

RULES OF THE VIRGINIA SUPREME COURT  
PART SIX, SECTION IV, PARAGRAPH 13

EFFECTIVE – ~~May 9, 2023~~ November 28, 2023

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13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-1. DEFINITIONS

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

“Adjudication of a Crime Proceeding” means the proceeding which follows the summary Suspension of an Attorney after receipt by the Clerk of the Disciplinary System of initial notification from any court of competent jurisdiction stating that an Attorney has been found guilty of a Crime, irrespective of whether sentencing has occurred.

“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.

“Agreed Disposition” means the disposition of a Disciplinary Proceeding agreed to by Respondent and Bar Counsel and approved by a Subcommittee, District Committee, the Board or a Circuit Court.

“Answer” means a written response to a Charge of Misconduct, Certification, or petition for expedited hearing, which must respond to each fact and Misconduct allegation contained in the Charge of Misconduct, Certification, or petition for expedited hearing, and be signed by the Respondent.

“Attorney” means a member of the Bar, a Corporate Counsel Registrant, Foreign Lawyer, Foreign Legal Consultant, and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia.

“Bar” means the Virginia State Bar.



“Bar Counsel” means the Attorney who is appointed as such by Council and who is approved by the Attorney General pursuant to Va. Code § 2.2-510 and such deputies, assistants, and Investigators as may be necessary to carry out the duties of the office, except where the duties must specifically be performed by the individual appointed pursuant to Va. Code § 2.2-510.

“Bar Official” means any Bar officer or any member, employee, or counsel of Council, the Board, a District Committee, or COLD.

“Board” means the Bar Disciplinary Board.

“Certification” means the document issued by a Subcommittee or a District Committee when it has elected to certify allegations of Misconduct to the Board for its consideration, which document must include sufficient facts to reasonably notify Bar Counsel and Respondent of the basis for such Certification and the Disciplinary Rules alleged to have been violated.

“Certification for Sanction Determination” means the document issued by a District Committee to certify to the Board that a sanction within the power of the Board is in order where the District Committee has found that Respondent failed to fulfill the terms of a Public Reprimand with Terms issued either by a Subcommittee on the basis of an Agreed Disposition or by a District Committee.

“Chair” unless otherwise specified, means the Chair, Vice Chair, or Acting Chair of a District Committee, or a Section, Panel, or Subcommittee of a District Committee, or of the Board or any Panel of the Board.

“Charge of Misconduct” means the notice given by the Bar to a Respondent, setting forth generally the Misconduct alleged to have been committed by the Respondent, and identifying the specific Disciplinary Rule(s) alleged to have been violated by the Respondent. The Charge of Misconduct must also include the date, time, and place of the hearing.

“Circuit Court” means a court designated as such by Va. Code §17.1-500.

“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.

“COLD” means the Standing Committee on Lawyer Discipline.

“Complainant” means the initiator of a Complaint.

“Complaint” means any written communication alleging Misconduct or from which allegations of Misconduct reasonably may be inferred.

“Committee Counsel” means an Attorney District Committee member assigned to prosecute a Complaint.

“Corporate Counsel Registrant” means a person who has been recorded by the Virginia State Bar as a Corporate Counsel Registrant pursuant to Rule 1A:5.

“Costs” means reasonable costs paid by the Bar to outside experts, consultants, or guardians *ad litem* in a proceeding conducted pursuant to subparagraph 13-22; reasonable travel and out-of-pocket expenses for witnesses; Court Reporter and transcript fees; electronic and telephone conferencing and recording costs, if such procedures are requested by Respondent; copying, mailing, and required publication costs; translator fees; and an administrative charge determined by Council.

“Council” means the Council of the Bar.

“Court Reporter” means a person who is qualified to transcribe proceedings in a Circuit Court.

“CRESPA” *See* “RESA.”

“Crime” means:

1. Any offense declared to be a felony by federal or state law;
2. Any other offense involving theft, fraud, forgery, extortion, bribery, or perjury;
3. An attempt, solicitation or conspiracy to commit any of the foregoing; or
4. Any of the foregoing found by a foreign jurisdiction.

“Disbarment” has the same meaning as Revocation.

“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.

“Disciplinary Rules” means:

1. the Virginia Rules of Professional Conduct and Virginia Code of Professional Responsibility, as applicable; and
2. the disciplinary rules of any other jurisdiction applicable under Rule 8.5 of the Virginia Rules of Professional Conduct.

“Dismissal” means the dismissal of a Complaint or Disciplinary Proceeding by Bar Counsel, a Subcommittee, a District Committee, the Board or a Circuit Court.

“Dismissal *De Minimis*” means a finding that the Respondent has engaged in Misconduct that is clearly not of sufficient magnitude to warrant disciplinary action, and Respondent has taken reasonable precautions against a recurrence of same.

“Dismissal for Exceptional Circumstances” means a finding that the Respondent has engaged in Misconduct but there exist exceptional circumstances mitigating against further proceedings, which circumstances must be set forth in writing.

“District Committee” means one of the District Committees appointed as hereinafter provided or, where the context requires, a Panel, a Section, or a Subcommittee thereof.

“District Committee Determination” means the written decision of a District Committee or a Subcommittee of a District Committee, relating to a Complaint or Charge of Misconduct.

“Executive Committee” means the Executive Committee of the Bar.

“Executive Director” means the Executive Director of the Bar and any deputy or assistant designated by Council to act as Executive Director.

“Files” means those files maintained by the Clerk of the Disciplinary System, and office of Bar Counsel with respect to each Complaint.

“Foreign Lawyer” means a person authorized to practice law by the duly constituted and authorized governmental body of any State or Territory of the United States or the District of Columbia, or a foreign nation, but is neither licensed by the Court or authorized under its rules to practice law generally in the Commonwealth of Virginia, nor disbarred or suspended from practice in any jurisdiction.

“Foreign Legal Consultant” means a person who has been issued a foreign legal consultant certificate by the Virginia Board of Bar Examiners pursuant to Rule 1A:7.

“Impairment” means any physical or mental condition that materially impairs the fitness of an Attorney to practice law.

“Impairment Proceeding” means any proceeding:

1. Initiated by Bar Counsel to petition the Board to order the Respondent to undergo examination(s) and provide releases for records;
2. Initiated by a District Committee, the Board, or Bar Counsel to determine whether an Attorney has an Impairment;
3. That follows the summary Suspension of an Attorney who may have an Impairment; or
4. That follows a request by Respondent to terminate an Impairment Suspension.

“Investigation” means any inquiry by Bar Counsel, Committee Counsel, or the Bar’s designee concerning any alleged Misconduct or Crime committed by an Attorney, ~~or~~ any Impairment of an Attorney, or any petition for Reinstatement.

“Investigative Report” means the report prepared as a result of an Investigation.

“Investigator” means a person designated by the Bar to conduct an Investigation.

“Judge” means a judge within the meaning of Va. Code §17.1-900, and any judge appointed or elected under the laws of any other jurisdiction.

“Lawyer Assistance Program” means a mental health and/or substance abuse treatment program for Attorneys that is approved by the Bar.

“License” means the license or authority to practice law granted by this Court.

“Memorandum Order” means the opinion and order of the Board entered following a Disciplinary Proceeding that must contain a brief statement of the findings of fact; the nature of the Misconduct shown by such findings of fact; the Disciplinary Rules found to have been violated by clear and convincing evidence; the sanction imposed; the notice requirements, if any, imposed upon Respondent; the time in which Terms are required to be satisfied by Respondent, if Terms are imposed; the alternative sanction, if Respondent fails to comply with any Terms that are imposed; the name and address of the Court Reporter who served at the hearing; the names of the members of the Board that constituted the Panel; and that Costs must be reimbursed by Respondent.

“Misconduct” means any:

1. Unlawful conduct described in Va. Code § 54.1-3935;

2. Violation of the Disciplinary Rules;
3. Conviction of a Crime;
4. Conviction of any other criminal offense or commission of a deliberately wrongful act that reflects adversely on the Attorney's honesty, trustworthiness, or fitness as an Attorney; or
5. Violation of RESA or any regulations adopted pursuant thereto.

“Panel” means a group of members of a Section, District Committee, or the Board hearing a disciplinary matter that constitutes the quorum required by this Paragraph.

“Paragraph” means Paragraph 13 of the Rules of this Court, Part Six, Section IV.

“Petitioner” means:

1. A ~~former~~ former Attorney seeking Reinstatement after a Revocation; or
2. An Attorney seeking termination of an Impairment Suspension; or
3. A Bar Counsel or District Committee Chair seeking an expedited hearing before the Board and alleging 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.

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

“Private Reprimand” means a form of non-public discipline that declares privately the conduct of the Respondent improper but does not limit the Respondent's right to practice law.

“Proceeding” means the same as Disciplinary Proceeding.

“Public Reprimand” means a form of public discipline that declares publicly the conduct of the Respondent improper, but does not limit the Respondent's right to practice law.

“Receivership” means a receivership created pursuant to Va. Code § 54.1-3900.01 or § 54.1-3936.

“Reinstatement” means the restoration ~~by this Court~~ of a Petitioner or an Attorney's License in the manner provided in this Paragraph.

“Reinstatement Proceeding” means the proceeding which takes place upon ~~referral from this Court of a Petition for Reinstatement by an~~ the filing of a petition by a former Attorney whose License was previously revoked.

“RESA” means Chapters 9 (titled “Real Estate Settlements”) and 10 (titled “Real Estate Settlement Agents”) of Title 55.1 of the Code of Virginia (formerly “Consumer Real Estate Settlement Protection Act” or “CRESPA”).

“Respondent” means any Attorney:

1. Who is the subject of a Complaint;
2. Who is the subject of any proceeding under this Paragraph, Va. Code §§ 54.1-3900.01, 54.1-3935, 54.1-3936, or RESA; or
3. Who is the subject of an Adjudication of a Crime Proceeding, Proceedings upon Disbarment, Revocation or Suspension in another jurisdiction, or Impairment Proceeding, ~~or Reinstatement Proceeding.~~

“Revocation” means any revocation of an Attorney’s License and, when applied to a lawyer not admitted or authorized to practice law in Virginia, means the exclusion from the admission to, or the exercise of any privilege to, practice law in Virginia.

“Section” means a subgroup of a District Committee that has the same powers, authority, and duties as the District Committee.

“Subcommittee” means a subgroup of a District Committee or any Section thereof, convened for the purpose of performing the functions of a Subcommittee as described in this Paragraph.

“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.

“Suspension” means the temporary suspension of an Attorney’s License for either a fixed or indefinite period of time and, when applied to a lawyer not admitted or authorized to practice law in Virginia, means the temporary or indefinite exclusion from the admission to, or the exercise of any privilege to, practice law in Virginia.

