

Friday

27th

February, 2009.

On November 14, 2008 came the Virginia State Bar, by Manuel A. Capsalis, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Paragraph 13, Section IV, of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be amended to read as follows:

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

13-1. Definitions

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

"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 private sanction imposed by a Subcommittee *sua sponte*, a private or public sanction based upon an Agreed Disposition approved by a Subcommittee, or a public sanction imposed by a District Committee or the Board upon a finding that Misconduct has been established, but that no substantial harm to the Complainant or the public has occurred, and that no further disciplinary action is necessary.

"Agreed Disposition" means the disposition of a Complaint or Charge of Misconduct agreed to by Respondent and Bar Counsel and approved by a Subcommittee, District Committee, or the Board.

"Attorney" means a member of the Bar 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 §2.1-122(c) 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 §2.1-122(c).

"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 shall 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 shall 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 of the Disciplinary System" means the employee of the Bar who, together with such assistants as may be required, provides administrative support to the disciplinary system and serves as official custodian of the Disciplinary Records.

"COLD" means the Standing Committee on Lawyer Discipline.

"Complainant" means the initiator of a Complaint.

"Complaint" means any written communication to the Bar 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.

"Costs" means reasonable costs paid by the Bar to outside experts or consultants; reasonable travel and out-of-pocket expenses for witnesses; Court Reporter and transcript fees; copying, mailing, and required publication costs, 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" means the Virginia Consumer Real Estate Settlement Protection Act, Va. Code, Title 6.1, Chapter 1.3, and any regulations promulgated thereunder.

"Crime" means:

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

the foregoing.

"Disbarment" has the same meaning as Revocation.

"Disciplinary Proceeding" means any proceeding governed by this Paragraph.

"Disciplinary Record" means any tangible or electronic record of:

1. Any proceeding in which the Respondent has been found guilty of Misconduct, including those proceedings in which (a) the Board's or Court's finding of Misconduct has been appealed to this Court; (b) the Respondent's License to practice law has been surrendered with charges pending 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 a Complaint or Charge of Misconduct has been resolved by (a) a *De Minimis* Dismissal; (b) a Dismissal for Exceptional Circumstances; or (c) an Admonition; and
3. Any proceeding in which the Respondent has been found guilty of a violation of CRESPA; and
4. Any proceeding which resulted in a sanction which created a disciplinary record at the time it was imposed.

"Disciplinary Rules" means the Virginia Rules of Professional Conduct and Virginia Code of Professional Responsibility, as applicable.

"Dismissal" means the dismissal of a Complaint by Bar Counsel or the dismissal of a Charge of Misconduct by 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 shall 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.

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

"Impairment Proceeding" means the 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 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.

"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 §2.1-37.1, and any judge appointed or elected under the laws of any other jurisdiction.

"License" means the license to practice law granted by this Court.

"Memorandum Order" means the opinion and order of the Board entered following a Disciplinary Proceeding that shall contain a brief statement of the findings of fact; the nature of the Misconduct shown by such finding of facts; 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 shall 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 CRESPA 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. An 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 an Admonition without Terms issued by a Subcommittee *sua sponte*, a Private Reprimand or any form of discipline which 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 an Attorney's License to practice law 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 Attorney whose License was previously revoked.

"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 CRESPA; or
3. Who is the subject of an Adjudication of a Crime Proceeding, Proceedings upon Disbarment, Revocation or Suspension in another jurisdiction, Impairment Proceeding, or Reinstatement Proceeding.

"Revocation" means any revocation of an Attorney's License to practice law and includes a revocation of such License as the result of a voluntary surrender by an Attorney of the Attorney's License to practice law as provided in this Paragraph.

"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 Board Chair following a Disciplinary Proceeding that outlines in summary form the Board's findings as to the Charge of Misconduct, the sanctions to be imposed, the effective date of any sanctions imposed, and any notice requirements.

"Suspension" means the temporary suspension of an Attorney's License to practice law for either a fixed or indefinite period of time.

"Terms" shall mean 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 Dismissal of a Complaint or Charge of Misconduct, or the imposition of an Admonition, or a Private or Public Reprimand.

"Va. Code" means the 1950 Code of Virginia, as amended.

13-2. AUTHORITY OF THE COURTS

Nothing in this Paragraph shall 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 shall have 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 shall have 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 shall have 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 shall appoint a sufficient number of District Committees to carry out the purposes of this Paragraph. District Committees shall be established in geographical areas consisting of one or more judicial circuits. In creating the District Committee areas, Council shall give due consideration to Attorney population and the community of interest among different judicial circuits within a District Committee area. Each District Committee shall consist 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 shall be nonlawyers. 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 shall consist of five or more persons. One person assigned to a District Committee Panel shall be a present or former nonlawyer member of a District Committee. If the scheduled nonlawyer is unable to attend, and if an alternate nonlawyer is not reasonably available, participation by a nonlawyer member shall not be required in a proceeding if a quorum is otherwise present. The action of a majority of a quorum shall be the action of the District Committee Panel.

C. Geographic Criteria. Each member of a District Committee shall be a resident of or have his or her office in the District Committee area for which such member is appointed. Members shall, to the extent practicable, be appointed from different geographical sections of their districts.

D. Term of Office. Council shall 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 shall be 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 shall not be 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 shall 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 shall

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 shall 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 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.

