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HOUSE BILL NO. 1405

Offered January 12, 2011

Prefiled August 30, 2010

A BILL to amend and reenact §§ 54.1-3935 and 54.1-3937 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 39 of Title 54.1 a section numbered 54.1-3938.2, relating to revocation of law license; petition for reinstatement of law license; members of the General Assembly.

 Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3935 and 54.1-3937 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 39 of Title 54.1 a section numbered 54.1-3938.2 as follows:

§ 54.1-3935. Procedure for revocation of license.

A. If the Supreme Court, the Court of Appeals, or any circuit court of this Commonwealth observes, or if a complaint, verified by affidavit is made by any person to such court, that any attorney has been convicted of a misdemeanor involving moral turpitude or a felony or has violated the Virginia Code of Professional Responsibility, the court may assign the matter to the Virginia State Bar for investigation. Upon receipt of the report of the Virginia State Bar, the court may issue a rule against such attorney to show cause why his license to practice law shall not be revoked. If the complaint, verified by affidavit, is made by a district committee of the Virginia State Bar, the court shall issue a rule against the attorney to show cause why his license to practice law shall not be revoked.

B. If the rule is issued by the Supreme Court or the Court of Appeals, the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued by the Supreme Court, the Chief Justice shall designate three circuit court judges to hear and decide the case. If the rule is issued by the Court of Appeals or a circuit court, the issuing 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 three circuit court judges of circuits other than the circuit in which the case is pending to hear and decide the case. In proceedings under this section, the court shall adopt the Rules and Procedures described in Part Six, Section IV, Paragraph 13 of the Rules of Court.

C. 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.

D. Upon the hearing, if the attorney is found guilty by the court, his license to practice law in this Commonwealth shall be revoked or suspended for such time as the court may prescribe. In lieu of revocation or suspension, the court may impose any other sanction authorized by Part Six, Section IV, Paragraph 13 of the Rules of Court. In any case in which the attorney is found guilty of engaging 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 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. 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.

E. The attorney, may, as of right, appeal from the judgment of the 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 Court. In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of suspension during the pendency of the appeal. Any order of reprimand shall be automatically stayed prior to or during the pendency of an appeal therefrom. No stay shall be granted in cases where the attorney's license to practice law has been revoked.

F. In any proceeding to revoke the license of an attorney, the attorney shall be entitled to representation by counsel.

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

H. Notwithstanding the provisions of this article or any Rule of Court, the Chief Justice shall designate only retired judges to hear and decide cases under this section where the subject attorney is a

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59 *member of the General Assembly.*

60 § 54.1-3937. Procedure for revocation of certificate of registration of professional law corporations or
61 professional limited liability companies.

62 A. If the Supreme Court, the Court of Appeals or any circuit court of this Commonwealth observes,
63 or if a complaint, verified by affidavit, is made by any person to a circuit court having jurisdiction
64 where the alleged violation occurred, that any law corporation or professional limited liability company
65 has willfully failed to comply with the applicable ethical standards of the Virginia Code of Professional
66 Responsibility or the applicable statutes governing professional corporations or professional limited
67 liability companies, such court may issue a rule against such law corporation or law professional limited
68 liability company to show cause why its certificate of registration should not be revoked. If the
69 complaint, verified by affidavit, is made by the Bar Counsel or a district committee of the Virginia State
70 Bar, the court shall issue a rule against the law corporation or law professional limited liability company
71 to show cause why its certificate of registration should not be revoked. However, such rule shall not
72 issue if the violation is (i) that of one or several persons only and the interest of justice and the
73 protection of the public can be fairly served by appropriate disciplinary proceedings against the
74 individuals involved, or (ii) that the law corporation does not have a valid certificate of registration.

75 B. If the rule is issued by the Supreme Court, the rule shall be returnable to the Circuit Court of the
76 City of Richmond. At the time the rule is issued, the Chief Justice of the Supreme Court shall designate
77 three circuit court judges to hear and decide the case.

78 If the rule is issued by a circuit court or the Court of Appeals, it shall thereupon certify the fact of
79 such issuance to the Chief Justice of the Supreme Court. The Chief Justice shall designate three circuit
80 court judges of circuits other than the circuit in which the case is pending to hear and decide the case.

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

83 D. If, after notice and opportunity to be heard, the law corporation or law professional limited
84 liability company is found guilty by the court of a willful failure to comply with the applicable ethical
85 standards in the Virginia Code of Professional Responsibility or the applicable statutes governing
86 professional corporations or professional limited liability companies, the court may (i) reprimand the
87 professional corporation or professional limited liability company, (ii) put it on terms to comply with the
88 applicable law or ethical standards within a reasonable time upon condition that failure to comply shall
89 constitute grounds for suspension or revocation of the certificate of registration or for other disciplinary
90 action, or (iii) suspend or revoke the certificate of registration. If the violation is such that it can be
91 corrected upon notice to the law corporation or law professional limited liability company and it is
92 corrected to the satisfaction of the court, or if the violation is that of one or several persons only, the
93 certificate of registration shall not be suspended or revoked if the interest of justice and the protection of
94 the public can be fairly served by applicable disciplinary proceedings against the individuals involved.

95 E. The law corporation or professional limited liability company may, as of right, appeal from the
96 judgment of the court to the Supreme Court by petition based upon a true transcript of the record, which
97 shall be made up and certified as in actions at law. In all cases where a professional corporation's or
98 professional limited liability company's certificate of registration has been revoked or suspended by the
99 court, such revocation or suspension shall be suspended pending appeal.

100 F. In any proceedings under this section the defendant shall be entitled to a full and fair hearing and
101 representation by counsel.

102 G. *Notwithstanding the provisions of this article or any Rule of Court, the Chief Justice shall*
103 *designate only retired judges to hear and decide cases under this section where a member of the*
104 *General Assembly is a member of the subject law corporation or law professional limited liability*
105 *company.*

106 § 54.1-3938.2. *Petition for reinstatement of license by member of the General Assembly; recusal of*
107 *the justices of the Supreme Court.*

108 *Notwithstanding any Rule of Court, all full-time justices of the Supreme Court shall recuse*
109 *themselves from consideration of any petition presented to the Court seeking reinstatement of the law*
110 *license of a person who is at the time of filing a member of the General Assembly. Such petition shall*
111 *be acted upon by seven retired justices or judges of the Supreme Court or the Court of Appeals.*