

**VIRGINIA:**

**IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND**

**IN THE MATTER OF  
SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPH 3(c) (JUDICIAL MEMBERS)  
(Petition ID: 22-4)**

**PETITION OF THE VIRGINIA STATE BAR**

Stephanie E. Grana, President  
Cameron M. Rountree, Executive Director  
Virginia State Bar  
1111 East Main Street  
Suite 700  
Richmond, VA 23219-3565  
Phone (804) 775-0560

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**VIRGINIA:**

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**IN THE MATTER OF  
SUPREME COURT RULES, PART 6, § IV  
PARAGRAPH 3(c)**

**PETITION**

**TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE  
SUPREME COURT OF VIRGINIA:**

NOW COMES the Virginia State Bar (VSB), by its president and executive director, pursuant to Part 6, § IV of the Rules of this Court, and requests review and approval of the proposed amendments to Paragraph 3(c) of Part 6, § IV of the Rules governing the Organization and Government of the VSB, as set forth below. The proposed amendments were approved by unanimous vote of the VSB Council on October 21, 2022 (Appendix, p. 3).

**I. Overview of the Issue**

The VSB proposes amending Paragraph 3(c) of Part 6, § IV of the Rules of the Supreme Court of Virginia to clarify the requirements for judicial class membership. This issue was presented because, on multiple occasions in recent years, the VSB staff has confronted questions as to who qualifies, and who should qualify, as judicial class members. The Rule found in Part 6, § IV, Paragraph 3(c) is likely both overinclusive and underinclusive and raises concerns about how the

class should be granted. Consequently, the VSB Bench Bar Relations Committee (the “Committee”) and staff endeavored to resolve this ambiguity and create a uniform understanding.

## **II. Practical Examples of Concern**

The following actual examples demonstrate the problems with the existing definition’s under inclusiveness resulting in surprising applicability for federal judges.

The associate justice of the Supreme Court of the United States (SCOTUS)—this judicial class member was an *associate* member of the VSB upon confirmation as a judge on the U.S. Court of Appeals for the 7th Circuit in 2018. At that time, the member was not textually eligible for judicial class membership because the member was not “a full-time judge of the state” (as the first prong of the Rule then required) and did not satisfy the other judicial class membership requirements. Notwithstanding textual ineligibility, the member was admitted to the judicial class and retained that membership upon confirmation to the Supreme Court of the United States two years later. Under the then-existing, and current, judicial class definition, the member was and would remain ineligible for the VSB judicial class, even as a Supreme Court of the United States associate justice, if not for the initial misapplication by VSB staff in 2018. The Committee and staff believe this member *should* be eligible for judicial class membership.

The judge on the U.S. Court of Appeals (CA4)—this judicial class member was an *associate* member of the VSB when the member was confirmed as a judge on the 4th Circuit in 2019 (presiding in North Carolina). At that time, the member was textually ineligible for judicial class membership because the member was not appointed as “a full-time judge of the state” (as the first prong of the Rule then required) and did not satisfy the other judicial class membership requirements. Under the then-existing, and current, judicial class definition, the member was and would remain ineligible for VSB judicial class membership, even as a 4th Circuit judge. However, the member was granted an ad hoc exception by VSB staff to confer judicial class membership to judges who have the authority to interpret Virginia law. The Committee and staff believe this member *should* be eligible for judicial class membership.

Another judge on the U.S. Court of Appeals (CA7)—this member was an *active* member of the VSB when the member was confirmed as a judge on the U.S. Court of Appeals for the 7th Circuit in 2021. Yet, in this instance, VSB staff strictly applied the requirements for judicial class membership and the same error that was made when the aforementioned associate justice was granted judicial class membership as a 7th Circuit judge was not replicated. This member was advised in 2021 that the member was ineligible for the judicial class because the member did not “preside” (as the Rule currently requires) in Virginia and did not satisfy the

other judicial class membership requirements. This was so despite being an active member of the VSB until the member's ascension to the bench. The Committee and staff believe this member *should* be eligible for judicial class membership.<sup>1</sup>

On the other hand, the Committee and staff believe the current definition of the judicial class is overinclusive and they are uncertain whether it was meant to include the following office holders/positions despite some individuals having been granted judicial class membership: federal judges with no connection to Virginia; federal and state ALJs (Immigration, Social Security, FERC, et al.) regardless of location; non-Virginia federal and state judges who intermittently interpret Virginia law (e.g., through choice of law provisions); US Merit System Protection Board members; Armed Services Board for Contract Appeals members; private arbitrators (e.g., retired non-Virginia judges); patent examiners; and hearing examiners.

