

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
SUPREME COURT RULES, PART 6, § IV, PARAGRAPH 13**

(VSB Petition ID: 25-05)

PETITION OF THE VIRGINIA STATE BAR

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PETITION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar (“VSB”), by its president and executive director, pursuant to Va. Code § 54.1-3909, and requests review and approval of the following proposed amendments to Part 6, § IV, Paragraph 13 of the Rules of this Court governing the Procedure for Disciplining, Suspending, and Disbarring Attorneys (“Paragraph 13”). On June 12, 2025, the VSB Council (“Council”) approved the proposed amendments by a 58-1 vote (Appendix, pp.19-21).

I. Overview of the Issues

On April 9 and May 14, 2025, the Standing Committee on Lawyer Discipline (“COLD”) proposed, unanimously approved, and recommended the following amendments to Council (Appendix, p. 3). The amendments attempt to:

1. conform Paragraph 13 to Va. Code § 54.1-3935.A. (Appendix, p. 1) by providing Bar Counsel¹ the same procedures and deadlines already

¹ Terms are capitalized consistent with Paragraph 13-1 DEFINITIONS.

established for Respondents to elect a three-judge Circuit Court for attorney disciplinary proceedings as follows:

- Paragraph 13-16.B. DISTRICT COMMITTEE PROCEEDINGS. Response by Respondent Required.
- Paragraph 13-17.A. PERFECTING AN APPEAL OF A DISTRICT COMMITTEE DETERMINATION BY THE RESPONDENT. Notice of Appeal; Demand.
- Paragraph 13-18.A. BOARD PROCEEDINGS UPON CERTIFICATION. Filing by Respondent.
- Paragraph 13-18.D. BOARD PROCEEDINGS UPON CERTIFICATION. Expedited Hearings.
- Paragraph 13-20.F. BOARD PROCEEDINGS UPON CERTIFICATION FOR SANCTION DETERMINATION.² Demand for Three-Judge Circuit Court.
- Paragraph 13-21.C. BOARD PROCEEDINGS UPON A FIRST OFFENDER PLEA. Demand for Three Judge Court.
- Paragraph 13-22.F. BOARD PROCEEDINGS UPON A GUILTY PLEA OR AN ADJUDICATION OF A CRIME. Demand for Three-Judge Circuit Court.
- Paragraph 13-24.I. BOARD PROCEEDINGS UPON DISBARMENT, REVOCATION OR SUSPENSION IN ANOTHER JURISDICTION. Demand for Three-Judge Circuit Court.
- Paragraph 13-25.G. PROCEEDINGS FOR REINSTATEMENT. Reinstatement Proceedings After a Revocation.
- Paragraph 13-29.B. DUTIES OF DISBARRED OR SUSPENDED RESPONDENT. Demand for Three-Judge Circuit Court;

² A 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 comply with the terms of a Public Reprimand with Terms.

2. clarify the sanctions available to a three-judge Circuit Court in District Committee Proceedings (Paragraph 13-16.X); and
3. remove restrictions on imposing Terms for Suspensions of one year or less and align procedures for the Disciplinary Board and District Committee when requesting and considering a Respondent's Disciplinary Record (Paragraph 13-18.M).

A. VSB's Statutory Right to Demand Three-Judge Circuit Court in Attorney Disciplinary Proceedings

Pursuant to Va. Code § 54.1-3935.A., “Any attorney who is the subject of a disciplinary proceeding *or the Virginia State Bar* may elect to terminate the proceeding before the Bar Disciplinary Board or a district committee and demand that further proceedings be conducted by a three-judge circuit court. Such demand shall be made in accordance with the rules and procedures set forth in Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia.” (emphasis added). Paragraph 13 does not set forth any procedures by which Bar Counsel may demand a three- judge Circuit Court. Consequently, COLD proposed and Council approved amendments to provide Bar Counsel the same procedures and deadlines as Respondents to demand a three-judge Circuit Court. The procedures include the filing of the demand and simultaneous provision of available hearing dates within 30 to 120 days from the date of the demand to the Clerk. As with Respondents, Bar Counsel's failure to file a demand and simultaneously provide available hearing

dates by the deadline constitutes consent to the jurisdiction of either the District Committee or Board.

1. **The Proposed Amendments Provide Bar Counsel the Same 21-Day Deadline and Procedure as Respondents to Demand a Three-Judge Circuit Court for a Disciplinary Proceeding for Alleged Disciplinary Rules Violation(s)**

Pursuant to Paragraphs 13-16.B and 13-18.A, Respondents must file a demand for a three-judge Circuit Court within 21 days of service of either the Charge of Misconduct (Paragraph 13-16.B) or Certification (Paragraph 13-18.A) and simultaneously provide available hearing dates within 30-120 days of the demand. If Respondents fail to file the demand within the deadline and simultaneously provide available hearing dates within 30-120 days of the demand, Respondents are deemed to consent to the District Committee's or Board's jurisdiction.

The proposed amendments similarly require Bar Counsel to file a demand for a three-judge Circuit Court within 21 days of serving either the Charge of Misconduct or Certification on the Respondent and simultaneously provide available hearing dates within 30-120 days of the demand. Bar Counsel's failure to file its demand by the deadline and simultaneously provide available dates within 30-120 days of the demand is deemed consent to the District Committee's or Board's jurisdiction.

Similarly, the proposed amendments require Bar Counsel to adhere to the same procedures and deadlines as Respondents in cases of expedited hearings (Paragraph 13-18.D.5). Specifically, five days prior to the hearing date, Bar Counsel may file its demand for a three-judge Circuit Court and simultaneously provide available dates within 30-120 days from the date of the Board order granting an expedited hearing. Failure to make the demand and simultaneously provide the available hearing dates within the deadline is deemed consent to the Board's jurisdiction.

2. The Proposed Amendments Provide Bar Counsel 10 Days From Respondent's Notice of Appeal to Demand a Three-Judge Circuit Court for an Appeal of a District Committee Determination

Pursuant to Paragraph 13-17.A, Respondent has 10 days from the service of the District Committee Determination to file either a notice of appeal to the Board or a notice of appeal and demand for a three-judge Circuit Court with the Clerk. The proposed amendment provides that Bar Counsel may file a demand for a three-judge Circuit Court within 10 days after Respondent's filing of a notice of appeal of a District Committee Determination. Bar Counsel's failure to file its demand by the deadline is deemed consent to the Board's jurisdiction.

3. The Proposed Amendments Provide Bar Counsel the Same 10-Day Deadline and Procedure as Respondents to Demand a Three-Judge Circuit Court for a Certification for Sanction Determinations

Pursuant to Paragraph 13-20.F, Respondent has 10 days from the notice of hearing mailing date to file a demand for a three-judge Circuit Court with the Clerk and simultaneously provide available hearing dates within 30-120 days of the demand. The proposed amendments give Bar Counsel the same 10-day deadline to file its demand for a three-judge Circuit Court and simultaneously provide available dates. Failure by Bar Counsel to file a demand and provide dates is deemed consent to the Board's jurisdiction.

