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SENATE BILL NO. 973

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 22, 1997)

(Patron Prior to Substitute—Senator Gartlan)

*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.***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; (v) terminate the subject's law practice; (vi) reduce to cash all of the assets of the subject's law practice; (vii) determine the nature and amount of all claims of creditors, including clients, of the subject's law practice; and (viii) prepare and file with the court a report of such assets and claims proposing a distribution to such creditors. Upon approval of the report of the receiver, the receiver shall distribute the assets of the subject's law practice first to clients whose funds were or ought to have been held in trust by the subject, then to the receiver in respect of the fees and costs awarded pursuant to subsection D below, and thereafter to the general creditors of the subject's law practice, including clients whose funds were not required to have been held in trust by the subject. 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 receivership is terminated by the court. 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 to a recovery of necessary costs incurred. If there are not sufficient nontrust 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 the State Bar shall have a claim against the subject attorney or his estate for the amount paid.

§ 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

60 the issuance of an order authorizing the immediate inspection by representatives of the applicant of any
61 records, documents, and physical or other evidence belonging to the attorney or any professional
62 partnership, professional limited liability company, or professional corporation with which he is
63 associated. The court may issue such order without notice to the attorney if the application, on verified
64 affidavit of the applicant and such other evidence as the court may require, shows reasonable cause to
65 believe that such action is required to prevent immediate loss of property of one or more of the
66 attorney's clients or any other person. The papers filed with the court pursuant to this subsection shall be
67 placed under seal.

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

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

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

95 E. *Any attorney so appointed shall (i) prepare and file with the Virginia State Bar an inventory of*
96 *all case files under the control of the subject attorney; (ii) notify all of the subject's clients of the*
97 *appointment and take whatever action seems indicated to protect the interests of the clients until such*
98 *time as the clients have had an opportunity to obtain substitute counsel; (iii) identify all bank accounts,*
99 *trust or otherwise, over which the subject had signatory authority and take control of the trust and*
100 *operating accounts; (iv) attempt to collect any accounts receivable related to the subject's law practice;*
101 *(v) terminate the subject's law practice; (vi) reduce to cash all of the assets of the subject's law*
102 *practice; (vii) determine the nature and amount of all claims of creditors, including clients, of the*
103 *subject's law practice; and (viii) prepare and file with the court a report of such assets and claims*
104 *proposing a distribution to such creditors. Upon approval of the report of the receiver, the receiver*
105 *shall distribute the assets of the subject's law practice first to clients whose funds were or ought to have*
106 *been held in trust by the subject, then to the receiver in respect of the fees and costs awarded pursuant*
107 *to subsection D below, and thereafter to the general creditors of the subject's law practice, including*
108 *clients whose funds were not required to have been held in trust by the subject. The appointed attorney*
109 *shall also prepare a statement of receipts and disbursements and account balances of all funds under*
110 *his control for submission to the court. The statement shall be submitted within two months of the*
111 *appointment and annually thereafter until the receivership is terminated by the court. The court, in its*
112 *discretion, may require any attorney appointed pursuant to this section to post bond, with or without*
113 *surety.*

114 F. *A receiver appointed pursuant to this section shall be entitled, upon proper application to the*
115 *court in which the appointment was made, to recover an award of reasonable fees for services rendered*
116 *and to a recovery of necessary costs incurred. If there are not sufficient nontrust funds to pay the*
117 *award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the State Bar has*
118 *funds available and the State Bar shall have a claim against the subject attorney or his estate for the*
119 *amount paid.*

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