARD PROCEEDINGS UPON IMPAIRMENT

* * *

B. Burden of Proof. Whenever the existence of an Impairment is alleged in a proceeding under this Rule or in mitigation of allegations of Misconduct, the burden of proving such an Impairment shall rest with the party asserting its existence. The issue of the existence of an Attorney's Impairment may be raised by any person at any time, and if a District Committee or the Board, during the course of a hearing on allegations of Misconduct against a Respondent, believes that the Respondent may then have an Impairment, the District Committee or the Board may postpone the hearing and initiate an Impairment Proceeding under this Rule. In proceedings to terminate a Suspension for Impairment, the burden of proving the termination of an Impairment shall be on the Respondent.

* * *

D. Summary Suspension. Upon receipt of a notice from the Clerk with supporting documentary evidence that an Attorney has been adjudicated by a court of competent jurisdiction

to have an Impairment, or that an Attorney has been involuntarily admitted to a hospital (as defined in Va. Code § 37.1-1) for treatment of any addiction, inebriety, insanity or mental illness, any member of the Board shall summarily issue on behalf of the Board an order of Suspension against the Respondent and cause the order to be served on such Respondent.

* * *

H. Examination. Following a psychiatric, physical or other medical examination, written reports of the results of such examination, along with written reports from other qualified physicians or other health care providers who have examined Respondent, may be considered as evidence by the Board. Such reports shall be filed with the Clerk.

* * *

13-24. BOARD PROCEEDINGS UPON DISBARMENT, REVOCATION OR SUSPENSION IN ANOTHER JURISDICTION

* * *

B. Initiation of Proceedings. Upon receipt of a notice from the Clerk that another Jurisdiction has, as a disciplinary measure, suspended or revoked the law license of an Attorney (“Respondent”) or has suspended or revoked Respondent’s privilege to practice law in that Jurisdiction, and that such action has become final (the “Suspension or Revocation Notice”), any Board member shall enter on behalf of the Board an order requiring Respondent to show cause why discipline that is the same or equivalent to the discipline imposed in the other Jurisdiction should not be imposed by the Board. If the Suspension or Revocation Notice is from a State Jurisdiction and the suspension or revocation has not been suspended or stayed, then the Board’s order shall suspend Respondent’s License pending final disposition of the Proceeding hereunder. The Board shall serve upon Respondent by certified mail the following: a copy of the Suspension or Revocation Notice; a copy of the Board’s order; and a notice fixing the date, time and place of the hearing before the Board to determine what action should be taken in response to the Suspension or Revocation Notice and stating that the purpose of the hearing is to provide Respondent an opportunity to show cause why the same or equivalent discipline that was

imposed in the other Jurisdiction should not be imposed by the Board. Notwithstanding the above, notice of a suspension or revocation for merely administrative reasons, such as the failure to pay dues or the failure to complete required continuing legal education, shall not be considered a Suspension or Revocation Notice.

C. Opportunity for Response. Within 14 days of the date of mailing of the Board order, via certified mail, to Respondent's last address of record with the Bar, Respondent shall file with the Clerk a written response, which shall be confined to argument and exhibits supporting one or more of the following grounds for dismissal or imposition of lesser discipline:

* * *

E. Provision of Copies. The Clerk shall furnish to the Board members designated for the hearing and make available to Respondent copies of the Suspension or Revocation Notice, the Board's order against the Respondent, the notice of hearing, any notice of continuance of the hearing, and any written response or materials filed by Respondent or by Bar Counsel.