4. The Proposed Amendments Provide Bar Counsel the Same 10-Day Deadline and Procedure as Respondents for Board Proceedings Upon First Offender Plea and Guilty Plea or an Adjudication of a Crime

Paragraph 13-21.C and 13-22.F require Respondents to file a demand for a three-judge Circuit Court and simultaneously provide available hearing dates within 30-120 days of the date of the demand within 10 days of Board Proceedings Upon a First Offender Plea (Paragraph 13-21.C) or Guilty Plea or an Adjudication of a Crime (Paragraph 13-22.F). The proposed amendments set the same procedures and deadlines for Bar Counsel. As with Respondents, failure to file the demand and provide available dates within the deadline constitutes consent to the Board's jurisdiction.

5. **The Proposed Amendments Provide Bar Counsel the Same 14-Day Deadline and Procedure as Respondents to Demand a Three-Judge Circuit Court in a Reciprocal Disciplinary Proceeding**

Paragraph 13-24.I requires Respondents to file a demand for a three-judge Circuit Court and simultaneously provide available hearing days within 14 days of the date of the mailing of the Board's show cause order. The proposed amendments set the same procedure and deadline for Bar Counsel. Failure to adhere to the requirements within the deadline constitutes consent to the Board's jurisdiction.

6. **The Proposed Amendments Provide Bar Counsel the Same Deadline and Procedure as Respondents to Demand a Three-Judge Circuit Court in a Reinstatement Proceeding**

Paragraph 13-25.G requires Attorneys seeking reinstatement of their license after Revocation to file a demand for a three-judge Circuit Court and simultaneously provide available dates not later than 21 days after Bar Counsel's notice of completion of Investigation. The proposed amendments provide Bar Counsel the same deadline and requirements for simultaneous provision of dates. Failure to file the demand within the 21-day deadline is deemed consent to the Board's jurisdiction.

7. **The Proposed Amendments Provide Bar Counsel the Same Deadline and Procedure as Respondents to Demand a Three-Judge Circuit Court on a Proceeding under Paragraph 13-29 Duties of Disbarred or Suspended Respondent**

The proposed amendments to Paragraph 13-29, Duties of Disbarred or

Suspended Respondent, require Bar Counsel to meet the same deadlines and requirements as Respondent to demand a three-judge Circuit Court. Respondent and Bar Counsel must file the demand within 10 days of the date of mailing of the petition for show cause and simultaneously provide available dates within 30-120 days from the date of the demand. Failure to timely file the demand and provide available dates is deemed consent to the Board's jurisdiction.

B. The Proposed Revisions to Paragraph 13-16.X, District Committee Sanctions, Clarify that (1) A District Committee Must Either Admonish or Reprimand a Respondent after Finding Misconduct, or if Suspension or Revocation May Be Warranted, Certify the Case to the Disciplinary Board or File a Complaint with the Circuit Court and (2) A Three-Judge Circuit Court Sitting in Lieu of a District Committee May Suspend or Revoke Respondent's License

Paragraph 13-16.X provides that, if the District Committee finds Misconduct, by clear and convincing evidence, the District Committee must inquire whether the Respondent has a Disciplinary Record in Virginia or any other jurisdiction and allow the parties to present material evidence in aggravation or mitigation. In determining the appropriate disposition, the District Committee must consider Respondent's Disciplinary Record. After considering evidence and arguments in aggravation and mitigation, the District Committee may either issue an Admonition or Reprimand, with or without terms, or, if the District Committee believes Suspension or Revocation of Respondent's license is warranted, the District Committee may certify the Charge of Misconduct to the Disciplinary Board or file a complaint in a Circuit Court pursuant to Va. Code Section § 54.1-

3935.

The first proposed revision replaces “may” with “must” to clarify that after finding Misconduct, considering the Respondent’s Disciplinary Record, and providing the parties the opportunity to present evidence and arguments in aggravation and mitigation, the District Committee must either impose the sanction of an Admonition or Reprimand or certify the Charge of Misconduct to the Disciplinary Board or file a complaint with the Circuit Court. The verb “may” is ambiguous and incorrect to the extent that it implies that the District Committee has any other option, including dismissal, after finding Misconduct. This revision is consistent with Paragraph 13-18.M, Board Proceedings Upon Certification, Disposition Upon a Finding of Misconduct, which mandates the Board to impose an enumerated sanction upon a finding of Misconduct and consideration of evidence and argument in aggravation and mitigation.

The second revision revises Paragraph 13-16.X. to clarify that a three-judge Circuit Court sitting in lieu of a District Committee is empowered to suspend or revoke Respondent’s license if warranted in lieu of certifying to the Disciplinary Board or filing a complaint for another three-judge Circuit Court. Va. Code § 54.1-3935.C states in part, “The three-judge circuit court hearing the case may dismiss the case or impose any sanction authorized by Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia.” These revisions align with the proposed revisions to Paragraph 13-18.M, the Board’s Disposition Upon a Finding

of Misconduct.

C. The Proposed Revisions Align Paragraph 13-18.M, Board Disposition Upon a Finding of Misconduct, with Paragraph 13-16.X, District Committee Sanctions, and Eliminate Limitations on Imposition of Terms to Suspensions of One Year or Less

The proposed revisions to Paragraph 13-18.M. align Paragraph 13-18.M. with Paragraph 13-16.X. to require the Board to inquire regarding Respondent's Disciplinary Record in Virginia or any other jurisdiction and to consider Respondent's Disciplinary Record as well as evidence and argument from Respondent and Bar Counsel regarding aggravating and mitigating evidence before determining a sanction. The proposed revisions also eliminate the restriction on the imposition of Terms when a Suspension exceeds one year by allowing the Board sitting under Paragraph 13-18.M. or a three-judge Circuit Court under Paragraph 13-16.X or 13-18.M to impose Terms regardless of the duration of the Suspension. The tribunals seek greater flexibility in imposing Terms in order to prevent future Misconduct and protect the public. There is no perceived benefit to limiting Terms to Suspensions of one-year or less. In fact, the current limitation may force the tribunal to choose a shorter Suspension than it otherwise would, in order to impose Terms to prevent future Misconduct.

II. Publication and Comment

COLD unanimously approved the proposed amendments at its April 9, 2025, meeting (Appendix, p. 3). On April 10, 2025, the VSB posted these proposed

amendments for public comment on the VSB’s website on the “Actions on Rule Changes and Legal Ethics Opinions” page (Appendix, p. 13). Notice of the proposed amendments was also circulated to VSB members in the VSB’s May 1, 2025, E-News and published on the VSB’s website (Appendix, p. 15). The deadline to comment was May 10, 2025. The VSB received two comments: August Bequai (Appendix, p. 16) and Daniel Schumack (Appendix, p. 17). Mr. Bequai supported the amendments. Mr. Schumack raised three concerns: (1) Respondents should have the exclusive option to demand a three-judge Circuit Court. (2) Respondents, and Bar Counsel, may have a “federal right” under *N.C. State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S.494 (2015) to opt out of peer-to-peer based adjudication. (3) Consideration of the amendments is premature without a study of the potential impact on judicial resources.

On May 14, 2025, COLD met to review and discuss the comments (Appendix, p. 8). COLD determined that Mr. Schumack’s first concern, that Respondents should have the exclusive option to demand a three-judge Circuit Court, is directed to the statutory right and not to conforming Paragraph 13 to provide Bar Counsel with the procedures by which Bar Counsel may exercise its statutory demand. COLD questioned Mr. Schumack’s second argument that both Respondents and Bar Counsel have a “federal right” to opt out of peer-to-peer based adjudication and noted instead that both Respondents and Bar Counsel have

a right under Va. Code § 54.1-3935 to demand a three-judge Circuit Court. Finally, COLD agreed that judicial resources are an important consideration, and COLD referenced a recent policy that Bar Counsel should exercise its demand sparingly. After discussion and review of both comments, COLD did not revise the proposed amendments and unanimously voted to present the proposed amendments as written to Council (Appendix, p. 10).