“Terms” means those conditions imposed on the Respondent by a Subcommittee, District Committee, Board, or Circuit Court, that require the Respondent to perform certain remedial actions as a necessary condition for the imposition of an Admonition, a Private or Public Reprimand, or a Suspension pursuant to this Paragraph.

“Va. Code” means the 1950 Code of Virginia, as amended.

#### 13-1.1. BURDEN OF PROOF

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

## 13-2. AUTHORITY OF THE COURTS

Nothing in this Paragraph should be interpreted so as to eliminate, restrict or impair the jurisdiction of the courts of this Commonwealth to deal with the disciplining of Attorneys as provided by law. Every Judge has authority to take such action as may be necessary or appropriate to protect the interests of clients of any Attorney whose License is subject to a Suspension or Revocation. Every Circuit Court has the power to enforce any order, summons or subpoena issued by the Board, a District Committee or Bar Counsel and to adjudge disobedience thereof as contempt.

## 13-3. GENERAL ADMINISTRATIVE AUTHORITY OF COUNCIL

Council has general administrative authority over and responsibility for the disciplinary system created pursuant to this Paragraph.

## 13-4. ESTABLISHMENT OF DISTRICT COMMITTEES

- A. Creation of District Committees. Council must appoint a sufficient number of District Committees to carry out the purposes of this Paragraph. District Committees are established in geographical areas consisting of one or more judicial circuits. In creating the District Committee areas, Council should give due consideration to Attorney population and the community of interest among different judicial circuits within a District Committee area. Each District Committee consists of ten, or in the discretion of Council, 20, 30 or 40 members. Three members of a ten-member District Committee, six members of a 20-member District Committee, nine members of a 30-member District Committee, and 12 members of a 40-member District Committee must be nonlawyers. All other members must be active members of the Bar. Former members of a District Committee may serve on a District Committee Subcommittee or participate in a District Committee hearing whenever the District Committee Chair determines that such service is necessary for the orderly administration of the District Committee's work.
- B. Panel Quorum. A Panel quorum consists 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 is not required in a proceeding if a quorum is otherwise present. The action of a majority of a quorum is the action of the Panel. For the exclusive purposes of considering an Agreed Disposition, pursuant to subparagraph 13-7.A.9, a Panel may act in a meeting in person or through any means of communication by which all five members participating may simultaneously hear each other during the meeting.

- C. Geographic Criteria. Each member of a District Committee must be a resident of or have his or her office in the District Committee area for which such member is appointed. Members are, to the extent practicable, appointed from different geographical sections of their districts.
- D. Term of Office. Council should appoint members of each District Committee for such terms of service as will allow for the retirement from the District Committee, or completion of the existing terms, of one-third of the District Committee membership at the end of each fiscal year. A District Committee member's term is for three years, and, upon completion of such term, such member is eligible for appointment to a second successive three-year term. A member who has served two full successive terms of three years each on a District Committee is not eligible to serve again until one year after the expiration of the second term.
- E. Qualifications of Members. Before nominating any individual for membership on a District Committee, the Council members making such recommendation should first determine that the nominee is willing to serve on the District Committee and will conscientiously discharge the responsibility as a member of the District Committee. Council members making the nominations must also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the District Committee, if elected. In order to be considered as a potential appointee to a District Committee, each potential appointee must execute the following: (1) a waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and any pending Complaints from any jurisdiction for purposes of the appointment process; and (2) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process. No member of Council can be a member of a District Committee; however, this rule does not apply to the chair or president of any conference of the Virginia State Bar, such as the Conference of Local Bar Associations, Diversity Conference, Senior Lawyers Conference, or Young Lawyers Conference, who are ex-officio members of Council. An ex-officio member of Council who is also a member of a District Committee cannot vote on the selection or confirmation of nominees for any District Committee.
- F. Persons Ineligible for Appointment. Any potential appointee is 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 has the sole discretion to determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances disqualifies a potential appointee.

- G. Interim Vacancies. Whenever a vacancy occurs on a District Committee, the Executive Committee may fill the vacancy. Bar Counsel or a majority of the members of a District Committee may request the Executive Committee to declare that a District Committee position held by any particular District Committee member has become vacant when, in the judgment of Bar Counsel or the Committee majority, such member has become, or has been for any reason, unavailable for or delinquent in the conduct of the District Committee's business. Similarly, upon request of Bar Counsel, the Executive Committee has the power to declare such vacancy. Before such vacancy is declared, the particular District Committee member must be afforded notice and a reasonable opportunity to be heard.

#### 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 is 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 is 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 is deemed to include Bar Counsel's consent on behalf of the Bar. The membership of COLD must consist of twelve persons, ten of whom must be active members of the Bar and two must be nonlawyers. In addition, a vice chair of the Board is an ex-officio, nonvoting member.

#### 13-6. DISCIPLINARY BOARD

- A. Appointment of Members. This Court must appoint, upon recommendation of Council, 20 members of the Board, 16 of whom must be active members of the Bar and four of whom must be nonlawyers. One Attorney member must be designated by the Court as Chair and two Attorney members as Vice Chairs, upon recommendations of Council. Before nominating any individual for membership on the Board, the Bar's nominating committee should first determine that the nominee is willing to serve on the Board and will conscientiously discharge the responsibilities as a member of the Board. All nominees must have previously served on a district committee. The Bar nominating committee must also obtain a statement from the nominees, in writing, that the nominees are willing to serve on the Board, if elected and appointed. In order to be considered as a potential appointee to the Board, each potential appointee must execute the following: (1) a

waiver of confidentiality with respect to his or her Disciplinary Record and any pending Complaints and a release allowing production of his or her Disciplinary Record and pending Complaints from any jurisdiction for purposes of the appointment process; and (2) an authorization for the Bar to conduct a criminal records check of all jurisdictions for any conviction of a Crime and provide the results to the members of Council and the staff of the Bar for purposes of the appointment process.

- B. Persons Ineligible for Appointment. Any potential appointee is ineligible for 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 has the sole discretion to determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances disqualifies a potential appointee.
- C. Term of Office. Members serve staggered terms of three years each. No member may serve more than two consecutive three-year terms but a member is eligible for reappointment after the lapse of one or more years following expiration of the previous three-year term. At the expiration of the initial term of any member so appointed for less than a three-year term, such member is eligible for immediate reappointment to the Board for two additional consecutive three-year terms.
- D. Meetings and Quorum. The Board meets on reasonable notice by the Chair or a Vice Chair. A Panel of five members constitutes a quorum, and the action of a majority of a Panel constitutes action of the Board. For the exclusive purposes of considering an Agreed Disposition, pursuant to subparagraph 13-6.H, a Panel may act in a meeting in person or through any means of communication by which all five members participating may simultaneously hear each other during the meeting. One of the five persons assigned to any Panel must 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 is not required in any proceeding if a quorum is otherwise present.
- E. Roster. The Clerk establishes 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 has 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 has the following powers in addition to all other powers granted to the Board:
1. To sanction a Respondent for failing to comply with an order issued by the Board. This sanction can include an interim Suspension. Before imposing an interim Suspension, the Board must issue a notice to the Respondent advising the Respondent that he or she may petition the Board within ten days after service of the notice to withhold entry of an interim Suspension order and to hold an evidentiary hearing. If ten days after service of the notice the Respondent has not petitioned the Board to withhold entry of an interim Suspension order, the Board must enter an Order suspending the Attorney's License until such time as the Attorney remedies the failure to comply or a determination is made as to whether the Attorney has violated any Disciplinary Rules. An Attorney suspended pursuant to this subparagraph G.1. is subject to the provisions of subparagraph 13-29;
  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 has 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, or Bar Counsel, 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 has 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 must summarily enter an Order suspending the Attorney's License. If the Board finds at any hearing conducted hereunder that the Attorney has failed to establish good cause for the alleged noncompliance, the Board must enter an Order suspending the Attorney's License. A suspension imposed under this subparagraph must remain in place until: i) the Attorney fully complies with the summons or subpoena; ii) a determination is made as to whether the Attorney's noncompliance violated the Disciplinary Rules; or iii) the Complaint or Disciplinary Proceeding in which the summons or subpoena was issued is closed. An Attorney suspended pursuant to this subparagraph G.3. is subject to the provisions of subparagraph 13-29;
4. To rule on the admissibility of evidence, through a panel Chair, which rulings may be overruled by a majority of the Panel; and
5. To act through its Chair or one of the Vice Chairs (an officer) on any non-dispositive pre-hearing matters and on any dispositive matters where all parties are in agreement, subject to the following qualification and exception: (1) any pre-hearing ruling on a non-dispositive matter made by an officer of the Board is subject to being overruled by a majority vote of the Panel which actually hears the matter; and (2) Agreed Dispositions must be approved by a Panel.

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 may be assigned to the Panel which hears the Disciplinary Proceeding. In the event the Panel rejects the proposed Agreed Disposition, the Panel may advise Bar Counsel and Respondent as to the reason for the rejection. Bar Counsel and Respondent may then meet privately and determine whether to revise the proposed Agreed Disposition and the Panel may reconsider any revised proposed Agreed Disposition within a timeframe determined by the Panel.