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

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 shall have the power to declare such vacancy. Before such vacancy is declared, the particular District Committee member shall 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 shall be deemed to be a professional relationship within the meaning of Disciplinary Rules 1.6, 1.7, 1.9, 1.10 and 3.7. Such service shall be deemed the holding of public office within the meaning of Disciplinary Rules 1.11 and 1.12. Consent under Disciplinary Rules 1.6, 1.7 and 1.9 shall be deemed to include Bar Counsel's consent on behalf of the Bar.

#### 13-6. DISCIPLINARY BOARD

A. Appointment of Members. This Court shall appoint, upon recommendation of Council, 20 members of the Board, 16 of whom shall be members of the Bar and four of whom shall be nonlawyers. One Attorney member shall 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 shall first determine that the nominee is willing to serve on the Board and will conscientiously discharge the responsibilities as a member of the Board. The Bar nominating committee shall 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 shall 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 shall be 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 Board member; (3) a Disciplinary Record in any jurisdiction of a Disbarment, Revocation, Suspension or Public Reprimand imposed within the ten years immediately preceding the proposed appointment date; (4) a Disciplinary Record in any jurisdiction consisting of Private Discipline, except for a *de minimis* dismissal or a dismissal for exceptional circumstances, or an Admonition within the five years immediately preceding the proposed appointment date. The Standing Committee on Lawyer Discipline shall have the sole discretion to determine whether a *de minimis* dismissal or a dismissal for exceptional circumstances shall disqualify a potential appointee.

C. Term of Office. Members shall serve staggered terms of

three years each. No member shall serve more than two consecutive three-year terms but shall be 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 shall be eligible for immediate reappointment to the Board for two additional consecutive three-year terms.

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

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

F. Jurisdiction. The Board shall have jurisdiction to consider: (1) Appeals from Public or Private Reprimands, with or without Terms, or Admonitions, with or without Terms, imposed by District Committees or Dismissals that otherwise create a Disciplinary Record; (2) Complaints and Charges of Misconduct certified 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 CRESPA 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; and (11) Failure of Respondent to fulfill the terms of a Public Reprimand with Terms certified to it by a District Committee for sanction determination.

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

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 shall 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 shall 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 of the Disciplinary System and shall have the force of and may be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar in the same manner as other notices served upon Respondents under this Paragraph;
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 of the Disciplinary System, Bar Counsel or any lawyer member of a District Committee for trust account, estate account, fiduciary account, operating account or other records maintained by the Attorney or the Attorney's law firm. In the event of alleged noncompliance, Bar Counsel may file with the Board and serve on the Attorney a notice of noncompliance requesting the Board to suspend the Attorney's License. The noncompliance notice must advise the Attorney that he or she may petition the Board within 10 days of service of the notice to withhold entry of a Suspension order and to hold a hearing, at which time the Attorney shall have the burden of proving good cause for the alleged noncompliance. If 10 days

after service of the notice of noncompliance the Attorney has not petitioned the Board to withhold entry of an interim Suspension order, the Board shall enter an Order suspending the Attorney's License until such time as the Attorney fully complies with the summons or subpoena or a determination is made as to whether the Attorney's noncompliance violated the Disciplinary Rules. An Attorney suspended pursuant to this subparagraph\_G.3. is subject to the provisions of subparagraph 13-29;

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 shall be 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 a Charge of Misconduct or a Certification for Sanction Determination and desire to enter into an Agreed Disposition of the Charge of Misconduct or Certification for Sanction Determination, 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. If the Agreed Disposition is not accepted by the Panel, the Charge of Misconduct or Certification for Sanction Determination will then be set for hearing before another Panel of the Board at the earliest possible date. No member of the Panel which considered the proposed Agreed Disposition shall be assigned to the Panel which hears the Charge of Misconduct or Certification for Sanction Determination.

### 13-7. DISTRICT COMMITTEES

A. Powers. Each District Committee and Section thereof shall have 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. Summon and examine witnesses under oath to be administered by any member of the District Committee;
4. Issue, through any of its Attorney members or through Bar Counsel, any summons or subpoena necessary to compel the attendance of witnesses and the production of documents or evidence necessary or material to any Investigation or Disciplinary Proceeding. Any such summons or subpoena issued to a non-Attorney shall have the force of and be enforced as a summons or subpoena issued by a Circuit Court. A subpoena duces tecum which compels the Respondent to produce documents may be served upon the Respondent by certified mail, return receipt requested, at the Respondent's last address of record with the Bar in the same manner as other notices served upon Respondents under this Paragraph;
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, through a Subcommittee acting by a unanimous vote, an Agreed Disposition of a Complaint or Charge of Misconduct submitted by Bar Counsel and the Respondent.

B. Creation of Subcommittees. The Chair shall appoint one or more Subcommittees of each District Committee. Where a District Committee is divided into two or more Sections, there shall be one or more Subcommittees of each Section, as determined by the respective District Committee Section Chair. Each Subcommittee shall consist of three members of that District Committee or that Section of the District Committee. Two members of a Subcommittee shall be Attorneys, one of whom shall be appointed by the District Committee or Section Chair to act as Chair of that Subcommittee, and one member of the Subcommittee shall be a non-attorney member.

C. Subcommittee Quorums. A quorum of a Subcommittee shall consist 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

shall have jurisdiction over all Complaints referred to it.

E. Limitation on Private Discipline. Private Discipline shall be 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 shall be 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, shall receive public discipline for any violation of the Disciplinary Rules, unless there are sufficient facts and circumstances to rebut such presumption.

