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## SENATE BILL NO. 973

Offered January 17, 1997

A BILL to amend and reenact §§ 54.1-3900.01 and 54.1-3936 of the Code of Virginia, relating to appointment of attorneys or receivers for disqualified attorneys.

Patrons—Gartlan, Barry, Benedetti, Chichester, Couric, Edwards, Miller, K.G. and Reynolds; Delegates: Almand, Armstrong, Croshaw, Davies, Diamonstein, McDonnell, Tate, Watts and Woodrum

Referred to the Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-3900.01 and 54.1-3936 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-3900.01. Protection of client interests; appointment of attorney for disabled, absent, deceased, suspended or disbarred attorney.

A. Upon a showing that an attorney is unable to discharge properly responsibilities to his client by reason of disability, absence or death or that an attorney has been disbarred or suspended and has not complied with Part Six, Section IV, Paragraph 13 (K) (1) of the Rules of the Virginia Supreme Court, and that no responsible party capable of conducting the affairs of the attorney is known to exist, the circuit court of any city or county wherein such attorney maintained an office, upon the petition of Bar Counsel or the chairman of a district committee of the Virginia State Bar ~~or any interested party~~, may issue an order appointing an attorney or attorneys ~~to inventory the files of the attorney in question and take whatever action seems indicated to protect the interests of clients until such time as the clients have had an opportunity to obtain substitute counsel who shall have the powers and duties specified in this section.~~

B. Any attorney so appointed shall be bound by the attorney-client privilege with respect to the records of individual clients and shall not disclose any information contained in the files so inventoried without the consent of the client to whom the file relates, except as required to carry out an order of the court.

C. Any attorney so appointed shall (i) prepare and file with the Virginia State Bar an inventory of all case files under the control of the subject attorney, (ii) notify all of the subject's clients of the appointment and take whatever action seems indicated to protect the interests of the clients until such time as the clients have had an opportunity to obtain substitute counsel, (iii) identify all bank accounts, trust or otherwise, over which the subject had signatory authority and take control of the trust and operating accounts, (iv) attempt to collect any accounts receivable related to the subject's law practice and (v) terminate the subject's law practice. The appointed attorney shall also prepare a statement of receipts and disbursements and account balances of all funds under his control for submission to the court. The statement shall be submitted within two months of the appointment and annually thereafter until the attorney is relieved. The court, in its discretion, may require any attorney appointed pursuant to this section to post bond, with or without surety.

D. Any attorney so appointed shall be entitled, upon proper application to the court in which the appointment was made, to recover ~~any costs incurred and to receive a reasonable fee for services rendered~~, said costs and fees to be fixed by the court and judgment entered therefor against the attorney ~~or the estate of the attorney whose disability, absence, death, disbarment or suspension was the subject of the order of appointment~~ an award of reasonable fees for services rendered and necessary costs incurred. The award shall be paid as an administrative priority claim from the funds under the control of the appointed attorney, other than trust funds. If there are not sufficient non-trust funds to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the State Bar has funds available and that amount shall be a judgment in favor of the State Bar against the subject attorney or his estate.

§ 54.1-3936. Proceedings pending disciplinary action.

A. If Bar Counsel or the chairman of a district committee of the Virginia State Bar has reasonable cause to believe that an attorney is engaging in any activity which is unlawful or in violation of the Virginia Code of Professional Responsibility and which will result in loss of property of one or more of the attorney's clients or any other person, he may make an ex parte application to the circuit court of the city or county wherein the attorney who is the subject of the complaint resides or is doing business for the issuance of an order authorizing the immediate inspection by representatives of the applicant of any records, documents, and physical or other evidence belonging to the attorney or any professional partnership, professional limited liability company, or professional corporation with which he is

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60 associated. The court may issue such order without notice to the attorney if the application, on verified  
61 affidavit of the applicant and such other evidence as the court may require, shows reasonable cause to  
62 believe that such action is required to prevent immediate loss of property of one or more of the  
63 attorney's clients or any other person. The papers filed with the court pursuant to this subsection shall be  
64 placed under seal.

65 B. If Bar Counsel or the chairman of a district committee of the Virginia State Bar has reasonable  
66 cause to believe that an attorney is engaging in any activity which is unlawful or in violation of the  
67 Virginia Code of Professional Responsibility and which will result in loss of property of one or more of  
68 the attorney's clients or any other person, he may file a complaint with the circuit court of the county or  
69 city wherein the attorney who is the subject of the complaint resides or is doing business. The complaint  
70 may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the  
71 disposition of any other assets belonging to or subject to the control of the attorney who is the subject  
72 of the complaint or any professional partnership, professional limited liability company, or professional  
73 corporation with which he is associated; and (ii) the appointment of a receiver for all or part of the  
74 funds or property belonging to or subject to the control of the attorney who is the subject of the  
75 complaint or any professional partnership, professional limited liability company, or professional  
76 corporation with which he is associated. The attorney who is the subject of the complaint shall be given  
77 notice of the time and place of the hearing on the complaint and an opportunity to offer evidence. The  
78 papers filed with the court under this subsection shall be placed under seal until such time as the court  
79 *grants an injunction or appoints a receiver*. The court may issue an injunction, appoint a receiver  
80 or provide such other relief as the court may consider proper if, after a hearing, the court finds that such  
81 relief is necessary or appropriate to prevent loss of property of one or more of the attorney's clients or  
82 any other person.

83 C. In any proceeding under subsection B of this section, any professional partnership, professional  
84 limited liability company, or professional corporation with which the attorney who is the subject of the  
85 complaint is associated and any other person indebted to or having in his possession property, real or  
86 personal, belonging to or subject to the control of such attorney and which property is sought to be  
87 protected, shall be served with a copy of the complaint and notice of the time and place of the hearing  
88 and shall be afforded an opportunity to respond and offer evidence.

89 D. The court, on motion filed by any party, may transfer a proceeding under this section to any court  
90 in which a proceeding is pending pursuant to § 54.1-3935 or § 54.1-3937 for the revocation of the  
91 license of the attorney who is the subject of an order issued pursuant to this section.

92 E. *Any receiver appointed pursuant to this section shall (i) inventory the files of the subject attorney,*  
93 *(ii) notify all clients of the subject attorney of the receiver's appointment and take whatever action*  
94 *seems indicated to protect the interests of clients until they have had an opportunity to obtain substitute*  
95 *counsel, (iii), marshal all assets of the subject attorney consistent with the order of appointment, and*  
96 *(iv) identify all property subject to control of the receiver and prepare a statement of receipts and*  
97 *disbursements and account balances of all funds under his control for submission to the court. The*  
98 *statement shall be submitted within two months of the appointment and annually thereafter until the*  
99 *receivership is terminated. The court, in its discretion, may require the receiver to post bond, with or*  
100 *without surety.*

101 F. *A receiver appointed pursuant to this section shall be entitled, upon proper application to the*  
102 *court in which the appointment was made, to recover an award of reasonable fees for services rendered*  
103 *and necessary costs incurred. The award shall be paid as an administrative priority claim from the*  
104 *funds under the control of the receiver, other than trust funds. If there are not sufficient non-trust funds*  
105 *to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the State*  
106 *Bar has funds available and that amount shall be a judgment in favor of the State Bar against the*  
107 *subject attorney or his estate.*

108 G. *The court may determine whether any assets under the control of the receiver should be turned*  
109 *over to the subject attorney during the receivership.*