### 13-7. DISTRICT COMMITTEES

- A. Powers. Each District Committee and Section thereof has the power to:
1. Elect a Chair, Vice Chair and Secretary, and such other officers as it considers appropriate;
  2. Conduct hearings and adjudicate Charges of Misconduct as provided in this Paragraph;
  3. Examine witnesses under oath to be administered by any member of the District Committee;
  4. Issue, 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, or through its Chair, any summons or subpoena permitted under subparagraph 13-16.E. Any such summons or subpoena issued to a non-Attorney has the force of and is enforceable 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.
  5. Direct Bar Counsel to file a notice of noncompliance requesting the Board to suspend an Attorney's License until such time as the Attorney fully complies with a subpoena requiring production of trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm;
  6. Rule on the admissibility of evidence and other matters relating to the

conduct of a Disciplinary Proceeding;

7. Rule on motions to limit or quash any summons or subpoena;
  8. Maintain order in all its proceedings through its Chair; and
  9. Approve an Agreed Disposition of a Complaint or Charge of Misconduct submitted by Bar Counsel and the Respondent, either through a Subcommittee acting by a unanimous vote, or, once a Charge of Misconduct is placed on the public District Committee hearing docket, a Panel of the District Committee acting by a majority vote. No appeal will lie from any sanction to which Respondent has agreed. If the Agreed Disposition is not accepted by a Panel of the District Committee, no member of the Panel which considered the Agreed Disposition may be assigned to the Panel that hears the Complaint or Charge of Misconduct.
- B. Creation of Subcommittees. The Chair must appoint one or more Subcommittees of each District Committee. Where a District Committee is divided into two or more Sections, there must be one or more Subcommittees of each Section, as determined by the respective District Committee Section Chair. Each Subcommittee must consist of three members of that District Committee or that Section of the District Committee. Two members of a Subcommittee must be members of the Bar, one of whom must be appointed by the District Committee or Section Chair to act as Chair of that Subcommittee, and one member of the Subcommittee must be a nonlawyer member.
- C. Subcommittee Quorums. A quorum of a Subcommittee consists of three members, who may act in a meeting in person or through any means of communication by which all three members participating may simultaneously hear each other during the meeting.
- D. District Committee Jurisdiction. A District Committee has jurisdiction over all Complaints referred to it.
- E. Limitation on Private Discipline. Private Discipline is imposed only in cases of minor Misconduct, when there is little or no injury to any of the following: a client, the public, the legal system or the profession, and when there is little likelihood of repetition by the Respondent. When any Respondent has received two determinations of Private Discipline, excepting only *de minimis* Dismissals, during any ten-year period, it is presumed that further Private Discipline is not an appropriate disposition. Any Respondent who has received two determinations of Private Discipline within the ten-year period immediately preceding the Bar's receipt of the oldest Complaint that the Subcommittee is considering, should receive public discipline for any violation of the Disciplinary Rules, unless there are sufficient facts and circumstances to rebut such presumption.

- F. Venue. Venue is not jurisdictional, but venue lies with the District Committee, in the following order of preference, where:
1. Any portion of the alleged Misconduct occurred;
  2. The Respondent resides;
  3. The Respondent maintains an office;
  4. The Respondent has an address on record with the Bar as the Respondent's address for membership purposes; or
  5. The Complainant resides.
- 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 should 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 are deemed waived unless made within this ten-day time period. Upon receipt of a timely filed notice of objection, the Clerk must forward the notice of objection to the Chair of the Board for decision.
- I. Complaints Referred to District Committee or Subcommittee. A District Committee or Subcommittee considers, adjudicates and disposes of Complaints referred to the District Committee pursuant to this Paragraph. Where appropriate, the District Committee or Subcommittee may also counsel Respondents concerning their conduct. In addition, members of a District Committee, other than nonlawyer members, may participate in the Investigation of Complaints, provided that a member participating in such Investigation must not participate in a District Committee's consideration, adjudication and disposition of such Complaint or Charge of Misconduct.
- J. Service by a Member of the Bar and Professional Relationship. Service by a member of the Bar on a District Committee is 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 is 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 is 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 must assign the Charges of Misconduct to another District Committee.

#### 13-8. BAR COUNSEL

- A. Authority. Bar Counsel has 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 acts independently and exercises prosecutorial autonomy and discretion;
  2. Examine criminal history record information relating to any Attorney or former Attorney from any state or federal law enforcement agency;
  3. Examine financial books and records, once a Complaint has been filed, including, without limitation, any and all escrow accounts, trust accounts, estate accounts, fiduciary accounts and operating or other accounts, maintained by the Attorney, the Attorney's law firm or any other third party organization by whom the Attorney is employed or with whom the Attorney is associated;
  4. Examine the accounts described in the preceding subparagraph A.3. at any time when Bar Counsel reasonably believes that such accounts may not be in compliance with the Disciplinary Rules. In every instance in which Bar Counsel initiates examination of accounts or issues any summons or subpoena in the conduct of an examination or an Investigation concerning accounts, other than on the basis of a Complaint against the Attorney, Bar Counsel must file a written statement as part of the record setting forth the reasons supporting the belief that the accounts may not comply with the Disciplinary Rules. A copy of this written statement must be served upon the Attorney who is the subject of the Investigation when an examination has begun or any summons or subpoena has been issued;
  5. Issue such summons for the attendance of witnesses and subpoenae for the production of documents necessary or material to any Investigation, District Committee or Board proceeding; and



6. File a notice of noncompliance requesting the Board to suspend the Attorney's License until such time as the Attorney fully complies with a subpoena issued by the Bar Counsel, a District Committee or the Board, for the production of trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm.
- B. Acting Bar Counsel. In the event of disqualification or recusal of Bar Counsel in any proceeding, the allegation of Misconduct must 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 must 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 must 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.
- C. File Destruction. Whenever a File is destroyed, the following information must be preserved:
1. The name and Bar identification number of Respondent;
  2. The name and last known address of the Complainant;
  3. The date the matter was initially received by the Bar;
  4. A summary of the Complaint or allegation of Misconduct;
  5. The date of the Dismissal or any sanction(s) imposed; and
  6. The disposition of the matter, including the basis for Dismissal or the sanction(s) imposed.

Such summary information must be retained for at least five years whenever the Complaint or allegation of Misconduct is dismissed with no Disciplinary Record having been created, and for at least ten years whenever a Disciplinary Record has been created, an Impairment determined, a Reinstatement Proceeding held or a

finding of Misconduct involving a RESA violation is made.

- D. Preservation of Determinations and Orders. The Clerk must 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 must assess Costs against the Respondent in the following cases:
1. All cases in which a final determination of Misconduct is made by a Subcommittee, District Committee, three-judge Circuit Court, the Board or this Court;
  2. All cases against a Respondent who consents to revocation;
  3. All proceedings under this Paragraph in which there is a finding that a Respondent has been found guilty of a Crime;
  4. All reciprocal cases under this Paragraph in which a final determination imposing discipline is made;
  5. All Reinstatement cases under this Paragraph;
  6. All cases before the Board in which sanctions were imposed for violations of RESA and/or the Bar's RESA regulations; and
  7. With respect to Guardian Ad Litem's fees and costs, all Disciplinary Proceedings in which a Guardian Ad Litem is appointed and the Board, in its discretion, assesses the Guardian Ad Litem's fees and costs against Respondent.
- F. Review of Costs Assessment. If the Respondent disagrees with the amount of Costs as calculated by the Clerk, or if the Respondent asserts that the immediate payment thereof would constitute a hardship, the Respondent may petition the Board for review within ten days of the notice assessing Costs. The Chair, upon written request of Respondent, included with his petition, may grant Respondent a hearing on the Costs issue. The decision of the Chair is final and non-appealable. Interest at the judgment rate commences on the Costs assessed 30 days after the issuance of the notice of assessment, unless otherwise prescribed by the Board. If the Respondent fails to pay the Costs and interest so assessed within 30 days of the notice of assessment or within such other time as the Board may order, then the Costs assessed and interest are a debt subject to collection by the Bar, and the Board must issue an order of Suspension against the Respondent until such time as Respondent pays all of the Costs and accrued interest.

- G. Public Notification of Sanctions. The Clerk must 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.

#### 13-10. PROCESSING OF COMPLAINTS BY BAR COUNSEL

- A. Review. Bar Counsel must review all Complaints. If, following review of a Complaint, Bar Counsel determines that the conduct questioned or alleged does not present an issue under the Disciplinary Rules, Bar Counsel must not open an Investigation, and the Complaint must be dismissed.
- B. No Dismissal by Complainant. No Complaint or allegation of Misconduct may be dismissed at any stage of the process solely upon a request by a Complainant to withdraw his or her Complaint.
- C. Summary Resolution. Bar Counsel may decide whether a Complaint is appropriate for an informal or abbreviated Investigation. When a Complaint involves minor allegations of Misconduct susceptible to early resolution, Bar Counsel may assign the Complaint to a staff member, a District Committee member, or use any other means practicable to speedily investigate and resolve the allegations of Misconduct. If the Complaint is resolved through this process, Bar Counsel must then dismiss the Complaint. Such dismissal does not become a part of the Respondent's Disciplinary Record. If Bar Counsel chooses not to proceed under this subsection, or, having elected to proceed under this subsection, the Complaint is not resolved within 90 days from the date of filing, Bar Counsel must proceed pursuant to the following subsections.
- D. Preliminary Investigation. A preliminary Investigation may consist of obtaining a response, in writing, from the Respondent to the Complaint and sharing the response, if any, with the Complainant, so the Complainant may have an opportunity to provide additional information.
- E. Disposition by Bar Counsel after Preliminary Investigation. Bar Counsel may conduct a preliminary Investigation of any Complaint to determine whether it should be referred to the District Committee. Bar Counsel must not file a Complaint with a District Committee following a preliminary Investigation when,

in Bar Counsel's judgment:

1. As a matter of law, the conduct questioned or alleged does not constitute Misconduct;
  2. The evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged;
  3. There is no credible evidence to support any allegation of Misconduct by the Respondent; or
  4. The evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard.
- F. Referral to District Committee. Bar Counsel must notify the District Committee Chair that a Complaint has been referred to a District Committee for investigation. Thereafter, the Complaint must be investigated and a report thereof made to a Subcommittee.
- G. Report to Subcommittee. When submitting an Investigative Report to the Subcommittee, Bar Counsel or Committee Counsel may also send a recommendation as to the appropriate disposition of the Complaint.

#### 13-11. LIMITED RIGHT TO DISCOVERY

There is no right to discovery in connection with disciplinary matters, including matters before three-judge Circuit Courts, except:

- A. Issuance of such summonses and subpoenas as are authorized; and
- B. Bar Counsel must furnish to Respondent a copy of the Investigative Report considered by the Subcommittee when the Subcommittee set the Complaint for hearing before the District Committee or certified the Complaint to the Board, with the following limitations:
  1. Bar Counsel is not required to produce any information or document obtained in confidence from any law enforcement or disciplinary agency, or any documents that are protected by the attorney-client privilege or work product doctrine, unless attached to or referenced in the Investigative Report; and
  2. Bar Counsel is not required to reveal other communications between the Investigator and Bar Counsel, or between Bar Counsel and the Subcommittee.

- C. Bar Counsel must make a timely disclosure to the Respondent of all known evidence that tends to negate the Misconduct of the Respondent or mitigate its severity or which, upon a finding of Misconduct, would tend to support imposition of a lesser sanction than might be otherwise imposed. Bar Counsel must comply with the duty to disclose this evidence regardless of whether the information is confidential under this Paragraph. If Bar Counsel discloses under this subparagraph information that is otherwise confidential, Bar Counsel must promptly notify the Attorney or Complainant who is the subject of the disclosure unless Bar Counsel decides that giving such notice would prejudice a disciplinary investigation. Notice must be in writing and is deemed effective when mailed by first-class mail to the Bar's last known address of the subject Complainant or Attorney.

