

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

13-1. DEFINITIONS

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

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“Petitioner” means:

1. A ~~former 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.

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

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

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“Respondent” means any Attorney:

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

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13-16. DISTRICT COMMITTEE PROCEEDINGS

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- BB. Enforcement of Terms. In all cases where Terms are included in the disposition, the District Committee must specify the time period within which compliance must be completed and, if required, the time period within which the Respondent must deliver a written certification of compliance to Bar Counsel. The District Committee must specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel is responsible for monitoring compliance and reporting any noncompliance to the District Committee. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel must serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. If the Respondent elects to have further show cause proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice to show cause and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the District Committee must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the District Committee, and the show cause proceeding~~Such show cause proceeding~~ must be set for hearing before the District Committee at its next available hearing date as determined in the discretion of the District Committee Chair. The burden of proof is on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period as determined by the District Committee, the alternative disposition must be imposed. Any show cause proceeding involving the question of compliance is deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.

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13-18. BOARD PROCEEDINGS UPON CERTIFICATION

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- O. Enforcement of Terms. In all cases where Terms are included in the disposition, the Board must specify the time period within which compliance must be completed and, if required, the time period within which the Respondent must deliver a written certification of compliance to Bar Counsel. The Board must specify the alternative disposition if the Terms are not complied with or, if required, compliance is not certified to Bar Counsel. Bar Counsel is responsible for monitoring compliance and reporting any noncompliance to the Board. Whenever it appears that the Respondent has not complied with the Terms imposed, including written certification of compliance if required, Bar Counsel must serve notice requiring the Respondent to show cause why the alternative disposition should not be imposed. If the Respondent elects to have further show cause proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice to show cause and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board, and the show cause proceeding ~~Such show cause proceeding~~ must be set for hearing before the Board at its next available hearing date. The burden of proof is on the Respondent to show compliance by clear and convincing evidence. If the Respondent has failed to comply with the Terms, including written certification of compliance if required, within the stated time period, as determined by the Board, the alternative disposition must be imposed. Any show cause proceeding involving the question of compliance is deemed a new matter and not a continuation of the matter that resulted in the imposition of Terms.

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13-20. BOARD PROCEEDINGS UPON CERTIFICATION FOR SANCTION DETERMINATION

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- F. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the notice of hearing and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by

Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board.

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

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

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

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3. Completion of Investigation and Hearing Date. As soon as practicable, Bar Counsel must complete the Investigation and notify the Clerk and the Petitioner of the completion of the Investigation in writing. The Petitioner may elect to have further proceedings on the petition conducted by a three-judge circuit court by filing a demand with the Clerk not later than 21 days after Bar Counsel's notice of completion of Investigation is served. The demand must include the Petitioner's available dates for a hearing on the petition not less than 30 days nor more than 120 days after the date of the demand; however, the 30 to 120-day time frame does not constitute a deadline for the hearing to be held. If the Petitioner does not file a demand with the Clerk to have further proceedings conducted by a three-judge circuit court by the 21-day deadline, the Petitioner will be deemed to have consented to the jurisdiction of the Board. If the Petitioner elects further proceedings before a three-judge circuit court as set forth in this

subsection, Bar Counsel must file a petition for rule to show cause, attaching the petition for Reinstatement, in the Circuit Court for the City of Richmond, and the chief judge must issue a rule against the Petitioner to show cause why the Petitioner's license should be reinstated. The Circuit Court for the City of Richmond must then certify the fact of issuance of the rule to show cause and the time and place of the hearing thereon to the Chief Justice of the Supreme Court, who must designate a three-judge circuit court consisting of three circuit court judges from any circuit to hold a hearing on the petition. The date of the hearing must be determined by the Clerk in consultation with the Bar Counsel and the Petitioner.

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6. Powers of the Board or a Three-Judge Circuit Court in Reinstatement Cases. The Board or, if designated, a three-judge circuit court is empowered to hold a hearing and make its recommendation to this Court either to approve or disapprove the petition.

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

b. Factors to be Considered. In considering the matter prior to making a recommendation to this Court, the Board or, if designated, three-judge circuit court may consider the following factors:

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c. Character Witnesses. Up to five character witnesses supporting and up to five character witnesses opposing the petition may be heard. In addition, the Board or, if designated, three-judge circuit court may consider any letters submitted regarding the Petitioner's character and fitness.

d. Character and Fitness Determination. The Board or, if designated,

three-judge circuit court must offer an opinion in its recommendation as to whether the Petitioner is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.

e. Determination by the Board or the Three-Judge Circuit Court. The Board or, if designated, three-judge circuit court must, within 60 days after the receipt of the transcript, forward the record and its recommendations to this Court. A copy of the recommendation must be forwarded to the Petitioner and Bar Counsel.

i. If the Board or, if designated, three-judge circuit court recommends Reinstatement, it may be conditioned upon Petitioner obtaining malpractice insurance coverage and/or a blanket fidelity bond or dishonesty insurance coverage in an amount(s) set by the Board or, if designated, three-judge circuit court from an approved professional insurance carrier for a definite term or on an ongoing basis.

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

iii. Upon approval of a petition by this Court, the Petitioner must meet the following requirements prior to and as a condition of his or her Reinstatement:

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

d) If required by the Board or, if designated, three-judge circuit court, obtain and maintain a blanket fidelity bond or dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia at the Petitioner's cost in an

amount and for such term as set by the Board or, if designated, three-judge circuit court.

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13-29. DUTIES OF DISBARRED OR SUSPENDED RESPONDENT

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

B. Demand for Three-Judge Circuit Court. If the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent must file a demand with the Clerk within 10 days of the date of mailing of the petition for show cause and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board.