

Friday 19th March, 2010.

On October 28, 2009 came the Virginia State Bar, by Jon D. Huddleston, 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:

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

* * *

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

* * *

2. Any proceeding which has been resolved by (a) a *De Minimis* Dismissal; (b) a Dismissal for Exceptional Circumstances; or (c) an Admonition; and

* * *

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

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"Summary Order" means a bench order entered by the Chair following a Disciplinary Proceeding that outlines in summary form the findings as to the allegations of Misconduct, the sanctions to be imposed, the effective date of any sanctions imposed, and any notice requirements.

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13-6. DISCIPLINARY BOARD.

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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 Certifications submitted to it by a Subcommittee or a District Committee; (3) Misconduct by reason of conviction of a Crime; (4) Impairment Proceedings; (5) Revocation or Suspension in another jurisdiction; (6) Petitions from Bar Counsel or the Chair of a District Committee seeking summary Suspension upon a belief that an Attorney is engaging in Misconduct likely to result in injury to or loss of property of a client or other entity or alleging an Attorney poses imminent danger to the public; (7) Petitions for Reinstatement referred to the Board for its recommendation to this Court; (8) Violations of 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.

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H. Agreed Disposition. Whenever Bar Counsel and Respondent are in agreement as to the disposition of a Disciplinary Proceeding, the parties may submit a proposed Agreed Disposition to five members of the Board selected by the Chair. The five members so selected will constitute a Panel. If the proposed Agreed Disposition is accepted by a majority of the Panel so selected, the Agreed Disposition will be adopted by order of the Board. If the Agreed Disposition is not accepted by the Panel, the Disciplinary Proceeding will then be set for hearing before another Panel of the Board at the earliest possible date. No member of the Panel which considered the proposed Agreed Disposition shall be assigned to the Panel which hears the Disciplinary Proceeding.

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13-8. BAR COUNSEL.

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B. Acting Bar Counsel. In the event of disqualification or recusal of Bar Counsel in any Proceeding, the allegation 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.

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C. File Destruction. Whenever a File is destroyed, the following information shall be preserved:

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4. A summary of the Complaint or allegation of Misconduct;

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

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13-10. PROCESSING OF COMPLAINTS BY BAR COUNSEL.

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B. No Dismissal by Complainant. No Complaint or allegation of Misconduct shall be dismissed at any stage of the process solely upon a request by a Complainant to withdraw his or her Complaint.

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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 allegation of Misconduct shall be dismissed on the sole ground that any such provision has not been strictly complied with.

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13-13. PARTICIPATION AND DISQUALIFICATION OF COUNSEL.

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C. Disqualification. An Attorney shall not represent a Respondent at any time with respect to a Complaint or allegation of Misconduct:

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3. At any time, after such Attorney ceases to be an employee or officer of the Bar or a member of Council, COLD, the Board or a District Committee, if such Attorney was personally involved in the subject matter of the Complaint, allegation of Misconduct or any related matter while acting as such employee, officer or member;

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13-16. DISTRICT COMMITTEE PROCEEDINGS.

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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:

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5. Certify the Charge of Misconduct to the Board or file a complaint in a Circuit Court, pursuant to Va. Code § 54.1-3935.

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13-18. BOARD PROCEEDINGS UPON CERTIFICATION.

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I. Order of Hearing.

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2. Bar Counsel shall present witnesses and other evidence supporting the Certification. 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.

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J. Motion to Strike. At the conclusion of the Bar's evidence or at the conclusion of all the evidence, the Board on its own motion, or the Respondent or the Respondent's counsel, may move to strike the Bar's evidence as to one or more allegations of Misconduct contained in the Certification. A motion to strike an allegation of Misconduct 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 Certification.

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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 allegation of Misconduct not so proven.

* * *

N. Dismissal for Failure to Reach a Majority Decision. If the Board is unable to reach a decision by a majority vote of those constituting the hearing panel, the Certification, or any allegation thereof, shall be dismissed on the basis that the evidence does not reasonably support the Certification, or one or more allegations thereof, under a clear and convincing evidentiary standard.

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13-19. BOARD PROCEEDINGS UPON APPEAL.

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G. Imposition of Sanctions. Upon review of the record in its entirety, the Board may:

1. Dismiss the Charge of Misconduct upon a finding that

the District Committee Determination is contrary to the law or is not supported by substantial evidence;

* * *

3. Reverse the decision of the District Committee and remand the Charge of Misconduct to the District Committee for further proceedings.

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

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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 allegations of Misconduct arising from the facts leading to such conviction.

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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 allegations 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 allegations 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 allegations of Misconduct against a Respondent, believes that the Respondent may then have an Impairment, the District Committee or the Board may postpone the hearing and initiate an Impairment Proceeding under this Rule. In Proceedings to terminate a Suspension for Impairment, the burden of proving the termination of an Impairment shall be on the Respondent.

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

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

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13-28. CONSENT TO REVOCATION.

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E. Dismissal of Complaints or Allegations of Misconduct. When an Attorney's License is revoked by consent, Bar Counsel, in his or her discretion, may dismiss without prejudice any and all Complaints or allegations of Misconduct then pending by notifying the Clerk of the Disciplinary System and the District Committee, Board or court wherein the matter or matters lie.

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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 pending Charge of Misconduct, when the matter is placed on the public District Committee hearing docket, or a Certification;

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13-31. DISMISSAL OF COMPLAINTS AND ALLEGATIONS OF MISCONDUCT UPON REVOCATION WITHOUT CONSENT, OR UPON DEATH.

When an Attorney's License is revoked without consent, or upon the death of an Attorney, Bar Counsel, in his or her discretion,

may dismiss without prejudice any and all Complaints or allegations of Misconduct then pending against said Attorney by notifying the Clerk 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, Section IV, of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective immediately.

A Copy,

Teste:

Clerk