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

- A. Substantial Compliance. Except where this Paragraph provides specific time deadlines, substantial compliance with the provisions hereof is sufficient, and no allegation of Misconduct may be dismissed on the sole ground that any such provision has not been strictly complied with.
- B. Time Deadlines. Where specific time deadlines are provided, such deadlines are 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 is 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.
- D. Evidentiary Rulings. In any Disciplinary Proceeding, evidentiary rulings must be made favoring receipt into evidence of all reasonably probative evidence to satisfy the ends of justice. The weight given such evidence received is commensurate with its evidentiary foundation and likely reliability.
- E. Rights of Counsel for Complainant or Witness. Neither counsel for the Complainant, if there is one, nor counsel for any witnesses, may examine or cross-examine any witness, introduce any evidence or present any argument.
- F. Notice of Impairment Evidence. A Respondent who intends to rely upon evidence of an Impairment in mitigation of Misconduct must, absent good cause

excusing his or her failure to do so, provide notice not less than 14 days prior to the hearing to Bar Counsel and the District Committee or Board of his or her intention to do so.

- G. English Required. All communication with the Bar, whether written or oral, should be in English.

### 13-13. PARTICIPATION AND DISQUALIFICATION OF COUNSEL

- A. Attorney for Respondent. A Respondent may be represented by a member of the Bar, or any member of the bar of any other jurisdiction while engaged *pro hac vice* in the practice of law in Virginia, at any time with respect to a Complaint. In any proceeding before the Board or a three-judge Circuit Court, or in a District Committee matter in which a Charge of Misconduct has been issued, counsel of record for a Respondent must not withdraw except upon motion for good cause shown.
- B. Signature Required by Respondent. A Respondent must sign his or her written response to any Complaint, Charge of Misconduct or Certification.
- C. Disqualification. An Attorney must not represent a Respondent with respect to a Complaint or allegation of Misconduct:
1. While such Attorney is a current employee or current officer of the Bar or is a member of Council, COLD, the Board, or a District Committee;
  2. For 90 days after such Attorney ceases to be an employee or officer of the Bar or a member of Council, COLD, the Board, or a District Committee;
  3. At any time, after such Attorney ceases to be an employee or officer of the Bar or a member of Council, COLD, the Board or a District Committee, if such Attorney was personally involved in the subject matter of the Complaint, allegation of Misconduct or any related matter while acting as such employee, officer or member;
  4. At any time after such Attorney ceased to be a liaison from COLD to a District Committee before which the Disciplinary Proceeding involving such Complaint or Charge of Misconduct was pending during the time such Attorney was such liaison; or
  5. If such Attorney is a partner or an associate of, or is a member, shareholder or has a similar relationship with an Attorney who is a current member of COLD or an officer of the Bar, or who was a member of COLD or an officer of the Bar within the previous 90 days.
  6. If such Attorney is a partner or an associate of, or is a member,

shareholder or has a similar relationship with an Attorney who is a current member of the Board or was a member of the Board within the previous 90 days, unless the Attorney's representation of the Respondent with respect to a Complaint or allegation of Misconduct preceded the Board member's appointment to the Board. In such cases, the Attorney may continue to represent the Respondent as follows:

- a. Before a Three Judge Court in proceedings conducted pursuant to Va. Code § 54.1-3935, or any appeal therefrom;
- b. Before any District Committee.

7. If such Attorney is a partner or an associate of, or is a member, shareholder or has a similar relationship with an Attorney who is a member of a District Committee, before that District Committee, or if the District Committee is divided into sections, before the District Committee section of which the Attorney's partner or associate is a member.

D. No Imputation of Conflict. Except as set forth in subparagraph C, there is no imputation of conflict that disqualifies an Attorney from representing a Respondent with respect to a Complaint or Charge of Misconduct.

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

- A. Personal or Financial Interest. A member or former member of a District Committee or the Board must 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. The Chair must rule on the issue of disqualification, subject to being overruled by a majority of the Panel or Subcommittee.
- B. Complaint Against a Member. Upon the referral of any Complaint against a member or former member of a District Committee or the Board to a District Committee for Investigation, the member must 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.
- C. Imposition of Discipline. Upon the final imposition of a Private Reprimand, a Public Reprimand, an Admonition, a Suspension or a Revocation against a member or former member of a District Committee or the Board, the member must automatically be terminated from membership or further service on the District Committee or Board. Upon the final imposition of any other form of Attorney discipline, COLD has sole discretion to determine whether the member is terminated from membership or further service on the District Committee or the Board.

- D. Interpretation. Unless otherwise stated, all questions of interpretation under this subparagraph 13-14 are decided by the tribunal before which the proceeding is pending, except that COLD determines discretionary termination of membership or further service.
- E. Ineligibility. Any member or former member of a District Committee or the Board is ineligible to serve in a Disciplinary Proceeding or Impairment Proceeding in which:
1. The District Committee or Board member or any member of his or her firm is involved in any significant way with the matter on which the District Committee or Board would act;
  2. The Board member or any member of the Board member's firm was serving on the District Committee that certified the matter to the Board or has otherwise acted on the matter;
  3. A Judge would be required to withdraw from consideration of, or presiding over, the matter under the Canons of Judicial Conduct adopted by this Court;
  4. The District Committee or Board member previously represented the Respondent; or
  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

- A. Referral. Following receipt of the report of Investigation and Bar Counsel's recommendation, the Subcommittee may refer the matter to Bar Counsel for further Investigation.
- B. Other Actions. Once the Investigation is complete to the Subcommittee's satisfaction, it will take one of the following actions.
1. Dismiss. It must 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 must 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 must 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 is presumed that another dismissal on the same basis is not an appropriate disposition, unless there are sufficient facts and circumstances to rebut such presumption.

- 2. Impose an Admonition without Terms. In making this determination, the Subcommittee must have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of an Admonition without Terms, may request a hearing before the District Committee.
- 3. Certify to the Board. Certify the Complaint to the Board pursuant to this Paragraph or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935. Certification is based on a reasonable belief that the Respondent has engaged or is engaging in Misconduct that, if proved, would justify a Suspension or Revocation. In making this determination, the Subcommittee must have access to Respondent's prior Disciplinary Record.
- 4. Approve an Agreed Disposition. Approve an Agreed Disposition imposing one of the following conditions or sanctions:

- a. Admonition, with or without Terms; or
  - b. Private Reprimand, with or without Terms; or
  - c. Public Reprimand, with or without Terms.
5. Set the Complaint for Hearing before the District Committee. In making this determination, the Subcommittee must have access to Respondent's prior Disciplinary Record.
- C. Vote Required for Action. All actions taken by Subcommittees, except for approval of Agreed Dispositions, must be by majority vote.
- D. Report of the Subcommittee. All decisions of the Subcommittee must be reported to the District Committee in a timely fashion.
- E. Notice of Action of the Subcommittee. If a Subcommittee has dismissed the Complaint, the Chair must 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 must 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 must promptly mail a copy of the Certification to the Clerk, Bar Counsel, the Respondent and the Complainant.
- F. Procedure in All Terms Cases. If a Subcommittee imposes Terms, the Subcommittee must specify the time period within which compliance with the Terms must be completed. If Terms have been imposed against a Respondent, that Respondent must deliver a certification of compliance with such Terms to Bar Counsel within the time period specified by the Subcommittee. If a Subcommittee issues an Admonition with Terms, a Private Reprimand with Terms, or a Public Reprimand with Terms based on an Agreed Disposition, the Agreed Disposition must specify the alternative disposition to be imposed if the Terms are not complied with or if the Respondent does not certify compliance with Terms to Bar Counsel. If the Respondent does not comply with the Terms imposed or does not certify compliance with Terms to Bar Counsel within the time period specified, Bar Counsel must serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding must be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee Chair. The burden of proof is on the Respondent to show timely compliance and timely certification by clear and convincing evidence. If the District Committee determines that the Respondent failed to comply with the Terms or failed to certify compliance within the stated time period, the alternative disposition must be imposed. Bar Counsel is responsible for monitoring compliance with Terms

and reporting any noncompliance to the District Committee.

- G. Alternative Disposition for Public Reprimand with Terms. The alternative disposition for a Public Reprimand with Terms must be a Certification For Sanction Determination unless the Respondent has entered into an Agreed Disposition for the imposition of an alternative disposition of a specific period of Suspension of License.

#### 13-16. DISTRICT COMMITTEE PROCEEDINGS

- A. Charge of Misconduct. If the Subcommittee determines that a hearing should be held before a District Committee, Bar Counsel must, at least 42 days prior to the date fixed for the hearing, serve upon the Respondent by certified mail the Charge of Misconduct, a copy of the Investigative Report considered by the Subcommittee and any exculpatory materials in the possession of Bar Counsel.
- B. Response by Respondent Required. After the Respondent has been served with the Charge of Misconduct, the Respondent must, within 21 days after service of the Charge of Misconduct:
1. File an Answer to the Charge of Misconduct with the Clerk, which Answer is 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 the filing of an Answer and such a demand, and provision of available dates as specified above, further proceedings before the District Committee must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held.
- C. Failure of Respondent to Respond. If the Respondent fails to file an Answer, or an Answer and a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the District Committee.
- 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.
- E. Subpoenae, Summonses and Counsel. The Respondent may be represented by counsel. The Respondent may request the Chair of the District Committee to issue summonses or subpoenae for witnesses and documents. Such a request must be filed with the Clerk with a copy to Bar Counsel. Requests for summonses and subpoenae will be granted, unless, in the judgment of the Chair of the District Committee, such request is unreasonable. Bar Counsel or any party subject to a summons or subpoena may file with the Clerk a motion to quash or limit such summonses or subpoenae.
- F. Continuances. Once a District Committee has scheduled a hearing, no continuance will be granted unless in the judgment of the Chair the continuance is necessary to prevent injustice.
- G. Public Hearings. District Committee hearings, except deliberations, must be open to the public.
- H. Public Docket. The Clerk's Office must maintain a public docket of all matters set for hearing before a District Committee or certified to the Board. For every matter before a District Committee for which a Charge of Misconduct has been mailed by the Office of the Bar Counsel, the Clerk must place it on the docket 21 days after the date of the Charge of Misconduct. For every Complaint certified to the Board by a Subcommittee, the Clerk must place it on the docket on receipt of the statement of the certified charges from the Subcommittee.
- I. Oral Testimony and Exhibits. Oral testimony must be taken and preserved by a Court Reporter. All exhibits or copies thereof received in evidence or refused by the District Committee must be filed with the Clerk.
- J. Opening Remarks by the Chair. After swearing the Court Reporter, who thereafter must administer oaths or affirmations to witnesses, the Chair must make opening remarks in the presence of the Respondent and the Complainant, if present. The Chair must also inquire of the members present whether any member has any personal or financial interest that may affect, or be reasonably perceived to affect, his or her ability to be impartial. Any member answering in the affirmative must be excused from participation in the matter.
- K. Motion to Exclude Witnesses. Witnesses other than the Complainant and the

Respondent must be excluded until excused from a public hearing on motion of Bar Counsel, the Respondent or the District Committee.