Additionally, as written, there are procedural shortfalls in the current definition. For example, according to the text, judicial class membership is automatic, i.e., by operation of Rule, without any ministerial process such as the filing of a judicial affirmation as is administratively requested by VSB staff. Unlike the active and associate classes of membership, that require an act to

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<sup>1</sup> Though immaterial under the current Rule, both court of appeals judges were licensed after successfully passing the Virginia bar exam.

consummate membership (e.g., paying dues, completing the Carrico Professionalism Course, completing MCLE requirements, certifying election of professional liability insurance), the judicial class Rule flatly states that those individuals satisfying one of the three judicial class membership prongs, “*are* judicial members of the Virginia State Bar” (emphasis added). This could lead to an erroneous representation of judicial class membership if quasi-judicial office holders interpret the Rule to grant them automatic judicial class membership.

The Committee and staff believe that the proposed amendments address these problems by requiring judicial class members to: (i) establish judicial bona fides; (ii) establish a connection to the Commonwealth of Virginia; and, on an annual basis, (iii) file an administrative affirmation that confirms their title, address of record, and tribunal/jurisdiction.

The proposed amendments are included below in Section IV.

### **III. Publication and Comments**

Notice of the proposed Paragraph 3 amendments was published on the VSB’s website on July 22, 2022 (Appendix, p. 6) and distributed in the VSB’s E-News on August 1, 2022. (Appendix, p. 7) The comment period for the amendments was open until September 16, 2022.

Several comments were received from Virginia magistrates and organizations representing magistrates voicing opposition to the omission of

magistrates from express inclusion as judicial class members. (Appendix, p. 10 et seq.) Representative of these sentiments were remarks from Avnel A. Coates, President of the Virginia Magistrates Association, who stated that magistrates should be included as judicial class members because “1.) those with magistrate authority (magistrate regional supervisors, chief magistrates, and magistrates) are judicial officers who perform judicial functions, and 2.) maintaining good standing membership of the Virginia State Bar is required for a chief magistrate.”

(Appendix, pp. 18-19)

As a result of Ms. Coates’ comments, and those similar, the Committee revisited the proposed definition at its meeting on September 21, 2022, and unanimously voted (with one abstention) to revise the definition to explicitly include Virginia magistrates. This revision, incorporated below, serves to clarify that Virginia magistrates are included in the definition of those eligible for judicial class membership.

Comprehensively, this proposal resolves ambiguity in the existing Rule and makes clear how the class of membership should be applied by VSB staff in the future.



## IV. Proposed Amendments

Additions are denoted by underlining and deletions by stippling.

### **Pt. 6, Sec. IV, Paragraph 3**

#### **EXISTING**

1 Judicial Members—All full-time judges presiding in the Commonwealth of  
2 Virginia (including federal judges), other officers qualified but forbidden by statute  
3 to practice law, and all retired judges who are receiving retirement benefits and are  
4 prohibited from appearing as counsel in any case in any court of the  
5 Commonwealth under section 51.1-309 of the Code of Virginia are judicial  
6 members of the Virginia State Bar. They are not required to pay dues but are  
7 entitled to all of the privileges of active members except that they cannot vote nor  
8 hold office in the Virginia State Bar and must comply with any statutory  
9 limitations regulating their practice of law.