* * *

13-25. BOARD PROCEEDINGS FOR REINSTATEMENT

* * *

D. Reinstatement After Disciplinary Suspension for More than One Year. After a Suspension for more than one year, the License of the Attorney subject to the Suspension shall not be considered for Reinstatement unless the Attorney has provided the Clerk clear and convincing evidence of proof of compliance that he or she has:

1. Attended 12 hours of continuing legal education, of which at least two hours shall be in the area of legal ethics or professionalism, for every year or fraction thereof of the Suspension;
2. Taken the Multistate Professional Responsibility Examination since imposition of discipline and received a scaled score of 85 or higher;
3. Reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of the Attorney's Misconduct;
4. Paid to the Bar all Costs that have been assessed against him or her, together with any interest due thereon at the judgment rate at the time the Costs are paid; and

5. Reimbursed the Bar for any sums of money it may have paid as a result of a receivership involving Petitioner's law practice.

Compliance with subparagraph 13-25.D will be determined by the Clerk. The Clerk will notify the Attorney of compliance or noncompliance. Upon a determination of compliance with the requirements of subparagraph 13-25.D, the Clerk will forward the request and supporting documentation to the Board for approval or disapproval of Reinstatement.

E. Petition for Reinstatement After Revocation. After a Revocation, a Petitioner may file with the Clerk a petition for Reinstatement, setting forth in that petition the reasons why his or her License should be reinstated. The Petitioner must comply with the requirements of subparagraph 13-25.F as a precondition to filing the petition. Compliance with subparagraph 13-25.F will be determined by the Clerk after the petition is filed, and the Clerk will notify the Petitioner of compliance or noncompliance. Upon a determination of compliance with the requirements of subparagraph 13-25.F, the Clerk will enter the petition on the docket of the Board and refer it to the office of Bar Counsel for investigation. The Board may recommend approval or disapproval of the petition. Final action on the petition shall be taken by this Court.

* * *

G. Reinstatement Proceedings After a Revocation. If the threshold requirements of subparagraph 13-25.F have been met, the following processes shall ensue:

* * *

2. Bill of Particulars. On written request by Bar Counsel, served by certified mail, return receipt requested, a Petitioner seeking Reinstatement shall file with the Clerk within 21 days after service of the request, an original and six copies of a bill of particulars setting forth the grounds for Reinstatement. The petition for Reinstatement shall not proceed without such Bill of Particulars being filed with the Clerk.

3. Hearing Date. The date of the hearing shall be determined by the Clerk in consultation with the Bar Counsel and the Petitioner.

4. Notice. Reasonable notice of filing of the petition and the date of the hearing shall be distributed by mail or electronic means by the Clerk to all members of the Bar of the circuit in

the jurisdictions in which the Petitioner resided, and of the circuit in which the Petitioner maintained a principal office, at the time of the Revocation. The Clerk shall also distribute by mail or electronic means the notice to the members of the District Committee who heard the original Complaint, to members of the Board who heard the original Complaint, to the members of the District Committee for the judicial circuit in which the Petitioner currently resides, to the complaining witness or witnesses on all Complaints pending against the Petitioner before the Board, a District Committee or a court at the date of the Revocation or Suspension and to such other individuals as the Clerk deems appropriate. The Clerk shall publish a synopsis of the petition in the Virginia Lawyer and in a newspaper of general circulation in the judicial circuit where the Petitioner currently resides and where the Petitioner maintained a principal office at the time of the Revocation or Suspension. The entire petition, as well as the transcript, exhibits, pleadings and orders from the original Disciplinary Proceedings and Bill of Particulars, together with the documents referred to in subparagraph 13-25.F above, shall be available for inspection and copying at the office of the Bar on reasonable notice and on payment of costs incurred to make the copies.

* * *

6. Powers of the Board in Reinstatement Cases. The Board is empowered to hold a hearing and make its recommendation to this Court either to approve or disapprove the petition.

* * *

e. Determination by the Board. The Board shall, within 60 days after the receipt of the transcript, forward the record and its recommendations to this Court. A copy of the recommendation shall be forwarded to the Petitioner and Bar Counsel.

* * *

ii. At the conclusion of the Reinstatement Proceeding, the Clerk shall determine the Costs associated with such Proceeding. The Clerk shall refund any remaining surplus or shall assess to the Petitioner any deficiencies that exist and submit a report on same to the Clerk of this Court as part of the Board's recommendation order.