On June 12, 2025, Council approved the proposed amendments by a vote of 58 in favor, 1 against, with no abstentions (Appendix, p. 19).

III. Proposed Amendments

Additions are denoted by underlining and deletions by strikethroughs.

- 13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS
- 13-16. DISTRICT COMMITTEE PROCEEDINGS

* * *

B. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court. After the Respondent has been served with the Charge of Misconduct, the Respondent must, within 21 days after service of the Charge of Misconduct:

- 1. File an Answer to the Charge of Misconduct with the Clerk, which Answer is deemed consent to the jurisdiction of the District Committee; or
- 2. File an Answer to the Charge of Misconduct and a demand with the Clerk that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the

date of the demand. Upon the filing of an Answer and such a demand, and provision of available dates as specified above, further proceedings before the District Committee must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held.

If Bar Counsel elects that further proceedings be conducted pursuant to Va. Code § 54.1-3935 instead of before the District Committee, Bar Counsel must, within 21 days after service of the Charge of Misconduct on Respondent, file a demand with the Clerk that proceedings before the District Committee be terminated and that the further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon the filing of such a demand, and provision of available dates as specified above, further proceedings before the District Committee must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held. If Bar Counsel fails to file a demand within 21 days after service of the Charge of Misconduct on Respondent and provide available dates, as specified above, Bar Counsel is deemed to have consented to the jurisdiction of the District Committee.

If Bar Counsel timely files a demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935 and Respondent has not previously filed an Answer to the Charge of Misconduct, Respondent must file an Answer to the complaint required by Va. Code § 54.1-3935 within 21 days after service of the complaint.

* * *

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

Charge of Misconduct is warranted, the District Committee must consider the Respondent's Disciplinary Record. After considering evidence and arguments in aggravation and mitigation, the A-District Committee ~~must~~ may:

1. Conclude that an Admonition, with or without Terms, should be imposed;
2. Issue a Public Reprimand, with or without Terms; or
3. Certify the Charge of Misconduct to the Board or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1- 3935.

A three-judge Circuit Court must impose a public Admonition or Public Reprimand, with or without Terms, a Suspension of the Respondent's license, with or without Terms, or Revocation of the Respondent's License. A Suspension may be 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.

If the three-judge Circuit Court imposes either a Suspension or Revocation, the three-judge Circuit Court must also state the effective date.

* * *

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

- A. Notice of Appeal; Demand. Within ten days after service on the Respondent of the District Committee Determination, the Respondent may file with the Clerk either a notice of appeal to the Board or a notice of appeal and a written demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935. In either case, the Respondent must send copies to the District Committee Chair and to Bar Counsel. Bar Counsel may file a written demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935 within ten days after Respondent's filing of a notice of appeal of the District Committee Determination. Upon such demand from either Respondent or Bar Counsel, further proceedings before the Board must terminate, and Bar Counsel must file the complaint required by

Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. If the Respondent or Bar Counsel fails to file a demand, as specified above, the Respondent or Bar Counsel is deemed to have consented to the jurisdiction of the Board.

* * *

13-18

BOARD PROCEEDINGS UPON CERTIFICATION

1. Filing by Respondent. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court. After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent must, within 21 days after service of the Certification: File an Answer to the Certification with the Clerk, which Answer is deemed consent to the jurisdiction of the Board; or
2. File an Answer to the Certification and a demand with the Clerk that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon the filing of an Answer and such demand and provision of available dates as specified above, further proceedings before the Board must terminate, and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held.

If Bar Counsel elects that further proceedings be conducted pursuant to Va. Code § 54.1-3935 instead of before the Board, Bar Counsel must, within 21 days after service of the Certification on Respondent, file a demand with the Clerk that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon the filing of such demand and provision of available dates, as specified above, further proceedings before the Board must terminate, and Bar Counsel must file the complaint required by Va.

Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame is not a deadline for the hearing to be held. If Bar Counsel fails to file a demand within 21 days after service of the Certification on Respondent and provide available dates, as specified above, Bar Counsel is deemed to have consented to the jurisdiction of the Board.

If Bar Counsel timely files a demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935 and Respondent has not previously filed an Answer to the Certification, Respondent must file an Answer to the complaint required by Va. Code § 54.1-3935 within 21 days after service of the complaint.

* * *

D. Expedited Hearings.

1. If Bar Counsel or a District Committee Chair has reasonable cause to believe that an Attorney is engaging in Misconduct which is likely to result in injury to, or loss of property of, one or more of the Attorney's clients or any other person, and that the continued practice of law by the Attorney poses an imminent danger to the public, Bar Counsel or the District Committee Chair may petition the Board to issue an order requiring the Attorney to appear before the Board for a hearing in accordance with the procedures set forth below.
2. The petition must be under oath and must set forth the nature of the alleged Misconduct, the factual basis for the belief that immediate action by the Board is reasonable and necessary and any other facts which may be relevant to the Board's consideration of the matter, including any prior Disciplinary Record of the Attorney.
3. Upon receipt of the petition, the Chair or Vice-Chair of the Board must issue an order requiring the Respondent to appear before the Board not less than 14 nor more than 30 days from the date of the order for a hearing to determine whether the Misconduct has occurred and the imposition of sanctions is appropriate. The Board's order must be served on the Respondent no fewer than ten days prior to the date set for hearing.

4. If the Respondent, at the time the petition is received by the Board, is the subject of an order then in effect by a Circuit Court pursuant to Va. Code § 54.1-3936 appointing a receiver for his accounts, the Board must issue a further order summarily suspending the License of the Respondent until the Board enters its order following the expedited hearing.
5. At least five days prior to the date set for hearing, the Respondent must either file an Answer to the petition with the Clerk, which Answer is conclusively deemed consent to the jurisdiction of the Board; or file an Answer and a demand with the Clerk that proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 days nor more than 120 days from the date of the Board order. Bar Counsel may also, at least five days prior to the date set for hearing, file a demand with the Clerk that proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less than 30 days nor more than 120 days from the date of the Board order. Upon the filing of an Answer and such demand by the Respondent and provision of available dates, as specified above, or the filing of such demand by Bar Counsel and provision of available dates, as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If any order of summary Suspension has been entered, such Suspension must remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it. If the Respondent fails to file an Answer, or an Answer and a demand, and provide available dates, as specified above, the Respondent is deemed to have consented to the jurisdiction of the Board. If Bar Counsel fails to file a demand and provide available dates, as specified above, Bar Counsel is deemed to have consented to the jurisdiction of the Board. If Bar Counsel timely files a demand that further proceedings be conducted pursuant to Va. Code § 54.1-3935 and Respondent has not previously filed an Answer to the petition, Respondent must file

an Answer to the complaint required by Va. Code § 54.1-3935 within 21 days after service of the complaint.