F. Venue. Venue shall not be jurisdictional, but venue shall lie 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 of the Disciplinary System. In determining to which District Committee a Complaint should be referred, the Clerk of the Disciplinary System shall consider the volume of Complaints pending before the District

Committee and the inconvenience imposed upon the Respondent and the witnesses by the location of the District Committee.

H. Objections to Venue. Either the Respondent or Bar Counsel may object to venue by filing a notice of objection with the Clerk of the Disciplinary System within ten days of notification of the referral of the Complaint to a District Committee. Objections to venue shall be deemed waived unless made within this ten-day time period. Upon receipt of a timely filed notice of objection, the Clerk of the Disciplinary System shall 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 shall consider, adjudicate and dispose of Complaints referred to the District Committee pursuant to this Paragraph. Where appropriate, the District Committee or Subcommittee shall 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 shall not participate in a District Committee's consideration, adjudication and disposition of such Complaint or Charge of Misconduct.

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

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

L. Recusal or Disqualification of District Committee Members. In the event of recusal or disqualification of so many District

Committee members that the District Committee is unable to discharge its responsibilities under this Rule, the District Committee may supplement its membership with members from other District Committees to achieve a quorum. If every member of a District Committee is recused or is disqualified from considering Charges of Misconduct, the Clerk of the Disciplinary System shall assign the Charges of Misconduct to another District Committee.

13-8. BAR COUNSEL

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

1. Initiate, investigate, present or prosecute Complaints or other Proceedings before Subcommittees, District Committees, the Board and Circuit Courts. Bar Counsel may represent the Bar in matters pending in this Court. In the course of performing such functions, Bar Counsel shall act independently and exercise prosecutorial autonomy and discretion;
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 shall 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 shall be delivered to 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 Charge of Misconduct shall be prosecuted by a District Committee member designated by the District Committee Chair if the Proceeding is before a District Committee, or by the Attorney General or his designee if the proceeding is before the Board or a three-judge Circuit Court.

13-9. CLERK OF THE DISCIPLINARY SYSTEM

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

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

C. File Destruction. Whenever a File is destroyed, the following information shall 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 Charge 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 shall be retained for at least five years whenever the Complaint or Charge 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 CRESPA violation made.

D. Preservation of Determinations and Orders. The Clerk of the Disciplinary System shall preserve a copy of all District Committee Determinations and Board or court orders in which an

Attorney has been found to have engaged in Misconduct, to be impaired, to have committed a violation of CRESPA or requested Reinstatement.

E. Costs. The Clerk of the Disciplinary System shall 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 surrenders his or her License to practice law at a time when charges are pending;
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; and
6. All cases before the Board in which sanctions were imposed for violations of CRESPA and/or the Bar's CRESPA regulations.

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 shall be final and non-appealable. Interest at the judgment rate shall commence 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 shall be a debt subject to collection by the Bar, and the Board shall issue an order of Suspension against the Respondent until such time as Respondent shall pay all of the Costs and accrued interest.

G. Public Notification of Sanctions. The Clerk shall issue a statement to the communications media summarizing each public Admonition, Public Reprimand, Suspension or Revocation. The Clerk shall notify the following individuals and entities of each public Admonition, Public Reprimand, Suspension or Revocation:

1. The Clerk of the Supreme 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 shall 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 shall not open an Investigation, and the Complaint shall be dismissed.

B. No Dismissal by Complainant. No Complaint or Charge of Misconduct shall 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 shall 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 to the satisfaction of the Complainant, the Respondent and the Bar, Bar Counsel shall then dismiss the Complaint. Such dismissal shall 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 shall 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 shall 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 shall notify the District Committee Chair that a Complaint has been referred to a

District Committee for investigation. Thereafter, the Complaint shall 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 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 subpoenae 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.

13-12. SUBSTANTIAL COMPLIANCE, NOTICE AND EVIDENTIARY RULINGS

A. Substantial Compliance. Except where this Paragraph provides specific time deadlines, substantial compliance with the provisions hereof shall be sufficient, and no Charge of Misconduct shall 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 shall be jurisdictional, except when the Clerk of the Disciplinary System, Bar Counsel, a District Committee or the Board is granted specific authority herein to extend or otherwise modify any such deadline.

C. Service. Whenever any notice or other writing directed to the Respondent is required or permitted under this Rule, such notice or other writing shall be deemed effective and served when mailed by certified mail, return receipt requested, to the Respondent at the Respondent's last address on record for membership purposes with the Bar.

D. Evidentiary Rulings. In any Disciplinary Proceeding, evidentiary rulings shall be made favoring receipt into evidence of all reasonably probative evidence to satisfy the ends of justice. The weight given such evidence received shall be 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 shall, 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.

13-13. PARTICIPATION AND DISQUALIFICATION OF COUNSEL

A. Attorney for Respondent. A Respondent may be represented by an Attorney at any time with respect to a Complaint.

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 shall not represent a Respondent at any time with respect to a Complaint or Charge 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, Charge 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 relation with any Attorney described in the preceding subparagraphs C.1. through C.4.

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 shall be disqualified from adjudicating any matter with respect to which the member has any personal or financial interest that might affect or reasonably be perceived to affect the member's ability to be impartial. The Chair shall 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 shall be recused from any service on the District Committee or the Board until the Dismissal of the Complaint without the imposition of any form of discipline.

