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SENATE BILL NO. 1494

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 1, 2023)

(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 attorney who has had his license revoked and filed a petition for reinstatement with the Virginia State Bar, setting forth in such petition the reasons why his license should be reinstated, may elect and demand that further proceedings be conducted by a three-judge circuit court. Such petition for reinstatement and any 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 or why the former attorney shall be reinstated. 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, or may grant reinstatement. 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 Court of Appeals and, if necessary, to the Supreme Court pursuant to the procedure for filing an appeal from a trial court, as set forth in Part 5 or Part 5A, as applicable, of the Rules of Supreme Court of Virginia. In any such appeal, the Court of Appeals or the Supreme Court may, upon petition of the

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60 attorney, stay the effect of an order of revocation or suspension during the pendency of the appeal. Any
61 other sanction imposed by a three-judge circuit court shall be automatically stayed prior to or during the
62 pendency of the appeal.

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

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