* * *

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, then the Board must, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has a Disciplinary Record in this or any other jurisdiction and must give Bar Counsel and the Respondent an opportunity to present evidence in aggravation and mitigation, as well as argument. In determining what disposition of the Certification is warranted, the Board must consider the Respondent's Disciplinary Record. ~~a~~After considering evidence and arguments in aggravation and mitigation, the Board must impose one of the following sanctions and state the effective date of the sanction imposed:

1. Admonition, with or without Terms;
2. Public Reprimand, with or without Terms;
3. Suspension of the License of the Respondent, with or without Terms,
 - a. ~~F~~for a stated period not exceeding five years; provided, however, if the Suspension is for more than one year, the Respondent must apply for Reinstatement as provided in this Paragraph; or
 - b. ~~or a stated period of one year or less, with or without terms; or~~
4. Revocation of the Respondent's License.

13-20 BOARD PROCEEDINGS UPON CERTIFICATION FOR SANCTION DETERMINATION

F. Optional Demand for Three-Judge Circuit Court. If either Bar Counsel or the Respondent elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the party seeking to terminate Board proceedings ~~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 or Bar Counsel fails to file a demand, and provide available dates, as specified above, the Respondent or Bar Counsel is deemed to have consented to the jurisdiction of the Board.

13-21 BOARD PROCEEDINGS UPON A FIRST OFFENDER PLEA

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

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

- F. Optional Demand for Three-Judge Circuit Court. If either the Respondent or Bar Counsel elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the ~~Respondent~~ party seeking to terminate Board proceedings must file a demand with the Clerk not later than ten days prior to the date set for the hearing before the Board, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the

hearing to be held. Any summary Suspension issued by the Board must remain in effect until the court designated under Va. Code § 54.1- 3935 enters a final order, unless earlier terminated pursuant to subparagraph 13-22.B. If the Respondent or Bar Counsel fails to file a demand, and provide available dates, as specified above, the Respondent or Bar Counsel is deemed to have consented to the jurisdiction of the Board.

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

- I. Optional Demand for Three-Judge Circuit Court. If either the Respondent or Bar Counsel elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent party seeking to terminate Board proceedings must file a demand with the Clerk within 14 days of the date of mailing of the Board order and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand. Upon such demand and provision of available dates as specified above, further proceedings before the Board must be terminated and Bar Counsel must file the complaint required by Va. Code § 54.1-3935. The hearing must be scheduled as soon as practicable. However, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. Any summary Suspension issued by the Board must remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order. If the Respondent or Bar Counsel fails to file a demand, and provide available dates, as specified above, the Respondent or Bar Counsel is deemed to have consented to the jurisdiction of the Board.

13-25 PROCEEDINGS FOR REINSTATEMENT

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

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 or Bar Counsel may elect to have further proceedings on the petition conducted by a three-judge circuit cCourt by filing a demand with the Clerk

not later than 21 days after Bar Counsel's notice of completion of Investigation is served and simultaneously providing available dates for a hearing on the petition not less than 30 nor more than 120 days after the date of the demand. ~~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;~~ hHowever, the 30- to 120-day time frame does not constitute a deadline for the hearing to be held. If the Petitioner or Bar Counsel does not file a demand with the Clerk to have further proceedings conducted by a three-judge cCircuit cCourt by the 21-day deadline, the Petitioner or Bar Counsel will be deemed to have consented to the jurisdiction of the Board. If the Petitioner or Bar Counsel elects further proceedings before a three-judge cCircuit cCourt 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 cCircuit cCourt consisting of three cCircuit cCourt 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.

13-29 DUTIES OF DISBARRED OR SUSPENDED RESPONDENT

- B. Optional Demand for Three-Judge Circuit Court. If the Respondent or Bar Counsel elects to have further proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent or Bar Counsel 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 or Bar Counsel fails to file a demand, and provide available dates, as

specified above, the Respondent or Bar Counsel is deemed to have consented to the jurisdiction of the Board.


IV. Conclusion

The proposed amendments seek to conform Paragraphs 13-16.B, 13-17.A, 13-18.A, 13-18.D, 13-20.F, 13-21.C, 13-22.F, 13-24.I, 13-25.G, and 13-29.B to Va. Code § 54.1-3935.A. by extending to Bar Counsel the same procedures and deadlines already available to Respondents to demand a three-judge Circuit Court. The revisions to Paragraph 13-16.X, District Committee Sanctions, clarify that a District Committee must issue either an Admonition or Reprimand, certify to the Board, or file a complaint with a Circuit Court if the District Committee finds Misconduct and has considered the Disciplinary Record and evidence and arguments in aggravation and mitigation. The revisions further clarify that a three-judge Circuit Court sitting in lieu of a District Committee may Suspend or Revoke a Respondent's license, in lieu of certifying the matter to the Board or filing a complaint with another Circuit Court. The revisions to Paragraph 13-18.M., Disciplinary Board Dispositions Upon a Finding of Misconduct, conform the Board's procedures with the District Committee with respect to the request for and consideration of a Respondent's Disciplinary Record. Finally, the remaining revisions to Paragraph 13-18.M. eliminate the restriction on the imposition of Terms to Suspensions of one-year or less. The proposed revisions to Paragraph 13-16.X are consistent with these revisions.

COLD proposed, vetted, and approved the amendments (Appendix, p. 3).
Council approved the amendments by a vote of 58 in favor, 1 against, with no
abstentions.

For the reasons stated herein, the VSB requests that the Court approve the
proposed amendments.

Respectfully submitted,
VIRGINIA STATE BAR


By _____
K. Brett Marston, President


By _____
Cameron M. Rountree, Executive Director

Dated this 24th day of July, 2025.

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
SUPREME COURT RULES, PART 6, § IV, PARAGRAPH 13**

(VSB Petition ID: 25-05)

APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

K. Brett Marston, President
Cameron M. Rountree, Executive Director
Renu M. Brennan, Bar Counsel
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219
Phone (804) 775-0560
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Code of Virginia

Title 54.1. Professions and Occupations

Subtitle IV. Professions Regulated by the Supreme Court

Chapter 39. Attorneys

Article 6. Revocation or Suspension of Licenses; Disbarment Proceedings

§ 54.1-3935. Procedure for disciplining attorneys by three-judge circuit court

A. Any attorney who is the subject of a disciplinary proceeding or the Virginia State Bar may elect to terminate the proceeding before the Bar Disciplinary Board or a district committee and demand that further proceedings be conducted by a three-judge circuit court. Such demand shall be made in accordance with the rules and procedures set forth in Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia. Upon receipt of a demand for a three-judge circuit court, the Virginia State Bar shall file a complaint in a circuit court where venue is proper and the chief judge of the circuit court shall issue a rule against the attorney to show cause why the attorney shall not be disciplined. At the time the rule is issued by the circuit court, the court shall certify the fact of such issuance and the time and place of the hearing thereon to the Chief Justice of the Supreme Court, who shall designate the three-judge circuit court, which shall consist of three circuit court judges of circuits other than the circuit in which the case is pending, to hear and decide the case. The rules and procedures set forth in Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia shall govern any attorney disciplinary proceeding before a three-judge circuit court.

B. Bar Counsel of the Virginia State Bar shall prosecute the case. Special counsel may be appointed to prosecute the case pursuant to § 2.2-510.