#### **PROPOSED**

1 Judicial Members—Lawyers who are admitted to practice law in any U.S.  
2 jurisdiction and who establish their authority to adjudicate the rights and liabilities  
3 of parties in adversarial proceedings other than arbitration on a full time basis, and  
4 who make final decisions affecting the rights and liabilities of parties,  
5 notwithstanding a right of appeal of the non-prevailing party, including Virginia  
6 magistrates; and, who are Virginia licensed lawyers at the time of application to  
7 the judicial class of membership, or preside in a tribunal located in Virginia, or, by  
8 virtue of the applicant's official position, have the authority to, and regularly,  
9 judicially interpret Virginia law, qualify for judicial class membership in the  
10 Virginia State Bar. They may become judicial members by filing an annual  
11 affirmation with the Virginia State Bar which identifies their tribunal or  
12 jurisdiction, address of record, and judicial title. They are not required to pay dues  
13 but are entitled to all the privileges of active members except that they cannot vote  
14 nor hold office in the Virginia State Bar. Former judges who do not engage in the  
15 practice of law and are ineligible to transfer to the retired class of membership may  
16 retain their judicial class membership by completing the annual affirmation  
17 indicating their previous title and tribunal or jurisdiction.

## REDLINE

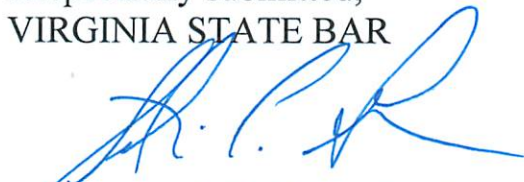
Judicial Members—~~All full-time judges presiding in the Commonwealth of Virginia (including federal judges), other officers qualified but forbidden by statute~~Lawyers who are admitted to practice law, and all retired judges who are receiving retirement benefits and are prohibited from appearing as counsel in any case in any court of the Commonwealth under section 51.1-309U.S. jurisdiction and who establish their authority to adjudicate the rights and liabilities of parties in adversarial proceedings other than arbitration on a full time basis, and who make final decisions affecting the rights and liabilities of parties, notwithstanding a right of appeal of the ~~Code of non-prevailing party~~ including Virginia magistrates; and, who are Virginia licensed lawyers at the time of application to the judicial class of membership, or preside in a tribunal located in Virginia~~are, or, by virtue of the applicant's official position, have the authority to, and regularly, judicially interpret Virginia law, qualify for judicial class membership in the Virginia State Bar. They may become judicial members of~~ by filing an annual affirmation with the Virginia State Bar which identifies their tribunal or jurisdiction, address of record, and judicial title. They are not required to pay dues but are entitled to all ~~of~~ the privileges of active members except that they cannot vote nor hold office in the Virginia State Bar~~and must comply with any statutory limitations regulating their~~. Former judges who do not engage in the practice of law and are ineligible to transfer to the retired class of membership may retain their judicial class membership by completing the annual affirmation indicating their previous title and tribunal or jurisdiction.

## V. Conclusion

“The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar.” Va. Code § 54.1-3910. Pursuant to this statutory authority, the Court has established Part 6, § IV of the Rules of Court relating to the organization and government of the VSB. After notice to the VSB membership and a comment period publicized through VSB publications, the proposed amendments were then unanimously approved by the Executive Committee and Council on October 20 and 21, 2022, respectively.

THEREFORE, the VSB, by its president and executive director, respectfully requests the Court to adopt the foregoing amendments to Part 6, § IV, Paragraph 3 for the reasons set forth above.

Respectfully submitted,  
VIRGINIA STATE BAR



By: Stephanie E. Grana, President



By: Cameron M. Rountree, Executive Director

Dated this 7<sup>th</sup> day of November, 2022

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SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPH 3(c) (JUDICIAL MEMBERS)  
DEFINING JUDICIAL CLASS MEMBERS  
(VSB Petition ID 22-4)**

**APPENDIX TO PETITION OF THE VIRGINIA STATE BAR**

**Stephanie E. Grana, President  
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**MINUTES OF THE VIRGINIA STATE BAR  
COUNCIL MEETING**

**Date:** October 21, 2022, 9:00 am  
**Location:** Boar's Head Resort, 200 Ednam Drive, Charlottesville

The VSB Council met in-person on Friday, October 21, 2022. At 9:04 a.m., President Stephanie E. Grana called the meeting to order. Seventy-one (71) Council members attended in-person satisfying Pt. 6., § IV, Para. 7 of the Rules of the Supreme Court of Virginia. There was no remote participation.