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 shall 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 shall have sole discretion to determine whether the member shall be 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 shall be decided by the tribunal before which the proceeding is pending, except that COLD shall determine discretionary termination of membership or further

service.

E. Ineligibility. Any member or former member of a District Committee or the Board shall be ineligible to serve in a Disciplinary 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 of the Disciplinary System 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 shall dismiss the Complaint when:
  - a. As a matter of law the conduct questioned or alleged does not constitute Misconduct; or
  - b. The evidence available shows that the Respondent did not engage in the Misconduct questioned or alleged, or there is no credible evidence to support any allegation of Misconduct by Respondent, or the evidence available could not reasonably be expected to support any allegation of Misconduct under a clear and convincing evidentiary standard; or
  - c. The Subcommittee concludes that a Dismissal *De Minimis* should be imposed; or
  - d. The Subcommittee concludes that a Dismissal for Exceptional Circumstances should be imposed; or
  - e. The action alleged to be Misconduct is protected by superseding law.

In making the determination in the preceding subparagraphs B.1.c. and B.1.d., the Subcommittee shall have access to Respondent's prior Disciplinary Record. Respondent, within ten days after the issuance of a dismissal which creates a Disciplinary Record, may request a hearing before the District Committee.

2. Impose an Admonition without Terms. In making this determination, the Subcommittee shall 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 shall be 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 shall 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 shall have access to Respondent's prior Disciplinary Record.

C. Vote Required for Action. All actions taken by Subcommittees, except for approval of Agreed Dispositions, shall be by majority vote.

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

and the Complainant.

F. Procedure in All Terms Cases. If a Subcommittee imposes Terms, the Subcommittee shall specify the time period within which compliance with the Terms shall be completed. If Terms have been imposed against a Respondent, that Respondent shall 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 shall 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 shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall 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 shall be 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 shall be imposed. Bar Counsel shall be 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 shall 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 shall, 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 shall, within 21 days after service of the Charge of Misconduct:

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

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 shall be 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 provide to each other, with a copy to 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 serve on each other, with a copy to 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 Bar Counsel or the Chair of the District Committee to issue summonses or subpoenae for witnesses and documents. Requests for summonses and subpoenae shall be granted, unless, in the judgment of the Chair of the District Committee, such request is unreasonable. Either Bar Counsel or Respondent may move the District Committee to quash such summonses or subpoenae.

F. Continuances. Once a District Committee has scheduled a hearing, no continuance shall be granted unless in the judgment of the Chair the continuance is necessary to prevent injustice.

G. Public Hearings. District Committee hearings, except deliberations, shall be open to the public.

H. Public Docket. The Clerk's Office shall 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 shall 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 shall place it on the docket on receipt of the statement of the certified charges from the Subcommittee.

I. Oral Testimony and Exhibits. Oral testimony shall be taken and preserved by a Court Reporter. All exhibits or copies thereof received in evidence or marked refused by the District Committee shall be preserved in the District Committee file on the matter.

J. Opening Remarks by the Chair. After swearing the Court Reporter, who thereafter shall administer oaths or affirmations to witnesses, the Chair shall make opening remarks in the presence of the Respondent and the Complainant, if present. The Chair shall 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 shall be excused from participation in the matter.

K. Motion to Exclude Witnesses. Witnesses other than the Complainant and the Respondent shall 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 shall present witnesses and other evidence supporting the Charge of Misconduct. Respondent shall 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 shall be afforded the opportunity to present witnesses and other

evidence on behalf of Respondent. Bar Counsel or Committee's Counsel shall 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 shall rule 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 shall 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 shall be dismissed.

S. Argument. The District Committee shall 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 shall deliberate in private on the allegations of Misconduct. After due deliberation and consideration, the District Committee shall 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 shall be 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, shall 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 shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has been the subject of any Disciplinary Proceedings in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence in aggravation or mitigation, as well as argument. In determining what disposition of the Charge of Misconduct is warranted, the District Committee shall consider the Respondent's Disciplinary Record. A District Committee may:

1. Conclude that a Dismissal *De Minimis* should be imposed;
2. Conclude that a Dismissal for Exceptional Circumstances should be imposed;
3. Conclude that an Admonition, with or without Terms, should be imposed;
4. Issue a Public Reprimand, with or without Terms; or
5. Certify the Charges of Misconduct to the Board or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935.

Y. District Committee Determinations. If the District Committee finds that the evidence shows the Respondent engaged in

Misconduct by clear and convincing evidence, then the Chair shall issue the District Committee's Determination, in writing, setting forth the following:

1. Brief findings of the facts established by the evidence;
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 shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor.
2. Issues a Public Reprimand, with or without Terms; an Admonition, with or without Terms; a Dismissal *De Minimis*; or a Dismissal for Exceptional Circumstances, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the District Committee's Determination.
3. Finds that the Respondent failed to comply with the Terms imposed by the District Committee, the Chair shall notify the Complainant, the Respondent and Bar Counsel of the imposition of the alternative disposition.
4. Has elected to certify the Complaint, the Chair of the District Committee shall promptly mail to the Clerk of the Disciplinary System a copy of the Certification. A copy of the Certification shall be sent to Bar Counsel, Respondent and the Complainant.

AA. District Committee Determination Finality and Public Statement. Upon the expiration of the ten-day period after service on the Respondent of a District Committee Determination, if either a notice of appeal or a notice of appeal and a written demand that further Proceedings be conducted before a three-judge Circuit Court pursuant to Va. Code § 54.1-3935 has not been filed by the Respondent, the District Committee Determination shall become final, and the Clerk of the Disciplinary System shall issue a public statement as provided for in this Paragraph for the dissemination of public disciplinary information.