C. The three-judge circuit court hearing the case may dismiss the case or impose any sanction authorized by Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia. In any case in which the attorney is found to have engaged in any criminal activity that violates the Virginia Rules of Professional Conduct and results in the loss of property of one or more of the attorney's clients, the three-judge circuit court shall also require, in instances where the attorney is allowed to retain his license, or is permitted to have his license reinstated or restored, that such attorney maintain professional malpractice insurance during the time for which he is licensed to practice law in the Commonwealth. The Virginia State Bar shall establish standards setting forth the minimum amount of coverage that the attorney shall maintain in order to meet the requirements of this subsection. Before resuming the practice of law in the Commonwealth, the attorney shall certify to the Virginia State Bar that he has the required insurance and shall provide the name of the insurance carrier and the policy number.

D. The attorney, may, as of right, appeal from the judgment of the three-judge circuit court to the Supreme Court pursuant to the procedure for filing an appeal from a trial court, as set forth in Part 5 of the Rules of Supreme Court of Virginia. In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of revocation or suspension during the pendency of the appeal. Any other sanction imposed by a three-judge circuit court shall be automatically stayed prior to or during the pendency of the appeal.

E. Nothing in this section shall affect the right of a court to require from an attorney security for good behavior or to fine the attorney for contempt of court.

Code 1950, §§ 54-74, 54-75; 1956, Ex. Sess., c. 33; 1964, c. 201; 1970, c. 430; 1972, c. 103; 1980, c. 289; 1984, cc. 289, 703; 1988, c. 765; 1997, c. 238; 1998, cc. 339, 637; 2009, c. 287; 2017, cc. 40, 91.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**MINUTES OF THE
STANDING COMMITTEE ON LAWYER DISCIPLINE (COLD)**

**WEDNESDAY, APRIL 9, 2025
RICHMOND, VIRGINIA**

COLD met at the Virginia State Bar (“VSB”) Offices located at 1111 East Main Street, Suite 700 on Wednesday, April 9, 2025, at 11:00 a.m.

Committee members in attendance

Melissa W. Robinson, Chair
Jennifer D. Royer, Ex-Officio
Chidinma U. Harley
E.M. Wright
Jennifer J. West
Cal T. Bain
James W. Hundley
Gaye T. Stone
George Hrichak
Maura Burke Weiner

Members in attendance telephonically, unanimously approved by committee

Christopher A. Tuck joined from Blacksburg, VA due to distance, his principal residence is more than 60 miles from the meeting location identified in the notice, and he was unable to attend in person. Mr. Tuck provided proper advance notice to the Chair.

Sean C. E. McDonough, joined from Alexandria, VA due to distance, his principal residence is more than 60 miles from the meeting location identified in the notice, and he was unable to attend in person. Mr. McDonough provided proper advance notice to the Chair.

R. Braxton Hill, IV joined from Midlothian, VA due to a personal matter. Mr. Hill stated that he is preparing for trial and requested approval to be exempt. Mr. Hill provided proper advance notice to the Chair.

Unable to attend

Pleasant S. Broadnax

Also attending

Cameron Rountree, Executive Director
Janet Van Cuyk, Deputy Executive Director
Renu M. Brennan, Bar Counsel
Edward J. Dillon, Jr., Deputy Bar Counsel
Elizabeth K. Shoenfeld, Senior Asst. Bar Counsel
James C. Bodie, Intake Counsel
Michael Schuler, Chief Investigator
Joanne Fronfelter, Clerk of the Disciplinary System
Patricia Jackson, Paralegal

I. Call to Order

Ms. Robinson called the meeting to order at 11:00 a.m. A motion was made by Ms. Robinson to approve the remote attendance of Mr. Tuck, Mr. McDonough, and Mr. Hill. All members unanimously approved their remote attendance. All members and attendees introduced themselves.

II. Approval of Minutes

A motion was made by Ms. Robinson to approve the November 7, 2024 minutes. All members in attendance unanimously approved the November 7, 2024 minutes.

III. Chair's Report

Ms. Robinson expressed the importance of the committee's work in maintaining transparency, fairness, and balance.

IV. State of the Disciplinary System

a. Bar Counsel Report

Ms. Brennan reviewed her Bar Counsel Report detailing the annual statistics. She also reviewed a chart comparing public and private discipline, appeals of disciplinary cases, filings in the Supreme Court of Virginia and federal court, and receiverships.

Ms. Brennan reported that the Office of Bar Counsel has been busy with board and three-judge circuit court hearings.

b. Intake Report

Mr. Bodie reported that as of April 7, 2025, the bar received 2,520 complaints. He reported that 397 complaints were assigned for preliminary investigations this year.

c. Investigator Report

Mr. Schuler reported that there are 86 active investigations, including 16 criminal defense matters, 14 family law matters, 6 estate planning matters, 7 personal injury matters, 5 immigration matters, and 4 real estate matters. He reported that as of April 8, 2025 investigators submitted 190 reports of investigation (ROIs) for

Fiscal Year 2025, which is an increase from last year.

d. Disciplinary Board Report

Ms. Royer reported that the Disciplinary Board's dockets have been very active. She stated that since November, the Disciplinary Board has heard 13 cases. Ms. Royer reported that they are running three-judge panel hearings every month.

Ms. Royer reported that the Board was able to terminate an impairment to allow a lawyer to return to the job they love.

V. Report of the Rules Subcommittee

Ms. Robinson deferred her report until discussion of the proposed revisions to Paragraph 13.

VI. Report of the Oversight Subcommittee

Ms. West reported that Oversight had a few reviews where Complainants were not satisfied with Bar Counsel's decision to dismiss their complaints. Ms. West reported that those decisions were reviewed and affirmed.

VII. Discussion

a. Revisions to Paragraph 13 –

1. Provide specific mechanisms for Bar Counsel to request a three-judge panel consistent with November 2023 revisions to Paragraph 13.
2. Paragraph 13-16. X. to clarify sanctions available to Three-Judge Circuit Court in District Committee proceedings.
3. To eliminate restriction on imposition of terms for suspensions of one-year or less and to conform Paragraph 13-18. M. to 13-16. X. regarding request for and consideration of Respondent's Disciplinary Record.

Ms. Brennan and Ms. Robinson discussed the proposed revisions to Paragraph 13, which were approved by the Rules Subcommittee.

A motion was made by Ms. Robinson and seconded by Ms. West to approve the proposed revisions to Paragraph 13. All members in attendance unanimously

approved the motion.

Ms. Robinson informed members that the Rules Subcommittee and COLD will review any comments regarding the proposed revisions at the May 14 meeting.

b. Discussion of proposed COLD and Bar Counsel Policies “Abusive Communication” – James C. Bodie

Mr. Bodie presented proposed COLD and Bar Counsel policies to allow Intake Counsel the discretion not to respond to abusive complainants. Mr. Bodie explained that, per the policies and procedure, Intake Counsel will continue to review each and every complaint and to preserve the complaints in the database. COLD members and staff observed that COLD Oversight will have continued access to the complaints in their biannual review of dismissed complaints. Mr. Bodie further explained that the policy aims to streamline the process and reduce the burden on staff while ensuring legitimate complaints are addressed.

Ms. West made a motion and seconded by Mr. Hundley to approve the proposed COLD and Bar Counsel Policies “Abusive Communication”. All members unanimously approved the motion.

VIII. Reports –

a. Disciplinary System Training, CLEs, and 2025 Disciplinary Conference Update – Ed Dillon

Mr. Dillon reported that the Disciplinary Conference will be held on July 31st and August 1st at The Crossings. Mr. Dillon stated that COLD will be meeting on the evening of July 30th. Mr. Dillon thanked the members of COLD that volunteered to assist with the upcoming Disciplinary Conference. He also reviewed some of the CLEs recently handled by staff and COLD including the presentation on April 7 by him and Ms. West at the Solo and Small Practitioner Forum in Charlottesville.