- L. Presentation of the Bar's Evidence. Bar Counsel or Committee Counsel may present witnesses and other evidence supporting the Charge of Misconduct. Respondent must be afforded the opportunity to cross-examine the Bar's witnesses and to challenge any evidence introduced on behalf of the Bar. District Committee members may also examine witnesses offered by Bar Counsel or Committee Counsel.
- M. Presentation of the Respondent's Evidence. Respondent must be afforded the opportunity to present witnesses and other evidence on behalf of Respondent. Bar Counsel or Committee's Counsel must be afforded the opportunity to cross-examine Respondent's witnesses and to challenge any evidence introduced on behalf of Respondent. District Committee members may also examine witnesses offered on behalf of Respondent.
- N. No Participation by Other Counsel. Neither counsel for the Complainant, if there be one, nor counsel for any witness, may examine or cross-examine any witness, introduce any other evidence, or present any argument.
- O. Depositions. Depositions may be taken only when witnesses are unavailable, in accordance with Rule 4:7(a)(4) of the Rules of this Court.
- P. Testimony by Videoconferencing and Telephone. Testimony by videoconferencing and/or telephonic means may be utilized, if in compliance with the Rules of this Court.
- Q. Admissibility of Evidence. The Chair rules on the admissibility of evidence, which rulings may be overruled by a majority of the remaining District Committee members participating in the hearing.
- R. Motion to Strike. At the conclusion of the Bar's evidence or at the conclusion of all of the evidence, the District Committee on its own motion, or the Respondent or the Respondent's counsel may move to strike the Bar's evidence as to one or more allegations of Misconduct contained in the Charge of Misconduct. A motion to strike an allegation of Misconduct must be sustained if the Bar has failed to introduce sufficient evidence that would under any set of circumstances support the conclusion that the Respondent engaged in the alleged Misconduct that is the subject of the motion to strike. If the Chair sustains the motion to strike an allegation of Misconduct, subject to being overruled by a majority of the remaining members of the Committee, that allegation of Misconduct must be dismissed.
- S. Argument. The District Committee must afford a reasonable opportunity for argument on behalf of the Respondent and Bar Counsel on the allegations of

Misconduct.

- T. Deliberations. The District Committee members deliberate in private on the allegations of Misconduct. After due deliberation and consideration, the District Committee must vote on the allegations of Misconduct.
  
- U. Change in District Committee Composition. When a hearing has been adjourned for any reason and any of the members initially constituting the quorum for the hearing cannot be present, the hearing of the matter may be completed by furnishing a transcript of the subsequent proceedings conducted in one or more member's absence to any such absent member or members; or substituting another District Committee member for any absent member or members and furnishing a transcript of the prior proceedings in the matter to such substituted member or members.
  
- V. Show Cause for Compliance with Terms. Any show cause proceeding involving the question of compliance with Terms is deemed a new hearing and not a continuation of the hearing that resulted in the imposition of Terms.
  
- W. Dismissal. After due deliberation and consideration, the District Committee may dismiss the Charge of Misconduct, or any allegation thereof, as not warranting further action when in the judgment of the District Committee:
  - 1. As a matter of law the conduct questioned or alleged does not constitute Misconduct;
  - 2. The evidence presented shows that the Respondent did not engage in the Misconduct alleged, or there is no credible evidence to support any allegation of Misconduct by Respondent, or the evidence does not reasonably support any allegation of Misconduct under a clear and convincing evidentiary standard;
  - 3. The action alleged to be Misconduct is protected by superseding law; or
  - 4. The District Committee is unable to reach a decision by a majority vote of those constituting the hearing panel, the Charge of Misconduct, or any allegation thereof, must be dismissed on the basis that the evidence does not reasonably support the Charge of Misconduct, or one or more allegations thereof, under a clear and convincing evidentiary standard.
  
- X. Sanctions. If the District Committee finds that Misconduct has been shown by clear and convincing evidence, then the District Committee must, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has a Disciplinary Record in this or any other jurisdiction and must 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 must 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 must issue the District Committee's Determination, in writing, setting forth the following:

1. Brief findings of the facts established by the evidence except that explicit findings are not required in proceedings conducted pursuant to Va. Code § 54.1-3935;
2. The nature of the Misconduct shown by the facts so established, including the Disciplinary Rules violated by the Respondent; and
3. The sanctions imposed, if any, by the District Committee.

Z. Notices.

If the District Committee:

1. Issues a Dismissal, the Chair must 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 must 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 must 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 must promptly mail to the Clerk a copy of the Certification. A copy of the Certification must 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 becomes final.
- BB. Enforcement of Terms. In all cases where Terms are included in the disposition, the District Committee must specify the time period within which compliance must be completed and, if required, the time period within which the Respondent must deliver a written certification of compliance to Bar Counsel. The District Committee must specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel is responsible for monitoring compliance and reporting any noncompliance to the District Committee. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel must serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. If the Respondent elects to have further show cause proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice to show cause 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does 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 is deemed to have consented to the jurisdiction of the District Committee, and the show cause proceeding~~Such show cause proceeding~~ must be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee Chair. The burden of proof is on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period as determined by the District Committee, the alternative disposition must be imposed. Any show cause proceeding involving the question of compliance is deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.
- CC. Alternative Disposition and Procedure for Public Reprimand with Terms. The alternative disposition for a Public Reprimand with Terms must be a Certification for Sanction Determination. Upon a decision to issue a Certification for Sanction Determination, Bar Counsel must 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.

DD. Reconsideration of Action by the District Committee. No motion for reconsideration or modification of the District Committee's decision following a hearing on a Charge of Misconduct may be considered unless it is filed with the Clerk, along with all supporting exhibits, within 10 days after the hearing before the District Committee.

1. A Charge of Misconduct dismissed by a District Committee may be reconsidered only upon:
  - a. A finding by a majority vote of the Panel that heard the matter originally that material evidence not known or available when the matter was originally presented has been discovered; or
  - b. A unanimous vote of the Panel that heard the matter originally.
2. No action by a District Committee imposing a sanction or certifying a matter to the Board may be reconsidered unless a majority of the Panel that heard the matter votes to reconsider the sanction.
3. No member may vote to reconsider a District Committee action unless it appears to such member that reconsideration is necessary to prevent an injustice or warranted by specific exceptional circumstances militating against adherence to the initial action of the District Committee.
4. District Committee members may be polled on the issue of whether to reconsider an earlier District Committee action.
5. Any reconsideration of an earlier District Committee action must occur at a District Committee meeting, whether in person or by any means of communication which allows all members participating to simultaneously hear each other.

If such a motion is timely filed, the Clerk must promptly forward copies to each member of the hearing Panel. The Panel may deny the motion without response from the other party. No relief may be granted without allowing the other party an opportunity to oppose the motion in writing. If no relief is granted, the District Committee must enter its order disposing of the motion.

#### 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 must send copies to the District Committee Chair and to Bar Counsel. Upon such demand, further proceedings before the Board must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. If the Respondent fails to file a demand, as specified above, the Respondent is 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 must be stayed during the pendency of the appeal.
- C. Filing the Transcript and Record on Appeal. The Respondent must 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 must 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 must 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 must 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 must 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 initiates 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 is 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 must forward the record to the clerk of the designated Circuit Court only upon receipt of the transcript as provided in the preceding subparagraph C.
- E. Appeal from Agreed Sanction Prohibited. No appeal lies from any sanction to which the Respondent has agreed.

#### 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 must, within 21 days after service of the Certification:

1. File an Answer to the Certification with the Clerk, which Answer is deemed consent to the jurisdiction of the Board; or
  2. 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. Upon the filing of an Answer and such demand and provision of available dates as specified above, further proceedings before the Board must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held.
- B. No Filing by Respondent. If the Respondent fails to file an Answer, or an Answer and a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board.
- C. Notice of Hearing. The Board must set a date, time, and place for the hearing, and must serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing.
- D. Expedited Hearings.
1. If Bar Counsel or a District Committee Chair has reasonable cause to believe that an Attorney is engaging in Misconduct which is likely to result in injury to, or loss of property of, one or more of the Attorney's clients or any other person, and that the continued practice of law by the Attorney poses an imminent danger to the public, Bar Counsel or the District Committee Chair may petition the Board to issue an order requiring the Attorney to appear before the Board for a hearing in accordance with the procedures set forth below.
  2. The petition must be under oath and must set forth the nature of the alleged Misconduct, the factual basis for the belief that immediate action by the Board is reasonable and necessary and any other facts which may be relevant to the Board's consideration of the matter, including any prior Disciplinary Record of the Attorney.
  3. Upon receipt of the petition, the Chair or Vice-Chair of the Board must issue an order requiring the Respondent to appear before the Board not less than 14 nor more than 30 days from the date of the order for a hearing to determine whether the Misconduct has occurred and the imposition of sanctions is appropriate. The Board's order must be served on the Respondent no fewer than ten days prior to the date set for hearing.

4. If the Respondent, at the time the petition is received by the Board, is the subject of an order then in effect by a Circuit Court pursuant to Va. Code § 54.1-3936 appointing a receiver for his accounts, the Board must issue a further order summarily suspending the License of the Respondent until the Board enters its order following the expedited hearing.
  5. At least five days prior to the date set for hearing, the Respondent must either file an Answer to the petition with the Clerk, which Answer is 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 the filing of an Answer and such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If any order of summary Suspension has been entered, such Suspension must 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 is 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 may 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 must be filed with the Clerk.