BB. Enforcement of Terms. In all cases where Terms are included in the disposition, the District Committee shall specify the time period within which compliance shall be completed and, if required, the time period within which the Respondent shall deliver a written certification of compliance to Bar Counsel. The District Committee shall specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel shall be 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 shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall 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 shall be 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 shall be imposed. Any show cause proceeding involving the question of compliance shall

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

DD. Reconsideration of Action by the District Committee. A Charge of Misconduct dismissed by a District Committee may be reconsidered only upon:

1. 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 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 shall be reconsidered unless a majority of the Panel that heard the matter votes to reconsider the sanction.
3. No member shall 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.

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 of the Disciplinary System either a notice of appeal to the Board or a notice of appeal and a written demand that further Proceedings be conducted pursuant to Va. Code § 54.1-3935. In either case, the Respondent shall send copies to the District Committee Chair and to Bar Counsel. Upon such demand, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. If the Respondent fails to file a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

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

C. Filing the Transcript and Record on Appeal. The Respondent shall certify in the notice of appeal or written demand that he or she has ordered from the Court Reporter a complete transcript of the proceedings before the District Committee, at the Respondent's cost. Upon receipt of the notice of appeal or written demand, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System. The transcript is a part of the record when it is received in the office

of the Clerk of the Disciplinary System within 40 days after filing of the notice of appeal or written demand. The Clerk of the Disciplinary System shall retain the records until the transcript has been received or for 40 days after the notice of appeal or written demand has been received, whichever occurs first, and shall then dispose of the record as prescribed in the records retention policy set forth in this Paragraph. Failure of the Respondent to make the complete transcript a part of the Record as specified herein shall result in Dismissal of the appeal by the Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed by the District Committee. Bar Counsel shall initiate the three-judge Circuit Court process for the appeal only after receipt of the transcript by the Clerk of the Disciplinary System.

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

E. Appeal from Agreed Sanction Prohibited. No appeal shall lie 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 shall, within 21 days after service of the Certification:

1. File an answer to the Certification with the Clerk of the Disciplinary System, which answer shall be deemed

consent to the jurisdiction of the Board; or file an answer to the Certification and a demand with the Clerk of the Disciplinary System 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.

2. Upon such demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute 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 shall be deemed to have consented to the jurisdiction of the Board.

C. Notice of Hearing. The Board shall set a date, time, and place for the hearing, and shall 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 shall be under oath and shall 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 shall 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 shall 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 shall 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 shall either file an answer to the petition with the Clerk of the Disciplinary System, which answer shall be conclusively deemed consent to the jurisdiction of the Board; or file an answer and

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

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

1. Direct Bar Counsel and the Respondent to provide to each other, with a copy to the Clerk of the Disciplinary System, 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 of the Disciplinary System, lists setting forth the name of each witness the party intends to call.

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

G. Preliminary Explanation. The Chair shall 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 shall 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 shall be excused from participation in the matter.

H. Attendance at Hearing. Witnesses other than the Complainant and the Respondent shall 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 shall be

permitted but are not required.

2. Bar Counsel shall present witnesses and other evidence supporting the Charge of Misconduct. The Respondent shall 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 shall be afforded the opportunity to present witnesses and other evidence. Bar Counsel shall 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 Charge of Misconduct. A motion to strike an allegation of Misconduct shall 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 shall be dismissed from the Charge of Misconduct.

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

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 shall dismiss any Charge 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 shall 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 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

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 Charge of Misconduct, or any allegation thereof, shall 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.

O. Enforcement of Terms. In all cases where Terms are included in the disposition, the Board shall specify the time period within which compliance shall be completed and, if required, the time period within which the Respondent shall deliver a written certification of compliance to Bar Counsel. The Board shall specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel shall be 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 shall serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. Such show cause proceeding shall be set for hearing before the Board at its next available hearing date. The burden of proof shall be 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 shall be imposed. Any show cause proceeding involving the question of compliance shall be 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 shall issue the Summary Order. Thereafter, the

Board shall issue the Memorandum Order. A Board member shall prepare the Summary Order and Memorandum Order for the signature of the Chair or the Chair's designee. Dissenting opinions may be filed.

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 shall be considered unless it is filed with the Clerk of the Disciplinary System within 10 days after the hearing before the Board. The moving party shall file an original and six copies of both the motion and all supporting exhibits with the Clerk of the Disciplinary System. Such motion shall 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.
3. If such a motion is timely filed, the Clerk of the

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

13-19. BOARD PROCEEDINGS UPON APPEAL

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

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

C. Record on Appeal. The record shall consist 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 shall be filed in the office of the Clerk of the Disciplinary System, as follows:

1. The appellant shall file an opening brief within 40 days after the mailing of the notice to the appellant regarding the record by the Clerk of the Disciplinary System. Failure of the appellant to file an opening brief within the time specified herein shall result

in the Dismissal of the appeal and affirmance of the decision by the District Committee.

2. The appellee shall 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 shall 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 shall 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 Charges 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 shall it increase the severity of the sanction imposed by the District Committee; or
3. Reverse the decision of the District Committee and remand the Charges 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 of the Disciplinary System shall issue a notice of hearing on the Certification for Sanction Determination giving Respondent

the date, time and place of the Proceeding and a copy of the Certification for Sanction Determination.