Mr. Dillon encouraged members to participate in upcoming events.

Committee on Lawyer Discipline
Minutes - Meeting of April 9, 2025
Page 5

IX. Announcement of Next Meeting and Adjournment

Ms. Robinson adjourned the meeting at 11:45 a.m. COLD will meet next on Wednesday, May 14, 2025.

**MINUTES OF THE
STANDING COMMITTEE ON LAWYER DISCIPLINE (COLD)**

**WEDNESDAY, MAY 14, 2025
RICHMOND, VIRGINIA**

The Standing Committee on Lawyer Discipline (COLD) met virtually via Microsoft Teams on Wednesday, May 14, 2025 at 11:30 a.m.

Committee members in attendance

Melissa W. Robinson, Chair
R. Braxton, Hill, IV, Vice Chair
Jennifer West, Oversight Subcommittee Chair
Jennifer D. Royer, Ex-officio
Chidinma Harley
E.M. Wright
Sean C. E. McDonough
James W. Hundley
Cal T. Bain
George Hrichak, Lay Member
Gaye T. Stone, Lay Member
Maura Burke Weiner, Lay Member

Unable to attend

Pleasant Brodnax
Christopher Tuck

Also attending

Renu M. Brennan, Bar Counsel
Edward J. Dillon, Jr., Deputy Bar Counsel
Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel
Joanne Fronfelter, Clerk of the Disciplinary System
Patricia Jackson, Paralegal

I. Call to Order

Ms. Robinson called the meeting to order at 11:35 a.m. Ms. Jackson took attendance.

II. Approval of Minutes

Ms. Robinson asked for a motion to approve April 9, 2025 minutes. A motion was made by Mr. Hrichak, seconded by Ms. Stone, and all members in attendance unanimously approved the April 9, 2025 minutes.

III. Discussion

- a. Review of public comments on proposed revisions to Paragraph 13:
1. Provide specific mechanisms for Bar Counsel to request a three-judge panel consistent with November 2023 revisions to Paragraph 13.
 2. Paragraph 13-16. X. to clarify sanctions available to Three-Judge Circuit Court in District Committee proceedings.
 3. To eliminate restriction on imposition of terms for suspensions of one-year or less and to conform Paragraph 13-18. M. to 13-16. X. regarding request for and consideration of Respondent's Disciplinary Record.

Ms. Robinson asked members to review public comments received from August Bequai, Esquire and Daniel Schumack, Esquire. Ms. Robinson reported that Mr. Bequai's comment was in support, and Mr. Schumack's comments opposed the proposed amendments. Ms. Robinson asked Ms. Brennan to lead the presentation of the public comments received.

Ms. Brennan reviewed Mr. Schumack's three objections to the amendments: 1. Respondents should have the exclusive choice of whether to select a three-judge panel; 2. Respondents, and arguably Bar Counsel, have a "federal right" to elect a three-judge panel; and 3. An analysis of the proposal's potential impact on judicial and taxpayer resources should be conducted.

Ms. Brennan provided responses to each objection. Ms. Brennan stated that Mr. Schumack's argument that respondents should have the exclusive choice of a three-judge panel is inconsistent with the statute and fairness does not require it. She stated the proposed amendments do not eliminate the Respondent's right to request a three-judge panel, and instead merely creates a mechanism for Bar Counsel to exercise its statutory right.

In response to the second objection, Ms. Brennan stated that she did not believe that either respondents or Bar Counsel has a "federal right" to elect a three-judge panel, but assuming arguendo the right exists, it is consistent with the proposed amendments conforming Paragraph 13 to 54.1-3935.

Ms. Weiner inquired about the numbers of requested three-judge panels and examples of when Bar Counsel would request a three-judge panel.

Ms. Brennan reported 45 respondents requested a three-judge panel since January 2022.

Ms. Brennan stated that the Office of Bar Counsel has reached out to the Office of the Executive Secretary (OES) to determine their thoughts on the impact on the judicial system by holding three-judge panels. Ms. Brennan stated that the cases where Bar Counsel would select a three-judge panel would be the exception, not the rule. Ms. Weiner concluded that while Bar Counsel will have the right there are parameters that they would use as to when to select a three-judge panel.

Ms. Robinson and Ms. Brennan discussed the COLD policy approved on November 7, 2024, which states that in the interest of peer-to-peer regulation Bar Counsel should not demand a three-judge panel except as the ends of justice require, such as to facilitate the presentation of evidence or to ensure the orderly conduct of a hearing and the integrity of the disciplinary process.

Ms. Robinson reported that the Rules Subcommittee unanimously approved the proposed amendments to Paragraph 13 and to recommend them to Council.

Ms. Robinson asked for a motion to approve the proposed amendments and submit them to Council for approval after review of public comments. A motion was made by Ms. Stone and seconded by Mr. Hrichak, and all members unanimously approved the motion.

IV. Announcement of Next Meeting and Adjournment

Ms. Robinson adjourned the meeting at 11:51 a.m. COLD will meet next on Wednesday, July 30, 2025.



Virginia State Bar

Public Comment Request

1111 East Main Street, Suite 700
Richmond, Virginia 23219-0026
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 VOICE/TTY 711 or (800) 828-1120

Release Date: April 10, 2025

The Virginia State Bar Seeks Public Comment on

Paragraph 13 and Virginia State Bar (“VSB”) and Council Bylaws

RICHMOND - The Virginia State Bar seeks public comment on proposed amendments to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13—Procedure for Disciplining, Suspending, and Disbarring Attorneys

The Committee on Lawyer Discipline (“COLD”) has proposed:

1. Amendments to conform Paragraph 13 to Va. Code § 54.1-3935.A. by adding a specific mechanism for Bar Counsel to elect a three-judge circuit court for each type of disciplinary proceeding. The amendments propose the equivalent mechanisms and deadlines already in place for respondents.

- Paragraph 13-16.B. District Committee Proceedings. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-17.A. Perfecting an Appeal of a District Committee Determination by the Respondent. Notice of Appeal. Demand.
- Paragraph 13-18.A. Board Proceedings Upon Certification. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-18.D. Board Proceedings Upon Certification. Expedited Hearings.
- Paragraph 13-20.F. Board Proceedings Upon Certification for Sanction Determination. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-21.C. Board Proceedings Upon a First Offender Plea. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-22.F. Board Proceedings Upon a Guilty Plea or an Adjudication of a Crime. Optional Demand for Three-Judge Circuit Court.

- Paragraph 13-24.I. Board Proceedings Upon Disbarment, Revocation or Suspension in Another Jurisdiction. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-25.G. Proceedings for Reinstatement. Reinstatement Proceedings After a Revocation.
- Paragraph 13-29.B. Duties of Disbarred or Suspended Respondent. Optional Demand for Three-Judge Circuit Court.

2. Amendments to Paragraph 13-16.X. District Committee Proceedings. Sanctions. The amendments clarify that a three-judge circuit court sitting in lieu of a district committee may impose a suspension or revocation of an attorney's license if the three-judge circuit court finds misconduct. In contrast, the maximum sanction a district committee may impose is a public reprimand.