**Council members in attendance:**

President Stephanie E. Grana	Member Kathryn N. Dickerson
President-elect Chidi I. James	Member Brian C. Drummond
Immediate Past President Jay B. Myerson	Member Stephen K. Gallagher
Member D.J. Hansen	Member Carly J. Hart
Member Ryan G. Ferguson	Member Sandra L. Havrilak
Member Naveed Kalantar	Member Tamika D. Jones
Member Bretta Zimmer Lewis	Member Nathan J. Olson
Member Matthew R. Foster	Member Luis A. Perez
Member Neil S. Lowenstein	Member Debra L. Powers
Member Charlene A. Moring	Member Robert B. "Bob" Walker
Member Thomas G. Shaia	Member Michael M. York
Member Derek A. Davis	Member R. Penn Bain
Member Benjamin M. Mason	Member Susan F. Pierce
Member Veronica E. Meade	Member G. Andrew Hall
Member E. M. Wright, Jr.	Member W. Huntington "Hunter" Byrnes, Sr.
Member P. George Eliades II	Member Daniel P. Frankl
Member Timothy R. Baskerville	Member Kevin W. Holt
Member Mark D. Dix	Member Eugene N. Butler
Member Cullen D. Seltzer	Member William T. Wilson
Member Samuel T. Towell	Member Peter K. McDermott II
Member Henry I. Willett, III	Member W. Grant Back
Member Craig B. Davis	Member Bruce H. Russell II
Member Thomas A. Edmonds	Member Bradley D. Fleming
Member Joel R. McClellan	Member D. Sue Baker
Member Allen F. Bareford	Member Anna B. Bristle
Member Richard H. Howard-Smith	Member at Large James W. Hundley
Member Ann Marie Park	Member at Large Lenard T. "Len" Myers, Jr.
Member Carole H. Capsalis	Member at Large Molly E. Newton
Member Jennifer S. Golden	Member at Large Lonnie D. "Chip" Nunley III
Member Adam M. Krischer	Member at Large Patricia E. Smith
Member David E. Sher	Member at Large Joanna L. Suyes
Member Nicholas J. Gehrig	Member at Large Nicole E. Upshur
Member Sebastian M. Norton	CLSBA Chair Luis A. Perez
Member Todd A. Pilot	Diversity Conference Chair Alicia R. Johnson
Member Susan M. Butler	Senior Lawyers Conference Chair Gary C. Hancock
Member Gary V. Davis	Young Lawyers Conference President Craig E. Ellis

**Members absent:**

Member Corrynn J. Peters  
 Member Susan B. Tarley  
 Member Shaun Huband  
 Member Ryan G. Ferguson  
 Member Neil S. Talegaonkar

Member Susheela Varky  
 Member G. L. "Rex" Flynn, Jr.  
 Member Susan M. Pesner  
 Member at Large David P. Weber  
 Member at Large Lisa A. Wilson

**Council Invitees:**

Solomon H. Ashby, Jr.  
 Valerie O'Brien  
 K. Danielle Payne

Old Dominion Bar Association  
 Virginia Trial Lawyers Association  
 Virginia Association of Criminal Defense Attorneys

**Also attending:**

Cameron M. Rountree	VSB	Executive Director and Chief Operating Officer
Renu M. Brennan	VSB	Bar Counsel
Crista L. Gantz	VSB	Director of Access to Legal Services
Crystal T. Hendrick	VSB	Director of Finance and Procurement
James M. McCauley	VSB	Ethics Counsel
Shawne D. Moore	VSB	Assistant to the Executive Director
Caryn B. Persinger	VSB	Director of Communications
Mallory J. Ralston	VSB	Meetings Coordinator
Dolly C. Shaffner	VSB	Meetings Coordinator
Maureen D. Stengel	VSB	Director of Bar Services

**I. Reports and Information Items****A. President's Report**

Ms. Grana reported on her activities. Her written report was included in the materials provided to Council.

**B. Executive Director's Report**

Mr. Rountree reported on matters relating to the VSB. His written report was included in the materials provided to Council.

**C. Financial Reports**

Ms. Hendrick presented the financial report for the year ending June 30, 2022, and as of August 31, 2022. Her written reports were included in the materials provided to Council.

**D. Bar Counsel Report**

Ms. Brennan reported on the activities in the Office of Bar Counsel. Her written report was included in the materials provided to Council.