B. Proceedings Upon the Record. The proceeding shall be conducted upon the record which shall consist 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. Evidence only of mitigation and aggravation with respect to compliance or certification shall be permitted in the proceeding.

D. Argument. Argument shall 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.

#### 13-21. BOARD PROCEEDINGS UPON A FIRST OFFENDER PLEA

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

with the order fixing the time and place of the hearing. The hearing shall be set not less than 14 or more than 30 days after the date of the Board's order.

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

D. Attorney Compliance with Notice Requirements. If the Board or court suspends or revokes the Attorney's License to practice law, 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 shall 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 shall be determined by the Board, which may suspend or revoke the Attorney

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 of the Disciplinary System receives written notification from any court of competent jurisdiction stating that an Attorney (the "Respondent") has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily issue an order of Suspension on behalf of the Board against the Respondent and shall forthwith cause to be served upon the Respondent: a copy of the written notification from the court; a copy of the Board member's order; and a notice fixing the time and place of a hearing to determine whether Revocation or further Suspension is appropriate.

B. Time of Hearing, Continuance and Interim Hearing. The hearing shall 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 any probation ordered by a court has ended or 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 shall, upon request of the Respondent, be continued pending disposition of such appeal. The Board shall, upon request of the Respondent, hold an interim hearing and shall terminate such Suspension while the probation, sentencing, or appeal is pending, if the Board finds that such 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 shall be automatically terminated and any Revocation shall be vacated, and the License shall be deemed automatically reinstated. Discharge or Dismissal of a guilty plea or termination of probation shall not result in the automatic termination of the Suspension or vacation of the Revocation. Nothing herein shall preclude further proceedings against the Respondent upon Charges of Misconduct arising from the facts leading to such conviction.

D. 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 shall be issued, and a copy thereof served upon the Respondent in which the Board shall 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.

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

court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

### 13-23. BOARD PROCEEDINGS UPON IMPAIRMENT

A. Suspension for Impairment. The Board shall have the power to issue an order of Suspension to a Respondent who has an Impairment. The term of such Suspension shall be indefinite, and, except as provided below, shall 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 shall, 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 dismiss any pending Complaints or Charges of Misconduct on the basis of the existence of exceptional circumstances militating against further proceedings, which circumstances of Impairment shall 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 Charges of Misconduct, the burden of proving such an Impairment shall rest with the party asserting its existence. The issue of the existence of an Attorney's Impairment may be raised by any person at any time, and if a District Committee or the Board, during the course of a hearing on Charges of Misconduct against a Respondent, believes that the Respondent may then have an Impairment, the District Committee or the Board may postpone the hearing and initiate an Impairment Proceeding under this Rule. In Proceedings to

terminate a Suspension for Impairment, the burden of proving the termination of an Impairment shall be on the Respondent.

C. Investigation. Upon receipt of notice or evidence that an Attorney 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 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 a psychiatric, physical or other medical examination by qualified physicians or other health care provider selected by the Board; and
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 shall hold a hearing to determine whether any such examination or release is appropriate.

D. Summary Suspension. Upon receipt of a notice from the Clerk of the Disciplinary System with supporting documentary evidence that an Attorney has been adjudicated by a court of competent jurisdiction to have an Impairment, or that an Attorney has been involuntarily admitted to a hospital (as defined in Va. Code §37.1-1) for treatment of any addiction, inebriety, insanity or mental illness, any member of the Board shall summarily issue on behalf of the Board an order of Suspension against the Respondent and cause the order to be served on such Respondent.

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 shall file a petition with the Board, and the Board shall promptly hold a hearing to determine whether such Impairment exists. A copy of the petition shall be served on the Respondent. If the Board determines that an Impairment exists, it shall enter an order of Suspension.

2. The Board shall 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 shall not be conclusive to the Board's determination of the Respondent's ability to resume the practice of law.

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

G. Guardian Ad Litem. The notice of any hearing to determine whether the Respondent has an Impairment shall 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 shall appoint a guardian *ad litem* to represent such Respondent at the hearing.

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

I. Termination of Suspension. In cases where a Suspension is

based upon an adjudication of an Impairment by a court, upon receipt of documentary evidence of adjudication by a court of competent jurisdiction that the Respondent's Impairment has terminated, the Board shall promptly enter an order terminating such Suspension.

J. Enforcement. The Board shall have 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*.

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

A. Initiation of Proceedings. Upon receipt of a notice from the Clerk of the Disciplinary System that another jurisdiction has suspended or revoked the License of the Respondent and that such action has become final (the "Suspension or Revocation Notice"), any Board member shall enter on behalf of the Board an order of Suspension against such Respondent to show cause why the same discipline imposed in the other jurisdiction should not be imposed by the Board. The Board shall serve upon such Respondent by certified mail: 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 discipline that was imposed in the other jurisdiction should not be imposed by the Board.

B. Opportunity for Response. Within 14 days of the date of

mailing of the Board order, via certified mail, return receipt requested, to the last address of record of the Respondent with the Bar, Respondent shall file with the Clerk of the Disciplinary System an original and six copies of any written response and any communications or other materials, which shall be confined to allegations that:

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 discipline upon the same proof would result in a grave injustice; or
3. The same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

C. Scheduling and Continuance of Hearing. Unless continued by the Board for good cause, the hearing shall be set not less than 21 nor more than 30 days after the date of the Board's order of Suspension.