3. Amendments to Paragraph 13-18.M. Board Proceedings Upon Certification. Disposition Upon a Finding of Misconduct. The proposed amendments 1) eliminate restrictions on imposition of terms for suspensions of one-year or less and 2) conform the disciplinary board and district committee procedures regarding request for and consideration of a respondent's disciplinary record.

Inspection and Comment

The proposed rule is available at the link below.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed rule amendments with Cameron M. Rountree, executive director of the Virginia State Bar, not later than May 10, 2025. Comments may be submitted via email to publiccomment@vsb.org.



Virginia State Bar

An agency of the Supreme Court of Virginia

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VSb Seeks Public Comment on Amendments to Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia

April 10, 2025

The Virginia State Bar seeks public comment on proposed amendments to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13—Procedure for Disciplining, Suspending, and Disbarring Attorneys

The Committee on Lawyer Discipline (“COLD”) has proposed:

1. Amendments to conform Paragraph 13 to Va. Code § 54.1-3935.A. by adding a specific mechanism for Bar Counsel to elect a three-judge circuit court for each type of disciplinary proceeding. The amendments propose the equivalent mechanisms and deadlines already in place for respondents.

- Paragraph 13-16.B. District Committee Proceedings. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-17.A. Perfecting an Appeal of a District Committee Determination by the Respondent. Notice of Appeal. Demand.
- Paragraph 13-18.A. Board Proceedings Upon Certification. Response by Respondent Required and Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-18.D. Board Proceedings Upon Certification. Expedited Hearings.
- Paragraph 13-20.F. Board Proceedings Upon Certification for Sanction Determination. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-21.C. Board Proceedings Upon a First Offender Plea. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-22.F. Board Proceedings Upon a Guilty Plea or an Adjudication of a Crime. Optional Demand for Three-Judge Circuit Court.
- Paragraph 13-24.I. Board Proceedings Upon Disbarment, Revocation or Suspension in Another

Jurisdiction. Optional Demand for Three-Judge Circuit Court.

- Paragraph 13-25.G. Proceedings for Reinstatement. Reinstatement Proceedings After a Revocation.
- Paragraph 13-29.B. Duties of Disbarred or Suspended Respondent. Optional Demand for Three-Judge Circuit Court.

2. Amendments to Paragraph 13-16.X. District Committee Proceedings. Sanctions. The amendments clarify that a three-judge circuit court sitting in lieu of a district committee may impose a suspension or revocation of an attorney’s license if the three-judge circuit court finds misconduct. In contrast, the maximum sanction a district committee may impose is a public reprimand.

3. Amendments to Paragraph 13-18.M. Board Proceedings Upon Certification. Disposition Upon a Finding of Misconduct. The proposed amendments 1) eliminate restrictions on imposition of terms for suspensions of one-year or less and 2) conform the disciplinary board and district committee procedures regarding request for and consideration of a respondent’s disciplinary record.

Inspection and Comment

The proposed rule is available at the link below.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed rule amendments with Cameron M. Rountree, executive director of the Virginia State Bar, not later than May 10, 2025. Comments may be submitted via email to publiccomment@vsb.org.

[View proposed amendments to Paragraph 13](#) (pdf)

Contact Numbers

All Departments (804) 775-0500
 Voice/TTY 711 or (800) 828-1120

Office Hours

Mon thru Fri 8:15am to 4:45pm
 (excluding [holidays](#))
 The Clerk’s Office does not accept filings after 4:45pm

Address and Directions

1111 East Main Street, Suite 700
 Richmond, Virginia 23219-0026



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Governance and News

[VSB Council Welcomes New Leaders in 2025](#)

The Virginia State Bar Council has 14 new members from across the Commonwealth whose terms will begin July 1, 2025, as well as members serving a second term and at-large members appointed by the Supreme Court of Virginia.

[VSB Seeks Public Comment on Amendments to Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia](#)

The Committee on Lawyer Discipline (COLD) has proposed amendments to Paragraph 13-16.X. and Paragraph 13-18.M. as well as other amendments to conform Paragraph 13 to Va. Code § 54.1-3935.A. by adding a specific mechanism for Bar Counsel to elect a three-judge circuit court for each type of disciplinary proceeding. Comments are due no later than May 10, 2025, and may be submitted via email to publiccomment@vsb.org.

[Supreme Court of Virginia Approves VSB Budget for FY26](#)

On April 16, 2025, the Supreme Court approved the fiscal year 2026 budget of the Virginia State Bar and, in light of significant budgetary challenges, ordered that the VSB's four conferences be converted to sections no later than June 30.

[Supreme Court of Virginia Amends Paragraph 5](#)

Ordered on April 16, 2025, and effective July 1, 2025, the Supreme Court of Virginia amended Part 6, Section IV, Paragraph 5 of the Rules of the Supreme Court of Virginia. The amendments convert four VSB conferences to sections, retaining ex officio seats on VSB Council for their chairs.

[Virginia Board of Bar Examiners Announce Virginia Bar Exam Content and Format Beginning July 2028](#)

The Virginia Board of Bar Examiners (VBBE) has announced the content and format for the Virginia law component of the bar exam beginning July 2028. This exam will consist of multiple-choice questions on the following subjects: domestic relations; evidence; torts; Virginia civil procedure; Virginia criminal law and procedure; and wills, trusts, and estates.

Compliance

From: attyabeq@aol.com
Sent: Tuesday, May 6, 2025 12:36 AM
To: publiccomment
Subject: EXT: Paragraph 13 Amendments

Caution: This email originated from outside the VSB. Do not click links or open attachments unless you recognize and have verified the sender.

I support the effort. It's both timely and fair. In addition, it should help discipline a miniscule number of lawyers who over the last dozen years have bankrupt the VSB client fund and tarnished the name and reputation of the more than 99% of VSB members and staff.

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May 12, 2025

Cameron Rountree, Esq.
VSB Executive Director
publiccomment@vsb.org

RE: COLD's Proposed Changes to Disciplinary Procedure

Dear Mr. Rountree:

I am writing to oppose COLD's proposed changes to Virginia's Disciplinary Procedures to the extent those changes would grant Bar Counsel the right to demand three-judge panels. My perspective is based a wide-array of experience in disciplinary law and procedure.¹ I see that the announcement soliciting public comment states a response deadline of Saturday, May 10, 2025. I hope you will accept this letter notwithstanding my two calendar day delay in responding.

First Objection

Being the subject of a bar prosecution is a high-stress event for all of my respondent clients. Most of my respondent clients believe a three-judge trial will be a higher anxiety event than litigating in front of a District Committee or Board panel that consists of volunteers.

My respondent clients are always weighing important factors such as geographic convenience (vs. potential embarrassment) of having a case tried in one's own Circuit, loss of billable revenue associated time needed to prepare for and attend a disciplinary hearing (wherever located), and the cost of paying for my services directly and/or paying for what may become increased malpractice premiums when I'm paid by a carrier.

¹ I have been defending respondents in Virginia for more than 30 years. In the District of Columbia, where I also defend respondents, I served from 1994-2000 as a Hearing Committee Member (the trial-level adjudicative body for all disciplinary prosecutions); served from 2004-2009 on the Rules of Professional Conduct Committee; and I am presently completing my sixth and final year on the Legal Ethics Committee. In between my service on the Hearing Committee and my appointment to the RPC Committee, I was twice appointed as a Special Bar Counsel in matters in which the District's Office of Bar Counsel was conflicted out. I have also taught dozens of ethics CLEs in Virginia and in the District, some of which were exclusively focused on disciplinary procedure. I am writing today solely in my capacity as a defender of bar complaints.

