

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 17th day of December, 2015.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective March 1, 2016.

Amend Section IV, Paragraph 13 of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court to read as follows:

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

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

There shall be 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 shall 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 shall not be 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;

2. Bar Counsel shall not be required to reveal other communications between the Investigator and Bar Counsel, or between Bar Counsel and the Subcommittee; and

3. Bar Counsel shall 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 shall 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 shall 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 shall be in writing and shall be deemed effective when mailed by first-class mail to the Bar's last known address of the subject Complainant or Attorney.

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Amend Paragraph 13-25 to read as follows:

13-25 BOARD PROCEEDINGS FOR REINSTATEMENT.

A. Waiver of Confidentiality. The filing by a former Attorney of a petition for Reinstatement shall constitute 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 shall 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 a psychiatric, physical or other medical examination by a qualified physician or other health care provider selected by the Board; and
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 shall 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 pass the Bar examination. 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 shall not be reinstated unless the Attorney demonstrates to the Board that he or she has:

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

E. Petition for Reinstatement After Revocation. After a Revocation, a Petitioner may file with the Clerk of the Disciplinary System 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 shall be determined by the Clerk of the Disciplinary System after the petition is

filed, and the Clerk of the Disciplinary System shall notify the Petitioner of compliance or noncompliance. Upon a determination of compliance with the requirements of subparagraph 13-25.F, the Clerk of the Disciplinary System shall enter the petition on the docket of the Board and shall refer it to the office of Bar Counsel for investigation. The Board may recommend approval or disapproval of the petition. Final action on the petition shall be taken by the Supreme Court of Virginia.

F. Threshold Requirements for Reinstatement After Revocation. After a Revocation, Petitioner's License shall 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 shall 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 shall ensue:

1. Investigation. Bar Counsel shall conduct such Investigation and make such

inquiry as it deems appropriate. On request of Bar Counsel, the Petitioner shall 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 shall 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 shall file with the Clerk of the Disciplinary System within 21 days after service of the request, an original and six copies of a bill of particulars setting forth the grounds for Reinstatement. The petition for Reinstatement shall not proceed without such Bill of Particulars being filed with the Clerk of the Disciplinary System.

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

4. Notice. Reasonable notice of filing of the petition and the date of the hearing shall be distributed by mail or electronic means by the Clerk of the Disciplinary System 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 of the Disciplinary System shall also distribute by mail or electronic means the notice to the members of the District Committee who heard the original Complaint, to members of the Board who heard the original Complaint, to the members of the District Committee for the judicial circuit in which the Petitioner currently resides, to the complaining witness or witnesses on all Complaints pending against the Petitioner before the Board, a District Committee or a court at the date of the Revocation or Suspension and to such other individuals as the Clerk of the Disciplinary System deems appropriate. The Clerk of the Disciplinary System shall publish a synopsis of the petition in the Virginia Lawyer and in a newspaper of general circulation in the judicial circuit where the Petitioner currently resides and where the Petitioner maintained a principal office at the time of the Revocation or

Suspension. The entire petition, as well as the transcript, exhibits, pleadings and orders from the original Disciplinary Proceedings and Bill of Particulars, together with the documents referred to in subparagraph 13-25.F above, shall be available for inspection and copying at the office of the Bar on reasonable notice and on payment of costs incurred to make the copies.

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 shall not be reinstated without such proof.

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

a. Hearing. On the date set for the hearing, the Petitioner shall have the right to representation by counsel, to examine and cross-examine witnesses and to present evidence. The testimony and other incidents of the hearing shall be transcribed and preserved, together with all exhibits (or copies thereof) received into evidence or refused. Bar Counsel shall appear and represent the Commonwealth and its citizens. Bar Counsel shall have the right to cross-examine, call witnesses and present evidence in opposition to the petition. Board members may examine witnesses called by either party. Legal advice to the Board, if required, shall 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 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 shall be heard. In addition, the Board may consider any letters submitted regarding the Petitioner's character and fitness.

d. Character and Fitness Determination. The Board shall 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. The Board shall, within 60 days after the receipt of the transcript, forward the record and its recommendations to the Supreme Court of Virginia. A copy of the recommendation shall be forwarded to the Petitioner and Bar Counsel.

- i. If the Board 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 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 of the Disciplinary System shall determine the Costs associated with such Proceeding. The Clerk of the Disciplinary System shall refund any remaining surplus or shall assess to the Petitioner any deficiencies that exist and submit a report on same to the Clerk of the Supreme Court of Virginia as part of the Board's recommendation order.

iii. Upon approval of a petition by this Court, the Petitioner shall 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, 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; and

d) If required by the Board, 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.

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Amend Paragraph 13-30 to read as follows:



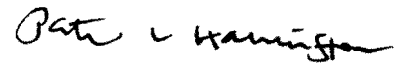
13-30. CONFIDENTIALITY OF DISCIPLINARY RECORDS AND PROCEEDINGS.

A. Confidential Matters. Except as otherwise provided in this subparagraph 13-30, or in subparagraph 13-11, the following Disciplinary Proceedings, records, and information are confidential and shall not be disclosed:

\* \* \*

A Copy,

Teste:



Clerk