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

E. Hearing Procedures. Insofar as applicable, the procedures for Proceedings on Charges of Misconduct shall govern Proceedings under this subparagraph 13-24.

F. Burden of Proof. The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard, and the burden of producing the Record upon which the Respondent relies to

support the Respondent's contentions, and shall be limited at the hearing to proof of the specific contentions raised in any written response. Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.

G. Action by the Board. If Respondent has not filed a timely written response, or does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has failed to establish the contentions of the written response by clear and convincing evidence, the Board shall impose the same discipline as was imposed in the other jurisdiction. If the Board determines that the Respondent has established such contentions by clear and convincing evidence, the Board may dismiss the proceeding or impose a lesser discipline than was imposed in the other jurisdiction. A copy of any order imposing discipline shall be served upon the Respondent via certified mail, return receipt requested. Any such order shall be final and binding, subject only to appeal as provided in this Paragraph.

#### 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. 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.

C. Petition for Reinstatement After Revocation. After a Revocation, a Petitioner may petition this Court for Reinstatement, setting forth in that petition the reasons why his or her License to practice law in Virginia should be reinstated. The following requirements shall apply: the petition shall be filed under oath or affirmation with penalty of perjury; no petition may be filed sooner than five years from the effective date of the Revocation; and the Petitioner must certify in the petition that he or she has met the requirements of the following subparagraph D. This Court may deny the petition or refer it to the Board for recommendation, together with the record before the clerk of this Court. The Board may recommend approval or disapproval of the petition. Final action on the petition shall be taken by this Court.

D. Evidence Required for Reinstatement After Revocation. After a Revocation, Petitioner's License to practice law shall not be reinstated unless the Petitioner proves by clear and convincing evidence that Petitioner:

1. Within five years prior to filing the petition has attended 60 hours of continuing legal education, of which at least ten hours shall be in the area of legal ethics or professionalism;
2. Has taken the Multistate Professional Responsibility Examination and received a scaled score of 85 or higher;
3. Has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of Petitioner's Misconduct;
4. Has paid the Bar all Costs that have been previously assessed against Petitioner, together with any interest due thereon at the judgment rate;
5. Has reimbursed the Bar for any sums of money it may

have paid as a result of a receivership involving  
Petitioner's law practice; and

6. Is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.

E. Bond Required for Reinstatement After Revocation. The Petitioner shall post with his or her petition for Reinstatement a \$3,500 cash bond for payment of Costs resulting from the Reinstatement Proceedings.

F. Determination of Costs for Reinstatement After Revocation. At the conclusion of the Reinstatement Proceeding, the Board or the Clerk of the Disciplinary System shall determine the Costs associated with such proceeding and submit that determination to the clerk of this Court as part of the Board's findings of fact.

G. Additional Requirements After Approval of Petition. 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:

1. Pay to the Bar any Costs assessed in connection with the Reinstatement Proceeding;
2. Take and pass the written portion of the Virginia State Bar examination;
3. 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
4. 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.

H. 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.

I. 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.

J. Reinstatement Hearings. The Clerk of the Disciplinary System shall advise the Petitioner in writing upon receipt of a petition for Reinstatement from the clerk of this Court and arrange a hearing date with the Petitioner and Bar Counsel.

1. Quorum. A quorum shall be five members of the Board.
2. 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.
3. Hearing Date. The date of the hearing shall be determined by the Chair. Upon the scheduling of a hearing date, the Clerk of the Disciplinary System shall file six copies of the available transcript, exhibits, pleadings, and orders from the original Disciplinary Proceeding.
4. 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 IRS, NCIC, NCIN and any other similar information network or system.

5. Notice. Reasonable notice of filing of the petition and the date of the hearing shall be mailed 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 or Suspension. The Clerk of the Disciplinary System shall also mail 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 Register 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 and exhibits together with the documents referred to in subparagraph 13-25.D. above, shall be available for inspection and copying by interested persons at the office of the Bar on reasonable notice and on payment of costs incurred to make the copies.
6. Bill of Particulars. On written request by Bar Counsel, a Petitioner seeking Reinstatement shall

file with the Clerk of the Disciplinary System within 21 days after receipt of the request, an original and six copies of a bill of particulars setting forth the grounds for Reinstatement.

7. 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.
8. Factors to be Considered. In considering the matter prior to making a recommendation to this Court the Board may consider, but is not bound by, the factors spelled out *In the Matter of Alfred Lee Hiss*, VSB Docket No. 83-26 (Va. Sup. Ct. July 2, 1984).
9. 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.
10. Determination by the Board. The Board shall, within 60 days after the receipt of the transcript, forward the record and its recommendations to this Court with a copy to the Petitioner and Bar Counsel. A

recommendation of approval may be conditioned upon Petitioner obtaining malpractice insurance coverage and/or a blanket fidelity bond or dishonesty insurance coverage in amount(s) set by the Board from an approved professional insurance carrier for a definite term or on an ongoing basis.

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. An appeal shall lie once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal shall lie from a Summary Order.

B. Notice of Appeal. The Respondent shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order of the Board is served on the Respondent. This action within the time prescribed is jurisdictional.

C. Further Proceedings. Further proceedings shall be as provided in this Court's procedure for filing an appeal from a trial court and procedure following perfection of appeal. For the purposes of determining dates of filing, the date of filing the record with the clerk of this Court shall be deemed to be the date of the issuance of the certificate of the clerk of this Court under Rule 5:23. The Clerk of the Disciplinary System shall immediately notify the Respondent and his counsel, if any, by certified mail, of the date on which the record is filed.