- G. Preliminary Explanation. Absent waiver by the parties, the Chair must state in the presence of the Respondent and the Complainant, if present, a summary of the alleged Misconduct, the nature and purpose of the hearing, the procedures to be followed during the hearing, and the dispositions available to the Board following the hearing. The Chair must also inquire of the members present whether any member has any personal or financial interest that may affect, or be reasonably perceived to affect, his or her ability to be impartial. Any member answering in the affirmative must be excused from participation in the matter.
- H. Attendance at Hearing. Witnesses other than the Complainant and the Respondent must be excluded until excused from a public hearing on motion of Bar Counsel, the Respondent or the Board.
- I. Order of Hearing.
1. Brief opening statements by Bar Counsel and by the Respondent or the Respondent's counsel must be permitted but are not required.
  2. Bar Counsel may present witnesses and other evidence supporting the Certification. The Respondent must be afforded the opportunity to cross-examine the Bar's witnesses and to challenge any evidence introduced on behalf of the Bar. Board members may also examine witnesses offered by Bar Counsel.
  3. Respondent must be afforded the opportunity to present witnesses and other evidence. Bar Counsel must be afforded the opportunity to cross-examine Respondent's witnesses and to challenge any evidence introduced on behalf of Respondent. Board members may also examine witnesses offered on behalf of a Respondent.
  4. Bar Counsel may rebut the Respondent's evidence.
  5. Bar Counsel may make the initial closing argument.
  6. The Respondent or the Respondent's counsel may then make a closing argument.
  7. Bar Counsel may then make a rebuttal closing argument.
- J. Motion to Strike. At the conclusion of the Bar's evidence or at the conclusion of all the evidence, the Board on its own motion, or the Respondent or the Respondent's counsel may move to strike the Bar's evidence as to one or more

allegations of Misconduct contained in the Certification. A motion to strike an allegation of Misconduct must be sustained if the Bar has failed to introduce sufficient evidence that would under any set of circumstances support the conclusion that the Respondent engaged in the alleged Misconduct that is the subject of the motion to strike. If the Chair sustains the motion to strike an allegation of Misconduct, subject to being overruled by a majority of the remaining members of the Board, that allegation of Misconduct must be dismissed from the Certification.

- K. Deliberations. As soon as practicable after the conclusion of the evidence and arguments as to the issue of Misconduct, the Board deliberates in private. If the Board finds by clear and convincing evidence that the Respondent has engaged in Misconduct, the Board must, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has a Disciplinary Record in this or any other jurisdiction and must give Bar Counsel and the Respondent an opportunity to present material evidence and arguments in aggravation or mitigation. The Board deliberates in private on the issue of sanctions. The Board may address any legal questions to the Office of the Attorney General.
- L. Dismissal for Failure of the Evidence. If the Board concludes that the evidence fails to show under a clear and convincing evidentiary standard that the Respondent engaged in the Misconduct, the Board must dismiss any allegation of Misconduct not so proven.
- M. Disposition Upon a Finding of Misconduct. If the Board concludes that there has been presented clear and convincing evidence that the Respondent has engaged in Misconduct, after considering evidence and arguments in aggravation and mitigation, the Board must impose one of the following sanctions and state the effective date of the sanction imposed:
1. Admonition, with or without Terms;
  2. Public Reprimand, with or without Terms;
  3. Suspension of the License of the Respondent:
    - a. For a stated period not exceeding five years; provided, however, if the Suspension is for more than one year, the Respondent must apply for Reinstatement as provided in this Paragraph; or
    - b. For a stated period of one year or less, with or without terms; or
  4. Revocation of the Respondent's License.
- N. Dismissal for Failure to Reach a Majority Decision. If the Board is unable to reach a decision by a majority vote of those constituting the hearing panel, the

Certification, or any allegation thereof, must be dismissed on the basis that the evidence does not reasonably support the Certification, or one or more allegations thereof, under a clear and convincing evidentiary standard.

- O. Enforcement of Terms. In all cases where Terms are included in the disposition, the Board must specify the time period within which compliance must be completed and, if required, the time period within which the Respondent must deliver a written certification of compliance to Bar Counsel. The Board must specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel is responsible for monitoring compliance and reporting any noncompliance to the Board. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel must serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. If the Respondent elects to have further show cause proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice to show cause 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does 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 is deemed to have consented to the jurisdiction of the Board, and the show cause proceeding~~Sueh show cause proceeding~~ must be set for hearing before the Board at its next available hearing date. The burden of proof is on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period, as determined by the Board, the alternative disposition must be imposed. Any show cause proceeding involving the question of compliance is deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.
- P. Orders, Findings and Opinions. Upon disposition of a matter, the Board must issue the Summary Order. Thereafter, the Board must issue the Memorandum Order. A Board member must prepare the Summary Order and Memorandum Order for the signature of the Chair or the Chair's designee. Dissenting opinions may be filed. Upon disposition of a matter conducted pursuant to Va. Code § 54.1-3935, the three-judge Circuit Court must issue the Summary Order and the Memorandum Order, except that explicit findings of fact are not required.
- Q. Change in Composition of Board Hearing Panel. Whenever a hearing has been adjourned for any reason and one or more of the members initially constituting the quorum for the hearing are unable to be present, the hearing of the matter may

be completed by furnishing a transcript of the subsequent proceedings conducted in one or more member's absence to such absent member, or substituting another Board member for any absent member and furnishing a transcript of the prior proceedings in the matter to such substituted member(s).

- R. Reconsideration of Board Action. No motion for reconsideration or modification of the Board's decision may be considered unless it is filed with the Clerk within 10 days after the hearing before the Board. The moving party must file the motion and all supporting exhibits with the Clerk. Such motion may be granted only to prevent manifest injustice upon the ground of:
1. Illness, injury or accident which prevented the Respondent or a witness from attending the hearing and which could not have been made known to the Board within a reasonable time prior to the hearing; or
  2. Evidence which was not known to the Respondent at the time of the hearing and could not have been discovered prior to, or produced at, the hearing in the exercise of due diligence and would have clearly produced a different result if the evidence had been introduced at the hearing.

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

#### 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 must place such matter on its docket for review.
- B. Notice to the Appellant. The Clerk must 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.
- C. Record on Appeal. The record consists of the Charge of Misconduct, the complete transcript of the Proceeding, any exhibits received or refused by the District Committee, the District Committee Determination, and all briefs, memoranda or other papers filed with the District Committee by the Respondent or the Bar. Upon petition of the Respondent, for good cause shown, the Board may permit the record to be supplemented to prevent injustice, such supplement to be in such form as the Board may deem appropriate.
- D. Briefing. Thereafter, briefs must be filed in the office of the Clerk, as follows:



1. The appellant must 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 must result in the Dismissal of the appeal and affirmance of the decision by the District Committee.
  2. The appellee must file its brief within 25 days after filing of the opening brief.
  3. The appellant may file a reply brief within 14 days after filing of the appellee's brief.
- E. Standard of Review. In reviewing a District Committee Determination, the Board must ascertain whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did.
- F. Oral Argument. Oral argument must be granted, unless waived by the appellant.
- G. Imposition of Sanctions. Upon review of the record in its entirety, the Board may:
1. Dismiss the Charge of Misconduct upon a finding that the District Committee Determination is contrary to the law or is not supported by substantial evidence;
  2. Affirm the District Committee Determination, in which instance the Board may impose the same or any lesser sanction as that imposed by the District Committee. In no case may it increase the severity of the sanction imposed by the District Committee; or
  3. Reverse the decision of the District Committee and remand the Charge of Misconduct to the District Committee for further proceedings.

#### 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 must 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.
- B. Proceedings Upon the Record. The proceeding must be conducted upon the record which consists of the Public Reprimand with Terms determination issued by either a Subcommittee or a District Committee, the transcript of the District Committee show cause hearing, and the Certification for Sanction Determination.

- C. Evidence. Only evidence of mitigation and aggravation with respect to compliance or certification will be permitted in the proceeding.
- D. Argument. Argument must be conducted as in the sanction phase of a Misconduct case.
- E. Sanctions. The Board may impose a sanction of Suspension or Revocation of License.
- F. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice of 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does 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 is deemed to have consented to the jurisdiction of the Board.

#### 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 must 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 must be served with the order fixing the time and place of the hearing. The hearing must be set not less than 14 or more than 30 days after the date of the Board's order.
- B. Burden of Proof. At the hearing, the Attorney has the burden of proving why his or her License should not be suspended or revoked and why he or she should not be required to give notice of the plea and probation ordered by the court.
- C. Demand for Three Judge Court. If the Attorney elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Attorney must 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does 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 is deemed to have consented to the jurisdiction of the Board.

- D. Attorney Compliance with Notice Requirements. If the Board or court suspends or revokes the Attorney's License, the Attorney must comply with the notice requirements set out in subparagraph 13-29. If the Board or court orders the Attorney to give notice of the plea and court ordered probation, the Attorney must give such notice within 14 days after the effective date of the Board's order and furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given. Issues concerning the adequacy of the notice must be determined by the Board, which may suspend or revoke the Attorney's License for failure to comply with the above notice requirements.

#### 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 must 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 must be served upon the Respondent with the Board's order of Suspension. The Board may appoint a guardian *ad litem* to represent the interests of a Respondent who is incarcerated and unrepresented by counsel at any time it appears that such an appointment may be appropriate to protect the interests of the Respondent.
- B. Time of Hearing, Continuance and Interim Hearing. The hearing must be set not less than 14 or more than 30 days after the date of the Board's order. Upon written request of the Respondent, the hearing may be continued until after sentencing has occurred. Upon receipt by the Board of a certified copy of a notice of appeal from the conviction, proceedings before the Board must, upon request of the Respondent, be continued pending disposition of such appeal. The Board must, upon request of the Respondent, hold an interim hearing and must terminate

a summary Suspension while the sentencing or appeal is pending, if the Board finds that the summary Suspension, if not terminated, would be likely to exceed the discipline imposed by the Board upon a hearing on the merits of the case.

- C. Reversal of Conviction. Upon presentation to the Board of a certified copy of an order setting aside the verdict or reversing the conviction on appeal, any Suspension must be automatically terminated and any Revocation must be vacated, and the License must be deemed automatically reinstated. Discharge or Dismissal of a guilty plea or termination of probation must not result in the automatic termination of the Suspension or vacation of the Revocation. Nothing herein precludes further proceedings against the Respondent upon allegations of Misconduct arising from the facts leading to such conviction.
- D. Burden of Proof. At the hearing, the Respondent has the burden of proving that he or she was not convicted of a Crime and why his or her License should not be further suspended or revoked.
- E. Action by the Board and Notice to Respondent. If the Board finds at the hearing that 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, an order must be issued, and a copy thereof served upon the Respondent in which the Board must continue the Suspension or issue an order of Suspension against the Respondent for a stated period not in excess of five years; or issue an order of Revocation against the Respondent.
- F. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. Any summary Suspension issued by the Board must remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order, unless earlier terminated pursuant to subparagraph 13-22.B. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board.