The lawyers in Bar Counsel's Office have no comparable pressures. What they do have is *ex parte* influence over which cases get certified for prosecution and the content of the certification. They also have substantial control over which cases go to trial based on their own willingness, or not, to enter into agreed dispositions. Bar Counsel doesn't need, and shouldn't get, the added benefit of being able to force a respondent to defend before a three-judge panel in the respondent's home Circuit.

Second Objection

An argument could be made that a Respondent has a federal right to opt-out of peer-based adjudication and instead demand to be heard by a three-judge panel. *See N.C. State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015). Bar Counsel has conceivable argument for a comparable federal right.

Third Objection

The proposal as posted to the Bar's website does not appear to contain any analysis of the proposal's impact on judicial and taxpayer resources. Three-judge panels consist solely of judges from outside the Circuit in which the disciplinary trial will be held. That means three different Circuit Courts must plan to be short by one sitting judge each time a prosecution is scheduled for trial. The Council should not be adopting COLD's proposal before such an analysis is published.

Conclusion

As the saying goes, *If it ain't broke, don't fix it*. For each of the reasons outlined above, I urge rejection of COLD's proposal to the extent the proposal would grant Bar Counsel the right to demand three-judge panels.

Thank you for your attention to this letter.

Respectfully yours,

/s/ *Daniel Schumack*

Daniel Schumack VSB 28729

cc: Seth Guggenheim

**MINUTES OF THE VIRGINIA STATE BAR
COUNCIL MEETING**

[in relevant part]

DATE: June 12, 2025, 9:15 a.m.

Location: Hilton Oceanfront, 3001 Atlantic Avenue, Virginia Beach

The VSB Council met on Thursday, June 12, 2025. At 9:15 a.m., President Michael M. York called the meeting to order. Sixty-four (64) committee members attended in person, satisfying the meeting quorum requirement in Part I, Art. V, Sec. 2 of the Bylaws of the Virginia State Bar (VSB). There was no remote participation

C. Approval of Amendments to Part 6, Sec. IV, Para. 13 of the Rules of the Supreme Court of Virginia

Melissa W. Robinson and E. M. Wright, Jr. presented the request for approval of Amendments to Part 6, Sec. IV, Para. 13 of the Rules of the Supreme Court of Virginia, presented the proposed amendments to the disciplinary rules, aiming to conform paragraph 13 to the statute and ensure fairness in the process. A copy of the memo from Melissa W. Robinson and Renu M. Brennan, dated May 16, 2025, re: Proposed Amendments to Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, Procedure for Disciplining, Suspending, and Disbarring Attorneys ("Paragraph 13"), was included in the meeting materials provided to Council.

A motion was made by E. M. Wright, Jr. and seconded by Daniel P. Frankl to vote to approve the committee's request for approval of amendments to Part 6, Sec. IV, Para. 13 of the Rules of the Supreme Court of Virginia, and to send the proposal to the Court for approval.

The motion passed, and Council approved the committee's request for approval of the amendments to Part 6, Sec. IV, Para. 13 of the Rules of the Supreme Court of Virginia, and to send to the proposed amendments to the Court for approval. Member Zaida C. Thompson voted "yes" verbally. All other members voted using the Poll Everywhere voting tool. The electronic voting results are appended to these minutes...

**C: Do you approve the Amendments to Part 6, Sec. IV, Para. 13
of the Rules of the Supreme Court of Virginia?**

Results Summary

Response	Count
Yes	57
No	1
Abstain	0
Total	58

Count	Started At (CDT)	Screen Name	Response
1	6/12/2025 10:01	David sher	Yes
2	6/12/2025 10:00	Marie Washington	Yes
3	6/12/2025 10:00	Daniel P. Frankl	Yes
4	6/12/2025 10:00	Bob Walker	Yes
5	6/12/2025 10:01	Tom Bell	Yes
6	6/12/2025 10:00	Matt Foster	Yes
7	6/12/2025 10:01	Randy Rollins	Yes
8	6/12/2025 10:00	Debra Powers	Yes
9	6/12/2025 10:00	K Dickerson	Yes
10	6/12/2025 10:00	Sean Dolan	Yes
11	6/12/2025 10:00	Adrienne George-Eliades	Yes
12	6/12/2025 10:00	Kyle Elliott	Yes
13	6/12/2025 10:00	Luis Perez	Yes
14	6/12/2025 10:00	Dale Pittman	Yes
15	6/12/2025 10:01	Ann Marie Park	Yes
16	6/12/2025 10:00	Richard Howard-Smith	Yes
17	6/12/2025 10:00	Paul Melnick	Yes
18	6/12/2025 10:00	Lisa Wilson	Yes
19	6/12/2025 10:01	CaroleHC	Yes
20	6/12/2025 10:00	Patrick C. Murphrey	Yes
21	6/12/2025 10:00	E M Wright Jr	Yes
22	6/12/2025 10:01	Tamika Jones	Yes
23	6/12/2025 10:00	Chidinma U. Harley	Yes
24	6/12/2025 10:00	W. Huntington Byrnes	Yes
25	6/12/2025 10:01	Sebastian Norton	Yes
26	6/12/2025 10:00	Joel McClellan	Yes
27	6/12/2025 10:00	Allen Bareford	Yes
28	6/12/2025 10:01	Derek Davis	Yes
29	6/12/2025 10:00	DJ Hansen	Yes
30	6/12/2025 10:00	Juli Porto	Yes
31	6/12/2025 10:00	Gobind Sethi	Yes
32	6/12/2025 10:01	Cullen Seltzer	Yes

Count	Started At (CDT)	Screen Name	Response
33	6/12/2025 10:01	Craig E. Ellis	Yes
34	6/12/2025 10:00	Hope Townes	Yes
35	6/12/2025 10:00	Chidi James	Yes
36	6/12/2025 10:00	Susan Tarley	Yes
37	6/12/2025 10:00	Lonnie D Nunley, III	Yes
38	6/12/2025 10:01	Brett Marston	Yes
39	6/12/2025 10:00	Adam Krischer	Yes
40	6/12/2025 10:00	Naveed Kalantar	Yes
41	6/12/2025 10:00	Christine Mougine-Boal	Yes
42	6/12/2025 10:01	Penn Bain	Yes
43	6/12/2025 10:00	Gifford Hampshire	Yes
44	6/12/2025 10:01	Will Egen	Yes
45	6/12/2025 10:00	Jonathan Petty	Yes
46	6/12/2025 10:01	Joanna Suyes	Yes
47	6/12/2025 10:00	Jim Hundley	Yes
48	6/12/2025 10:00	Veronica Meade	Yes
49	6/12/2025 10:01	Molly Newton	Yes
50	6/12/2025 10:01	Nicole Upshur	Yes
51	6/12/2025 10:00	Bretta Lewis	Yes
52	6/12/2025 10:01	Jeremiah Denton	Yes
53	6/12/2025 10:00	Charlene Moring	Yes
54	6/12/2025 10:01	Stephanie Grana	Yes
55	6/12/2025 10:00	Susan Butler	Yes
56	6/12/2025 10:00	Benjamin A. Shute	Yes
57	6/12/2025 10:01	Bruce Russell	Yes
58	6/12/2025 10:01	Rex Flynn	No