D. Determination. This Court shall hear the case and make such determination in connection therewith as it shall deem right and proper.

E. 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, shall represent the interests of the Commonwealth and its citizens as appellees.

F. Stay Pending Appeal. Upon the entry by the Board of either a Summary or Memorandum Order of Suspension, this Court may, upon petition of the Respondent, stay the effect of such an order of suspension prior to or during the pendency of the appeal. Any order of Admonition or Public Reprimand shall be automatically stayed prior to or during the pendency of an appeal therefrom. No stay shall be granted in cases where the Respondent's License to practice law has been revoked by either the Summary or Memorandum Order of the Board.

#### 13-27. RESIGNATION

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

B. Procedure. The Clerk of the Disciplinary System shall submit applications for resignation to Bar Counsel, who shall investigate each application and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the application with the Clerk of the Disciplinary System, the Board shall hold a hearing on whether the application should be accepted. If Bar Counsel does not file an objection, the Board may enter an order accepting the Attorney's resignation without a hearing. A resignation shall be effective only upon entry

of an order accepting it. Upon entry of an order accepting an Attorney's resignation, the former Attorney shall immediately cease the practice of law and make appropriate arrangements for the disposition of matters in the Attorney's care in conformity with the wishes of the Attorney's clients.

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 involving allegations of Misconduct may consent to Revocation, but only by delivering to the Clerk of the Disciplinary System 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 complaint, an investigation into, or a Proceeding involving, allegations of Misconduct, the nature of which shall be specifically set forth in the affidavit;
3. The Attorney acknowledges that the material facts upon which the allegations of Misconduct 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 Misconduct 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 shall not be 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 of the Disciplinary System shall submit the affidavit to Bar Counsel, who shall investigate the affidavit and determine whether, based upon the information available, the statements in the sworn application appear to be true and complete. If Bar Counsel files a written objection to the affidavit with the Clerk of the Disciplinary System, the Board shall hold a hearing on whether the affidavit and consent to Revocation should be accepted. If Bar Counsel does not file an objection, the Board shall enter an order revoking the Attorney's License to practice law by consent without a hearing.

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

E. Dismissal of Complaints or Charges 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 Charges of Misconduct then pending by notifying the Clerk of the Disciplinary System and the District Committee, Board or Court wherein the matter or matters lie.

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

After a Suspension against a Respondent is imposed by either a Summary 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, that Respondent shall 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 shall 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 shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph 13-29.

13-30. CONFIDENTIALITY OF DISCIPLINARY RECORDS AND PROCEEDINGS

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

1. Complaints, unless introduced at a public hearing or incorporated in a Charge of Misconduct or a Certification;
2. Investigations, except that Investigative Reports admitted as exhibits at a public hearing are public;
3. Impairment proceedings, except that final orders are public;
4. Notes, memoranda, research, and all other work product of Bar Counsel;
5. Records, communications, and information protected by Disciplinary Rule 1.6;

6. Subcommittee records and proceedings, except determinations imposing public discipline; and
7. Deliberations and working papers of District Committees, the Board or a three-judge Circuit Court.

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

C. Timing of Public Access to Disciplinary Information. All records of a matter set for public hearing remain confidential until the matter is dismissed or a public sanction is imposed except:

1. A Charge of Misconduct is public when the matter is placed on the public District Committee hearing docket; and
2. A Certification is public when filed with the Clerk of the Disciplinary System.

D. Public Statements Concerning Disciplinary Information. To the extent necessary to exercise their official duties, Bar Officials have access to all confidential information; however, except for Bar Counsel, no Bar Official shall communicate with a member of the media or the public concerning a matter that is confidential under this Paragraph. If an inquiry is made about a

matter that, although confidential under this Paragraph, has become a matter of public record or has become known to the public, Bar Counsel may confirm whether the Bar is conducting an Investigation or if an Investigation resulted in a determination that further proceedings were not warranted.

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

F. Disclosure to Other Jurisdictions. Bar Counsel may share 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 shall forward such evidence to the appropriate Commonwealth's Attorney, United States Attorney or other law enforcement agency. The Attorney concerned shall 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 the Respondent, by the Complainant, and, if protected by Disciplinary Rule 1.6, by Respondent's client.

J. Testimony about Disciplinary Proceedings.

1. In no case shall Bar Counsel, a member of COLD, a member of a District Committee, a member of the Board, or a Committee Counsel be subject to a subpoena or otherwise compelled to testify in any proceeding regarding any matter investigated or considered in such person's official capacity, except that an Investigator may be compelled to testify in a Disciplinary Proceeding, subject to rulings of the court or Chair.
2. In no case shall the Clerk of the Disciplinary System 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 of the Disciplinary System in his or her official capacity, except that the Clerk of the Disciplinary System may be compelled to testify in a Disciplinary Proceeding in order to authenticate records of the Clerk of the Disciplinary System.

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

L. Virginia Lawyer Referral Service. Bar Counsel shall 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 shall 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.

13-31. DISMISSAL OF COMPLAINTS AND CHARGES 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 Charges of Misconduct then pending against said Attorney by notifying the Clerk of the Disciplinary System, the Complainant(s) and the District Committee, Board or court wherein the matter(s) lies.

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective May 1, 2009.

A Copy,

Teste:

Clerk