* * *

13-26. APPEAL FROM BOARD DETERMINATIONS

A. Right of Appeal. As a matter of right any Respondent may appeal to this Court from an order of Admonition, Public Reprimand, Suspension, or Disbarment imposed by the Board, except for any sanction to which Respondent has agreed, using the procedures outlined in Rule 5:21(b) of the Rules of this Court. An appeal shall lie once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal shall lie from a Summary Order or Agreed Disposition. If a Respondent appeals to this Court, then the Bar may file assignments of cross-error pursuant to Rule 5:28 of the Rules of this Court.

* * *

13-27. RESIGNATION

A. Application. A sworn and notarized application to resign from the practice of law shall be submitted to the Clerk. The application shall state that the resignation is not being offered to avoid disciplinary action and that the Attorney has no knowledge of any complaint, investigation, action, or proceeding in any jurisdiction involving allegations of Misconduct by the Attorney. An application to resign will not prevent or preclude any disciplinary proceeding or action against an Attorney.

B. Procedure. The Clerk shall submit applications for resignation to Bar Counsel, who shall investigate each application and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the application with the Clerk, the Board shall hold a hearing on whether the application should be accepted. If Bar Counsel does not file an objection, the Board may enter an order accepting the Attorney's resignation without a hearing. A resignation shall be effective only upon entry of an order accepting it. Upon entry of an order accepting an Attorney's resignation, the former Attorney shall immediately cease the practice of law and make appropriate arrangements for the disposition of matters in the Attorney's care in conformity with the wishes of the Attorney's clients.

* * *

13-28. CONSENT TO REVOCATION

A. When Permitted. An Attorney who is the subject of a disciplinary complaint, investigation or Proceeding involving allegations of Misconduct may consent to Revocation, but only by delivering to the Clerk an affidavit declaring the Attorney's consent to Revocation and stating that:

* * *

C. Procedure. The Clerk shall submit the affidavit to Bar Counsel, who shall investigate the affidavit and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the affidavit with the Clerk, the Board shall hold a hearing on whether the affidavit and consent to Revocation should be accepted. If Bar Counsel does not file an objection, the Board shall enter an order revoking the Attorney's License by consent without a hearing.

* * *

E. Dismissal of Complaints or Allegations of Misconduct. When an Attorney's License is revoked by consent, Bar Counsel, in his or her discretion, may dismiss without prejudice any and all Complaints or allegations of Misconduct then pending by notifying the Clerk and the District Committee, Board or court wherein the matter or matters lie.

* * *

13-30. CONFIDENTIALITY OF DISCIPLINARY RECORDS AND PROCEEDINGS

A. Confidential Matters. Except as otherwise provided in this subparagraph 13-30, or in subparagraph 13-11, all District Committee, Board, and three-judge Circuit Court hearings and all determinations imposing public discipline and orders of summary, interim, or administrative Suspension are public; and the following proceedings, records, and information are confidential and shall not be disclosed:

1. Complaints, unless filed in a Disciplinary Proceeding set for hearing or introduced at a public hearing or incorporated in a Certification, petition for expedited hearing, or Charge of Misconduct, when the Charge of Misconduct is placed on the public District Committee hearing docket;

2. Investigations, except that Investigative Reports admitted as exhibits at a public hearing are public;

3. Impairment Proceedings, except that all Suspension orders are public;

4. Notes, memoranda, research, and all other work product of Bar Counsel;

5. Records, communications, and information protected by Rule of Professional Conduct 1.6;

6. Subcommittee records and proceedings, except determinations imposing public discipline;

7. Deliberations and working papers of District Committees, the Board, or a three-judge Circuit Court; and

8. Records or information sealed or proceedings closed for good cause shown by order of a District Committee, the Board, or three-judge Circuit Court.