### 13-23. BOARD PROCEEDINGS UPON IMPAIRMENT

- A. Suspension for Impairment. The Board has the power to issue an order of Suspension to a Respondent who has an Impairment. The term of such Suspension is indefinite, and, except as provided below, can be terminated only

upon determination by the Board that Respondent no longer has the Impairment. A Respondent who intends to rely upon evidence of an Impairment in mitigation of Misconduct must, absent good cause excusing his or her failure to do so, provide notice not less than 14 days prior to the hearing to Bar Counsel and the District Committee or Board of his or her intention to do so. A finding of Impairment may be utilized by Bar Counsel to: (1) dismiss any pending Complaints or allegations of Misconduct; and (2) move to dismiss a Charge of Misconduct, Certification or Disciplinary Proceeding, on the basis of a finding of Impairment militating against further proceedings, which circumstances of Impairment must be set forth in the Dismissal.

- 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 rests 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 is on the Respondent.
- C. Investigation. Upon receipt of reliable information that raises a substantial question as to whether an Attorney has an Impairment, Bar Counsel must cause an Investigation to be made to determine whether there is reason to believe that the Respondent has the Impairment. As a part of the Investigation of whether an Impairment exists, and for good cause shown in the interest of public protection Bar Counsel may petition the Board to order the Respondent:
1. To undergo psychiatric, physical or other medical examinations by qualified physicians or other health care providers selected by the Board;
  2. To provide appropriate releases to health care providers authorizing the release of Respondent's psychiatric, physical or other medical records to Bar Counsel and the Board for purposes of the Investigation and any subsequent Impairment proceedings.

Upon notice to the Respondent, the Board must hold a hearing to determine whether any such examination or release is appropriate.

- D. Summary Suspension. Upon receipt of a notice from the Clerk with supporting documentary evidence that an Attorney has been: a) adjudicated by a court of competent jurisdiction to be incompetent or incapacitated; or b) involuntarily admitted to a hospital (as defined in Va. Code §37.2-100) for evaluation or treatment of any addiction, inebriety, insanity, intellectual disability, or mental illness, any member of the Board must summarily issue on behalf of the Board an

order of Suspension against the Respondent and cause the order to be served on such Respondent.

E. Action by Board after a Hearing.

1. If Bar Counsel determines that there is reason to believe that an Attorney has an Impairment, Bar Counsel must file a petition with the Board, and the Board must promptly hold a hearing to determine whether such Impairment exists. A copy of the petition must be served on the Respondent. If the Board determines that an Impairment exists, it must enter an order of Suspension.
2. The Board must hold a hearing upon petition of a Respondent who is subject to a Suspension for Impairment that alleges that the Impairment no longer exists. Evidence that the Respondent is no longer hospitalized is not conclusive to the Board's determination of the Respondent's ability to resume the practice of law.

F. Procedure. Such hearing must be conducted substantially in accordance with the procedures established in proceedings related to Misconduct, except that the public and witnesses, other than the Respondent, must be excluded throughout an Impairment Proceeding when not testifying.

G. Guardian Ad Litem. The Board may appoint a guardian *ad litem* to represent the interests of a Respondent at any time when it appears that such an appointment may be appropriate to protect the interests of a Respondent who is the subject of an Impairment Proceeding and unrepresented by counsel. If no guardian *ad litem* has been appointed for, and no counsel has made an appearance on behalf of, a Respondent, the notice of any hearing to determine whether the Respondent has an Impairment must order Respondent to advise the Board whether Respondent has retained counsel for the hearing. Unless counsel for such Respondent enters an appearance with the Board within ten days of the date of the notice, the Board must appoint a guardian *ad litem* to represent the interests of 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 must be filed with the Clerk.

I. Termination of Suspension. In cases where a Suspension is based upon an adjudication by a court under Paragraph 13-23.D, the Board must promptly enter an order terminating such Suspension upon receipt of an order from a court of competent jurisdiction finding that the Respondent is no longer incompetent or incapacitated.

- J. Enforcement. The Board has the power to sanction an Attorney for failure to comply with its orders and subpoenae issued in connection with an Impairment Proceeding. The sanction can include a summary Suspension in a case where it is determined that the public and/or the clients of the Attorney are in jeopardy; such action can be *sua sponte* or on motion by Bar Counsel, with appropriate notice to the Attorney and the Attorney's counsel or guardian *ad litem*.
- K. Transfer of Membership Status. Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled or Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk and the Virginia State Bar's Membership Department that the Respondent will not seek transfer from the Disabled or Retired class of membership. The declaration must be endorsed by the Respondent and, as applicable, the Respondent's counsel or guardian *ad litem*. The Respondent's transfer to the Disabled or Retired class of membership and filing of the declaration as described above may also be utilized by Bar Counsel to: (1) dismiss any pending Complaints or allegations of Misconduct; and (2) move to dismiss a Charge of Misconduct, Certification, or Disciplinary Proceeding, on the basis of transfer to the Disabled or Retired class of membership, militating against further proceedings, which must be set forth in the Dismissal.

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

- A. Definitions Specific to Paragraph 13-24. The following terms have the meaning set forth below unless the content clearly requires otherwise:
1. "State Jurisdiction" means any state, United States Territory, or District of Columbia law licensing or attorney disciplinary authority, including the highest court of any such Jurisdiction, authorized to impose attorney discipline effective throughout the Jurisdiction.
  2. "Jurisdiction" refers to either a "State Jurisdiction" or any federal court or agency authorized to discipline attorneys, including the United States military.
- 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 must 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 must suspend Respondent's License pending final disposition of the Proceeding hereunder. The Board must 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, is not considered a Suspension or Revocation Notice.

- C. Opportunity for Response. Respondent may file a written response, which must be confined to argument and exhibits supporting one or more of the following grounds for dismissal or imposition of lesser discipline:
1. The record of the proceeding in the other Jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
  2. The imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice;
  3. The same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; or
  4. The misconduct found in the other Jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

Any such written response must be filed with the Clerk 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.

- D. Scheduling and Continuance of Hearing. Unless continued by the Board for good cause, the hearing must be set not less than 21 nor more than 30 days after the date of the Board's order.
- E. Provision of Copies. The Clerk must 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.
- F. Hearing Procedures. Insofar as applicable, the procedures for Proceedings on



allegations of Misconduct must govern. Bar Counsel has discretion to put forth evidence and argument that one or more of the grounds specified in Paragraph 13-24.C exists. If Respondent does not file a timely written response, but appears at the hearing and expresses intent to present evidence or argument supporting the existence of one or more of the grounds specified in Paragraph 13-24.C, Respondent must make a proffer to the Board. The Board may refuse to consider such evidence or argument as untimely. If the Board in its discretion is willing to consider such evidence or argument, then Bar Counsel, upon motion, may be entitled to a continuance.

G. Burden of Proof. The burden of proof to establish the existence of one or more of the grounds specified in Paragraph 13-24.C is clear and convincing evidence. Unless one or more of the grounds specified in Paragraph 13-24.C has been established by clear and convincing evidence, the Board must conclude that Respondent was afforded due process by the other Jurisdiction and the findings of the other Jurisdiction must be conclusive of all matters for purposes of the Proceeding before the Board.

H. Action by the Board. If the Board determines that none of the grounds specified in Paragraph 13-24.C exist by clear and convincing evidence, it must impose the same or equivalent discipline as imposed in the other Jurisdiction. If the Board finds by clear and convincing evidence the existence of one or more of the grounds specified in Paragraph 13-24.C, the Board must enter an order it deems appropriate. A copy of any order imposing discipline must be served upon Respondent via certified mail, return receipt requested. Any such order is final and binding, subject only to appeal as set forth in the Rules of Court.

I. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 14 days of the date of mailing of the Board order 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 must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. Any summary Suspension issued by the Board must remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board.

## 13-25. ~~BOARD~~ PROCEEDINGS FOR REINSTATEMENT

A. Waiver of Confidentiality. The filing by a former Attorney of a petition for Reinstatement constitutes a waiver of all confidentiality relating to the petition,

and to the Complaint or Complaints that resulted in, or were pending at the time the former Attorney resigned or his or her License was revoked.

B. Investigation of Impairment in Reinstatement Matters. Upon receipt of notice or evidence that an individual seeking Reinstatement has or may have an Impairment, Bar Counsel must cause an Investigation to be made to determine whether there is reason to believe that the Impairment exists. As part of the Investigation of whether an Impairment exists, and for good cause shown in the interest of public protection, Bar Counsel may petition the Board to order the individual:

1. To undergo at his or her expense psychiatric, physical or other medical examinations by qualified physicians or other health care providers selected by the Board;
2. To provide appropriate releases to health care providers authorizing the release of his or her psychiatric, physical or other medical records to Bar Counsel and the Board for purposes of the Investigation and any subsequent Reinstatement Proceedings. The Board must hold a hearing to determine whether such examination(s) and releases(s) are appropriate, upon notice to the individual petitioning for Reinstatement.

C. Readmission After Resignation. If after resigning from the Bar, a former Attorney wishes to resume practicing law in the Commonwealth of Virginia, the former Attorney must apply to the Board of Bar Examiners, satisfy the character and fitness requirements, and either pass the Bar examination or meet all eligibility requirements for admission without examination under Rule 1A:1. Before being readmitted to the Bar, the former Attorney must also satisfy any membership obligations that were delinquent when the former Attorney resigned.

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 must 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 must 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 must be taken by this Court.~~
- F. Threshold Requirements for Reinstatement After Revocation. After a Revocation, Petitioner's License must not be considered for Reinstatement unless the Petitioner has provided clear and convincing evidence of proof of compliance with the following requirements:
  1. No petition may be filed sooner than five years from the effective date of the Revocation;
  2. The petition has been filed under oath or affirmation with penalty of perjury;
  3. Within five years prior to the filing of the petition, Petitioner has attended 60 hours of continuing legal education, of which at least ten hours must be in the area of legal ethics or professionalism;
  4. The Petitioner has taken the Multistate Professional Responsibility Examination and received a scaled score of 85 or higher;
  5. The Petitioner has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of Petitioner's Misconduct;

6. The Petitioner has paid the Bar all Costs previously assessed against Petitioner, together with any interest due thereon at the judgment rate;
7. The Petitioner has reimbursed the Bar for any sums of money paid as a result of a receivership involving Petitioner's law practice; and
8. The Petitioner has posted with his or her petition for Reinstatement a \$5,000 cash bond for payment of Costs resulting from the Reinstatement Proceedings.