**E. Conference of Local & Specialty Bar Associations Report**

Chair Luis Perez reported on the activities of the Conference of Local & Specialty Bar Associations. His written report was included in the materials provided to Council.

**F. Diversity Conference Report**

Chair Alicia Johnson reported on the activities of the Diversity Conference. Her written report was included in the materials provided to Council

**G. Young Lawyer Conference Report**

Conference President Craig Ellis reported on the activities of the Young Lawyers Conference. His written report was included in the materials provided to Council.

**H. Senior Lawyers Conference Report**

Chair Gary Hancock reported on the activities of the Senior Lawyers Conference. His written report was included in the materials provided to Council.

**I. Access to Legal Services Report**

Chair Joanna Suyes reported on the activities of the Standing Committee on Access to Legal Services and presented the Voluntary Pro Bono Reporting Summary for Year 4 (2021-2022 Bar Year Contributions for renewals processed as of September 20, 2022). Her written report was included in the materials provided to Council

**J. Standing Committee on Legal Ethics**

Chair Michael York presented Mr. McCauley with a plaque in appreciation of his service as staff liaison to the committee.

**II. Action Items****A. Minutes of the June 16, 2022 Meeting**

A motion was made by Bruce Russell and seconded by Jay Myerson, to vote to approve the minutes of the June 16, 2022 meeting. Council approved, by unanimous vote, the minutes of the June 16, 2022 meeting.

**B. Minutes of the September 7, 2022 Meeting**

A motion was made by Chidi James and seconded by Jay Myerson, to vote to approve the minutes of the September 7, 2022 meeting. Council approved, by unanimous vote, the minutes of the September 7, 2022 meeting.

**C. Paragraph 3 Revisions to Judicial Class Membership**

A summary of the proposed amendments to Part 6, Section IV, Para. 3, defining judicial class membership, was presented by Robert B. Walker, on behalf of the Special Committee on Bench-Bar Relations. A motion was made by Jay Myerson and seconded by Luis Perez, to vote to accept the proposals of the Bench-Bar Relations Committee. Council unanimously voted to recommend the Committee's proposal to the Supreme Court.



**D. Legal Ethics Opinion 1899**

Mr. McCauley presented the memo from Ethics Counsel to the Council for Proposed LEO 1899, Use of Conversion Clause in Flat Fee Agreements, and a draft opinion. A copy of the memo and draft opinion were included in the materials provided to the Council. After brief questions from Cullen Seltzer, a motion was made by Jay Myerson and seconded by Chidi James, to vote to approve the draft opinion. Council voted unanimously to approve the draft to send to the Supreme Court for approval.

**E. Election of Disciplinary Board Chairs**

Ms. Havrilak presented the September 26, 2022 memo to Bar Council from the Clerk of the Disciplinary System requesting approval of Disciplinary Board Vice-Chair recommendations to fill vacancies caused by the resignation of Steven B. Novey due to his appointment to the Circuit Court for the 12<sup>th</sup> judicial circuit. The Board recommended Second Vice-Chair Kamala H. Lannetti to fill the First Vice-Chair vacancy, and board member David J. Gogal to fill the Second Vice-Chair vacancy. Copies of the clerk's memo were included in the materials provided to Council. A motion was made by Luis Perez and seconded by Jay Myerson, to vote to accept the Disciplinary Board's vice-chair recommendations. Council voted unanimously to accept and refer the committee's recommendations to the Supreme Court.

**F. Election of District Disciplinary Committee Members**

Mr. Rountree presented nominees for attorney vacancies on the First, Fourth, Sixth and Seventh district disciplinary committees. Copies of the district committee ballots were included in the materials provided to the Council. A motion was made by Len Myers and seconded by Chidi James, to vote to elect the nominees as presented. Council elected by unanimous vote, the nominees in each district:

- First District
  - Aaron F. Kass
  - Nancy G. Parr
- Fourth District, Section I
  - Edwin Y. Szeto
- Sixth District
  - Adam R. Kinsman
- Seventh District
  - Benjamin B. Fitzgerald

- G. Approval of Resolution Honoring Ethics Counsel James M. "Jim" McCauley**  
Mr. Rountree presented a Resolution dated October 21, 2022 to honor retiring ethics counsel James M. "Jim" McCauley. A copy of the resolution was included in the materials provided to Council. A motion was made by Jay Myerson and seconded by Chidi James, to vote to approve the Resolution. The vote was recorded by the Poll Everywhere live voting tool. The Council unanimously voted, as follows, to approve the resolution. The results are appended to these minutes.