B. Timing of Disclosure of Disciplinary Record in Review of Agreed Dispositions and Sanctions Proceedings. If an Attorney has a Disciplinary Record and is subsequently found by a Subcommittee, a District Committee, the Board, or a three-judge Circuit Court empaneled under Va. Code § 54.1-3935 to have engaged in Misconduct, the facts and circumstances giving rise to such Disciplinary Record may be disclosed (i) to the Subcommittee, District Committee, Board or three-judge Circuit Court prior to the imposition of any sanction and (ii) by the Subcommittee, District Committee, Board or three-judge Circuit Court in its findings of fact set forth in its order. The facts and circumstances giving rise to such Disciplinary Record may also be disclosed to the Board during a hearing concerning whether an affidavit and consent to Revocation should be accepted. An Attorney's Disciplinary Record, and the facts and circumstances giving rise to such Disciplinary Record, may also be disclosed to a Subcommittee, District Committee, the Board, or a three-judge Circuit Court as part of the review of an Agreed Disposition.

C. Timing of Public Access to Disciplinary Information.

1. A Charge of Misconduct is public when the matter is placed on the public District Committee hearing docket; and

2. A Certification or petition for expedited hearing is public when filed with the Clerk; and
3. All notices, orders, pleadings, and other documents filed with the Clerk or Circuit Court in any Disciplinary Proceeding set for hearing are public upon such filing.

D. Public Statements Concerning Disciplinary Information. To the extent necessary to exercise their official duties, Bar Officials have access to all confidential information; however, except for Bar Counsel, no Bar Official shall communicate with a member of the media or the public concerning a matter that is confidential under this Paragraph. If an inquiry is made about a matter that, although confidential under this Paragraph, has become a matter of public record or has become known to the public, Bar Counsel may confirm whether the Bar is conducting an Investigation or if an Investigation resulted in a determination that further proceedings were not warranted.

E. Protection of the Public. Bar Counsel may transmit confidential information to persons or agencies outside of the disciplinary system if Bar Counsel has reason to believe disclosure is necessary to protect the public or the administration of justice.

F. Disclosure to Other Jurisdictions. Bar Counsel may share confidential information regarding an Investigation with his or her counterparts in other jurisdictions provided that such jurisdiction agrees to maintain the confidentiality of the information as provided in this Paragraph.

* * *

I. Waiver of Confidentiality. Confidential information, excluding notes, memoranda, research, and all other work product of Bar Counsel, may upon written request be disclosed when and to the extent confidentiality is waived by Bar Counsel, the Respondent, the Complainant, and, if protected by Rule of Professional Conduct 1.6, by Respondent's client.

J. Testimony about Disciplinary Proceedings.

1. In no case shall Bar Counsel, a member of COLD, a member of a District Committee, a member of the Board, or a Committee Counsel be subject to a subpoena or otherwise compelled to testify in any proceeding regarding any matter investigated or considered in such person's official capacity, except that an Investigator may be compelled to testify in a Disciplinary Proceeding, subject to rulings of the three-judge Circuit Court or Chair.

2. In no case shall the Clerk be subject to a subpoena or otherwise compelled to testify regarding any matter investigated or considered in the disciplinary system, or the records of any such matter, dealt with by the Clerk in his or her official capacity, except that the Clerk may be compelled to testify in a Disciplinary Proceeding or Impairment Proceeding in order to authenticate records of the Clerk.

K. Records of the Disciplinary System. In no case shall confidential records of the attorney disciplinary system be subject to subpoena.

* * *

13-31. DISMISSAL OF COMPLAINTS AND ALLEGATIONS OF MISCONDUCT UPON REVOCATION WITHOUT CONSENT, OR UPON DEATH

When an Attorney's License is revoked without consent, or upon the death of an Attorney, Bar Counsel, in his or her discretion, may dismiss without prejudice any and all Complaints or allegations of Misconduct then pending against said Attorney by notifying the Clerk, the Complainant(s) and the District Committee, Board or court wherein the matter(s) lies.

* * *

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective December 1, 2019.

A Copy,

Teste:


Clerk