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

1. Investigation. Bar Counsel must conduct such Investigation and make such inquiry as it deems appropriate. On request of Bar Counsel, the Petitioner must promptly sign such forms and give such permission as are necessary to permit inquiry of the Petitioner's background through the Internal Revenue Service, the National Criminal Information Center, the National Criminal Information Network and any other similar information network or system. The petition for Reinstatement must not proceed without such forms and permissions being signed by Petitioner and returned to Bar Counsel.
2. Bill of Particulars. On written request by Bar Counsel, served by certified mail, return receipt requested, a Petitioner seeking Reinstatement must file with the Clerk within 21 days after service of the request a bill of particulars setting forth the grounds for Reinstatement. The petition for Reinstatement must not proceed without such bill of particulars being filed with the Clerk.
3. Completion of Investigation and Hearing Date. As soon as practicable, Bar Counsel must complete the Investigation and notify the Clerk and the Petitioner of the completion of the Investigation in writing. The Petitioner may elect to have further proceedings on the petition conducted by a three-judge circuit court by filing a demand with the Clerk not later than 21 days after Bar Counsel's notice of completion of Investigation is served. The demand must include the Petitioner's available dates for a hearing on the petition not less than 30 days nor more than 120 days after the date of the demand; however, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Petitioner does not file a demand with the Clerk to have further proceedings conducted by a three-judge circuit court by the 21-day deadline, the Petitioner will be deemed to have consented to the jurisdiction of the Board. If the Petitioner elects further proceedings before a three-judge circuit court as set forth in this subsection, Bar Counsel must file a petition for rule to show cause, attaching the petition for Reinstatement, in the Circuit Court for the City

of Richmond, and the chief judge must issue a rule against the Petitioner to show cause why the Petitioner's license should be reinstated. The Circuit Court for the City of Richmond must then certify the fact of issuance of the rule to show cause and the time and place of the hearing thereon to the Chief Justice of the Supreme Court, who must designate a three-judge circuit court consisting of three circuit court judges from any circuit to hold a hearing on the petition. The date of the hearing must 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 must 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 must 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 must 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, must 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.
5. Proof of Good Character. Petitioner must prove by clear and convincing evidence that Petitioner is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law. After a Revocation, an attorney's license must not be reinstated without such proof.
6. Powers of the Board or a Three-Judge Circuit Court in Reinstatement Cases. The Board or, if designated, a three-judge circuit court is empowered to hold a hearing and make its recommendation to this Court either to approve or disapprove the petition.
  - a. Hearing. On the date set for the hearing, the Petitioner has the right to representation by counsel, to examine and cross-examine

witnesses and to present evidence. The testimony and other incidents of the hearing must be transcribed and preserved, together with all exhibits (or copies thereof) received into evidence or refused. Bar Counsel must appear and represent the Commonwealth and its citizens. Bar Counsel has the right to cross-examine, call witnesses and present evidence in opposition to the petition. Board or, if designated, three-judge circuit court members may examine witnesses called by either party. Legal advice to the Board or, if designated, three-judge circuit court, if required, must be rendered by the Office of the Attorney General.

- b. Factors to be Considered. In considering the matter prior to making a recommendation to this Court, the Board or, if designated, three-judge circuit court may consider the following factors:
- i. The severity of the Petitioner's Misconduct, including, but not limited to, the nature and circumstances of the Misconduct;
  - ii. The Petitioner's character, maturity and experience at the time of his or her Revocation;
  - iii. The time elapsed since the Petitioner's Revocation;
  - iv. Restitution to the clients and/or the Bar;
  - v. The Petitioner's activities since Revocation, including, but not limited to, his or her conduct and attitude during that period of time;
  - vi. The Petitioner's present reputation and standing in the community;
  - vii. The Petitioner's familiarity with the Virginia Rules of Professional Conduct and his or her current proficiency in the law;
  - viii. The sufficiency of the punishment undergone by the Petitioner;
  - ix. The Petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his or her Revocation and Reinstatement; and
  - x. The impact upon public confidence in the administration of

justice if the Petitioner's License is restored.

- c. Character Witnesses. Up to five character witnesses supporting and up to five character witnesses opposing the petition may be heard. In addition, the Board or, if designated, three-judge circuit court may consider any letters submitted regarding the Petitioner's character and fitness.
- d. Character and Fitness Determination. The Board or, if designated, three-judge circuit court must offer an opinion in its recommendation as to whether the Petitioner is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.
- e. Determination by the Board or the Three-Judge Circuit Court. The Board or, if designated, three-judge circuit court must, within 60 days after the receipt of the transcript, forward the record and its recommendations to this Court. A copy of the recommendation must be forwarded to the Petitioner and Bar Counsel.
  - i. If the Board or, if designated, three-judge circuit court recommends Reinstatement, it may be conditioned upon Petitioner obtaining malpractice insurance coverage and/or a blanket fidelity bond or dishonesty insurance coverage in an amount(s) set by the Board or, if designated, three-judge circuit court from an approved professional insurance carrier for a definite term or on an ongoing basis.
  - ii. At the conclusion of the Reinstatement Proceeding, the Clerk must determine the Costs associated with such Proceeding. The Clerk must refund any remaining surplus or must 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 or, if designated, three-judge circuit court's recommendation order.
  - iii. Upon approval of a petition by this Court, the Petitioner must meet the following requirements prior to and as a condition of his or her Reinstatement:
    - a) Pay to the Bar any Costs assessed in connection with the Reinstatement Proceeding;
    - b) Take and pass the written portion of the Virginia State Bar examination;

- c) If required by the Board or, if designated, three-judge circuit court, obtain and maintain a professional liability insurance policy issued by a company authorized to write such insurance in Virginia at the cost of the Petitioner in an amount and for such term as set by the Board or, if designated, three-judge circuit court; and
- d) If required by the Board or, if designated, three-judge circuit court, obtain and maintain a blanket fidelity bond or dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia at the Petitioner's cost in an amount and for such term as set by the Board or, if designated, three-judge circuit court.

#### 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 lies once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal lies 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.
- B. Determination. This Court must hear the case and make such determination in connection therewith as it deems right and proper.
- C. Office of the Attorney General. In all appeals to this Court, the Office of the Attorney General, or the Bar Counsel, if so requested by the Attorney General, must represent the interests of the Commonwealth and its citizens as appellees.

#### 13-27. RESIGNATION

- A. Application. A sworn and notarized application to resign from the practice of law must be submitted to the Clerk. The application must 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 must submit applications for resignation to Bar Counsel, who must 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 must 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 is effective only upon entry of an order accepting it. Upon entry of an order accepting an Attorney's resignation, the former Attorney must 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.

- C. When Not Permitted. An Attorney may not resign while the Attorney is the subject of a disciplinary complaint, investigation, action, or proceeding involving allegations of Misconduct.

### 13-28. CONSENT TO REVOCATION

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

1. The consent is freely and voluntarily rendered, that the Attorney is not being subjected to coercion or duress, and that the Attorney is fully aware of the implications of consenting to Revocation;
2. The Attorney is aware that there is currently pending a disciplinary complaint, Investigation, or Proceeding, the nature of which must be specifically set forth in the affidavit;
3. The Attorney acknowledges that the material facts upon which the disciplinary complaint, Investigation, or Proceeding are predicated are true; and
4. The Attorney submits the consent to Revocation because the Attorney knows that if disciplinary Proceedings based on the alleged conduct were brought or prosecuted to a conclusion, the Attorney could not successfully defend them.

- B. Admissions. The admissions offered in the affidavit consenting to Revocation are not deemed an admission in any proceeding except one relating to the status of the Attorney as a member of the Bar.

- C. Procedure. The Clerk must submit the affidavit to Bar Counsel, who must 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

must hold a hearing on whether the affidavit and consent to Revocation should be accepted. If Bar Counsel does not file an objection, the Board must enter an order revoking the Attorney's License by consent without a hearing.

- D. Attorney Action Required upon Revocation. Upon entry of such an order of Revocation by consent, the revoked Attorney must immediately cease the practice of law and must comply with the notice requirements set forth in subparagraph 13-29.
- 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.

#### 13-29. DUTIES OF DISBARRED OR SUSPENDED RESPONDENT

A. Duties After Suspension or Revocation. After a Suspension against a Respondent is imposed by either a Summary Order or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, Respondent must forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent must also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent must give such notice immediately and in no event later than 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days of the effective date of the Revocation or Suspension. The Respondent must also furnish proof to the Clerk within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements have been made for the disposition of matters. The Board must decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof is on the Respondent to show compliance. If the Respondent fails to show compliance, the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph 13-29.

B. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the petition for show cause 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 must be terminated and Bar Counsel must file the complaint required by

Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does 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 is deemed to have consented to the jurisdiction of the Board.

### 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 must 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 orders imposing or terminating a Suspension 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: i) determinations imposing public discipline; and ii) determinations imposing private discipline which have been disclosed to a District Committee, the Board or a three-judge Circuit Court empaneled under Va. Code §54.1-3935, pursuant to subparagraph 13-30.B, are public;
  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 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 may 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.

G. Disclosure of Criminal Activity. If Bar Counsel or a Chair of the Board or a

Chair of a District Committee discovers evidence of criminal activity by an Attorney, Bar Counsel, the Chair of the Board or a Chair of a District Committee must forward such evidence to the appropriate Commonwealth's Attorney, United States Attorney or other law enforcement agency. The Attorney concerned must be notified whenever this information is transmitted pursuant to this subparagraph 13-30 unless Bar Counsel decides that giving such notice will prejudice a disciplinary investigation.

- H. Disclosure of Information to Government Entities. By order of this Court, confidential information may be disclosed to the Joint Legislative Audit and Review Commission or other governmental entities incident to their discharge of official duties, provided the entity is required or agrees to maintain the confidentiality of the information provided.
- 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 may Bar Counsel, a member of COLDC, 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 may 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 may confidential records of the attorney disciplinary system be subject to subpoena.
- L. Virginia Lawyer Referral Service. Bar Counsel must notify the Virginia Lawyer Referral Service when a Complaint involving any Attorney member of the service is referred to a District Committee for Investigation or when any Attorney member of the service is disciplined. Bar Counsel must also notify the Virginia Lawyer Referral Service when any Complaint involving an Attorney member of the service is dismissed following Investigation or when any Attorney member of the service complies with Terms imposed.

- M. Disclosure of Information to Lawyer Assistance Program. If Bar Counsel believes that an Attorney may benefit from the services of a Lawyer Assistance Program, Bar Counsel may make an informal referral to a Lawyer Assistance Program and may share information deemed confidential under this Paragraph as part of that referral. Bar Counsel must not share information that is protected from disclosure by other state or federal privacy laws. Bar Counsel may, but must not be required to, notify the subject Attorney of the informal referral or transmission of confidential information to the Lawyer Assistance Program. Unless the subject Attorney has signed a release allowing the Lawyer Assistance Program to share information with Bar Counsel, the Lawyer Assistance Program must not report information about the subject Attorney to Bar Counsel, and Bar Counsel must not receive such information from the Lawyer Assistance Program.

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.

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