

THE STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL COMPLAINT PROCESS

The Code of Virginia, §19.2-163.01(4), requires the Virginia Indigent Defense Commission (VIDC) to establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments. The following are guidelines for enforcement of the Standards of Practice. The Standards of Practice for Indigent Defense Counsel are located at www.vadefenders.org.

The enforcement process consists of five steps. However, many complaints are resolved prior to reaching the fifth step. The evidence to support a violation of the Standards must be clear and convincing.

- The Standards of Practice Enforcement Process **will not** affect the outcome of a case or post-conviction matters beyond state direct appeal.

Step 1: Complaint Intake and Initial Evaluation

All complaints are received by the VIDC Standards of Practice Enforcement Attorney (SOPEA). The complaint form may be downloaded from the VIDC website at www.vadefenders.org, or it will be provided upon request by mail.

The SOPEA will evaluate and determine whether the complaint is “qualified.” A complaint shall be deemed “qualified” when it satisfactorily complies with all the filing requirements and if the facts as alleged are assumed to be true would rise to the level of a violation of the Standards of Practice.

In order to be deemed “qualified,” a complaint must:

- a. be submitted in writing on the correct form;
- b. not be anonymous;
- c. be filed within twelve months of the conclusion of the case, including any appeals;
- d. reference a specific case;
- e. involve a court-appointed attorney or public defender in an indigent defense case;
- f. allege violation(s) of specific Standard(s) of Practice; AND
- g. be inherently credible.

If the SOPEA finds the complaint does not meet the requirements as set forth above, the complaint will be dismissed.

There can be no appeal of a dismissal based upon a finding of “unqualified.” However, the complainant may initiate a new revised complaint if the time limit (filing within twelve months of the conclusion of the case) has not elapsed. If the complaint has been dismissed only because the complaint was not written on the correct form, the complainant may amend the complaint within three months or prior to the original twelve month filing period, whichever is later.

If the SOPEA finds the complaint meets the requirements and is “qualified,” the complaint shall then proceed to the investigation stage. A “qualified” complaint will proceed through the complaint process regardless of whether the attorney’s certifications are inactive or expired.

NOTICE: The SOPEA may submit the SOP complaint and any relevant information to the Virginia State Bar for a misconduct inquiry.

Step 2: Investigation

The SOPEA shall investigate every qualified complaint and compile a written report. The SOPEA will contact a complainant if more information is needed. The process may take several months to complete, depending on the nature of the complaint and the number of complaints currently under investigation. During the course of an investigation, if the SOPEA finds that violations not alleged in the complaint may have occurred, additional violations may become part of the complaint. The SOPEA shall provide a copy of the complaint to the attorney against whom the complaint is filed (“respondent attorney”) and request a written response within thirty (30) days. The Investigative Report shall contain, at a minimum, a copy of the complaint filed, the respondent attorney’s response, if any, and any supporting documentation or other relevant information obtained by the SOPEA.

Upon completion of investigation, the SOPEA may:

- 1) Dismiss the complaint as unfounded;
- 2) Dismiss the complaint because the complained actions do not rise to the level of specific violations; or
- 3) Make findings and/or recommendations based on the investigation.

If there is a finding of facts sufficient to substantiate a claim, the SOPEA will refer the Investigative Report to the Informal Resolution Panel (IRP).

Step 3: Informal Resolution Panel

The Informal Resolution Panel (IRP) will be a three-member panel consisting of VIDC Virginia licensed attorneys designated by the VIDC Executive Director.

Upon receipt and review of the Investigative Report, the IRP may:

- 1) Issue a formal determination and dismiss the complaint as unfounded;
- 2) Request more information from the SOPEA; and/or
- 3) Schedule, within thirty days or as soon thereafter as practical, an informal hearing with the respondent attorney.

The respondent attorney shall be provided a copy of the Investigative Report prior to the informal hearing. During the informal hearing, any relevant information may be considered. The SOPEA will be available either in person or via telephone conference, to answer questions pertaining to his/her report and investigation. The respondent attorney may choose to appear before the Panel either in person or via telephone conference.

- In the event of multiple complaints against the same attorney, the Panel may combine all complaints into one hearing. Each complaint, however, will be addressed separately.
- Within fifteen days of the hearing or as soon thereafter as practicable, the Panel will issue written findings. If the Panel does not find a violation of the Standards of Practice, the Panel will dismiss the complaint. In the event the Panel finds clear and convincing evidence that the Standards of Practice have been violated, the Panel will send a letter to the respondent attorney with a proposed resolution. The proposed resolution may include sanctions up to and including suspension from the court-appointed list for an indefinite period of time.

If the respondent attorney agrees to the proposed resolution, he/she shall endorse the letter, and send it back to the Panel, at which point the endorsed letter becomes a Resolution Agreement.

The SOPEA will ensure that any remedial measures agreed to by endorsement of the Resolution Agreement are timely completed. If the respondent attorney fails to fully comply with the terms of the Resolution Agreement, the SOPEA is authorized to issue additional sanctions, up to and including removal from the list.

If the respondent attorney does not wish to accept the proposed resolution offered by the Panel, the attorney must notify the SOPEA in writing within a specified time period, and the matter will proceed to a Formal Hearing.

Step 4: Formal Hearing

The Formal Hearing Panel will consist of three Virginia State Bar members chosen from a committee of volunteer attorneys. All Formal Hearings will be recorded.

The SOPEA shall be available either in person or via telephone conference to answer questions pertaining to his/her report and investigation.

Up until forty-eight hours before the hearing, the respondent attorney may opt to accept the IRP's proposed resolution.

Prior to the Formal Hearing, the Panel members shall review the Investigative Report and the IRP's proposed resolution. Any additional relevant information may be presented to the Panel.

The Hearing Panel may:

1. Dismiss the complaint as unfounded;
2. Dismiss the complaint upon a finding that the complained actions do not rise to the level of a specific violation(s);
3. Find that a violation(s) has occurred and issue remedial sanctions; or
4. Find that a violation(s) has occurred and remove the attorney from the court-appointed list for a specific term or an indefinite period of time.

The SOPEA will ensure that any remedial measures issued by the Hearing Panel are timely completed. If the respondent attorney fails to fully comply with the imposed sanctions, the SOPEA is authorized to issue additional sanctions, up to and including removal from the list.

Step 5: Appeal to the Virginia Indigent Defense Commission

In the event that the Hearing Panel finds a violation and imposes a sanction or directs removal from the court appointed list, the respondent attorney may appeal only the sanctions to a three-person Commission Panel. The appeal shall be in writing only. The Commission Panel may review any relevant written materials in support of appellant attorney's argument concerning appropriateness of the sanction(s). The Commission Panel shall issue a written decision which shall be final.

Every complainant shall be notified in writing as to the outcome of his/her complaint.