

SENATE BILL NO. 1494

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Surovell)

A BILL to amend and reenact §§ 17.1-406 and 54.1-3935 of the Code of Virginia, relating to procedure for disciplining attorneys and reinstatement of attorneys by three-judge circuit court.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-406 and 54.1-3935 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-406. Appeals in criminal matters; cases over which Court of Appeals does not have jurisdiction.

A. Any aggrieved party may appeal to the Court of Appeals from any final conviction in a circuit court of a traffic infraction or a crime. The Commonwealth or any county, city, or town may petition the Court of Appeals for an appeal pursuant to this subsection in any case in which such party previously could have petitioned the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may also petition the Court of Appeals for an appeal in a criminal case pursuant to § 19.2-398. An attorney may appeal a judgment of the three-judge circuit court to the Court of Appeals pursuant to § 54.1-3925.

B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court from a final decision, judgment or order of a circuit court involving a petition for a writ of habeas corpus, from any final finding, decision, order, or judgment of the State Corporation Commission, and from proceedings under ~~§§ 54.1-3935 and § 54.1-3937~~. Complaints of the Judicial Inquiry and Review Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have jurisdiction over any cases or proceedings described in this subsection.

§ 54.1-3935. Procedure for disciplining or reinstating 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 or any former

27 attorney who has had his license revoked and filed a petition for reinstatement with the Virginia State Bar,
28 setting forth in such petition the reasons why his license should be reinstated, may elect and demand that
29 further proceedings be conducted by a three-judge circuit court. Such petition for reinstatement and any
30 demand shall be made in accordance with the rules and procedures set forth in Part Six, Section IV,
31 Paragraph 13 of the Rules of Supreme Court of Virginia. Upon receipt of a demand for a three-judge
32 circuit court, the Virginia State Bar shall file a complaint in a circuit court where venue is proper and the
33 chief judge of the circuit court shall issue a rule against the attorney to show cause why the attorney shall
34 not be disciplined or why the former attorney shall be reinstated. At the time the rule is issued by the
35 circuit court, the court shall certify the fact of such issuance and the time and place of the hearing thereon
36 to the Chief Justice of the Supreme Court, who shall designate the three-judge circuit court, which shall
37 consist of three circuit court judges of circuits other than the circuit in which the case is pending, to hear
38 and decide the case. The rules and procedures set forth in Part Six, Section IV, Paragraph 13 of the Rules
39 of Supreme Court of Virginia shall govern any attorney disciplinary proceeding before a three-judge
40 circuit court.

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

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

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

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

63 F. Each party shall bear its own fees and costs for the proceedings conducted by a three-judge
64 circuit court and any appeal therefrom. In no instance shall a former attorney be required to pay a fee when
65 seeking reinstatement.

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