The President invited a motion to adjourn the meeting. A motion was made and seconded, and at 11:24 a.m. the meeting was adjourned.



# Virginia State Bar

*An agency of the Supreme Court of Virginia*

## NEWS AND INFORMATION

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July 22, 2022

### VSB Seeks Comments on proposed amendments to Supreme Court Rules defining judicial class members

The Virginia State Bar seeks public comment on proposed amendments to [Part 6, Section IV, Para. 3\(c\)](#) of the Rules of the Supreme Court of Virginia defining Judicial class members of the VSB.

The proposed amendments by the VSB Bench Bar Relations Committee are primarily intended to address concerns that the existing rule is both underinclusive — by excluding certain judges, and overinclusive — by including occupations that do not require a law license.

### Inspection and Comment

The proposed rule amendments may be inspected below, or at the office of the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0060, between the hours of 9:00 am and 4:30 pm, Monday through Friday.

Any individual, business, or other entity may submit written comments in support of or in opposition to the proposed opinion with Cameron M. Rountree, interim executive director of the Virginia State Bar, not later than **September 16, 2022**. Comments may be submitted via email to [publiccomment@vsb.org](mailto:publiccomment@vsb.org).

[View proposed revisions to Paragraph 3\(c\)](#).(PDF file)

Updated: Jul 22, 2022

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## Governance

The **40th** together working to



**Annual VSB Disciplinary Conference** brought over 120 lawyers, judges, and lay persons maintain the integrity of the legal profession in the Commonwealth.

Over two days, the 17 disciplinary district committees, the Disciplinary Board, the Committee on Lawyer Discipline (COLD), and Bar leadership worked to improve the process

that disciplines lawyers in order to fulfill the Bar's first mission: protecting the public.

The VSB seeks public comment on proposed amendments to [Part 6, Section IV, Para. 3\(c\)](#) of the Rules of the Supreme Court of Virginia **defining Judicial class members of the VSB.**

## Compliance

The MCLE compliance deadline is **October 31, 2022**. Now is the time to check your online record and plan your MCLE compliance. Apply now for any non-approved course that you have attended. Review the [MCLE compliance deadlines](#) and other information.



## Discipline

Disciplinary hearings are public meetings and may be found on the [disciplinary docket](#).

**Recent disciplinary system actions:**

**Jay A. Rosenberg**, privilege revoked, effective July 6, 2022.

**Joseph Ray Pope**, license revoked, effective July 15, 2022.

**Ann Cabell Baskervill**, license suspended, effective July 6, 2022.

**Bradley Glenn Pollack**, license suspended, effective July 30, 2022.

**Dale Reese Jensen**, license suspended, effective August 1, 2022. **John**

**Edward Williams**, public reprimand, effective July 20, 2022.

**Private discipline:** 1 private admonition; 2 private reprimands.

## Pro Bono / Access to Justice



Nominations are being accepted for the **Lewis F. Powell, Jr. Pro Bono Award** and the **Frankie Muse Freeman Organizational Pro Bono Award**. Deadline for submitting nominations is August 12.

We are

one month into the **Get to 30! Challenge**. The goal is 30 hours of pro bono or a donation of \$30 at three different recurring levels by March 31, 2023. Get the full details and be a pro bono All Star. Everyone who signs up is entered into our **monthly gift card drawing**.

## Awards and Events



Competing against bars across the country, the VSB's **Young Lawyers Conference** won four Awards of Achievement from the American Bar Association for the 2021-2022 bar year. The YLC accolades include awards for its newsletter, the Bench-Bar Conference, Wills for Heroes, the Minority Pre-Law Conference, and the Bench-Bar Dinner.

### **Update to Open Meetings Laws Under the Virginia Freedom of Information Act**

August 16 from 2 - 3:30 pm

Free, live webinar CLE

1.5 hours LIVE CLE (*pending*)

Sponsored by the VSB Local Government Section Registration is open.

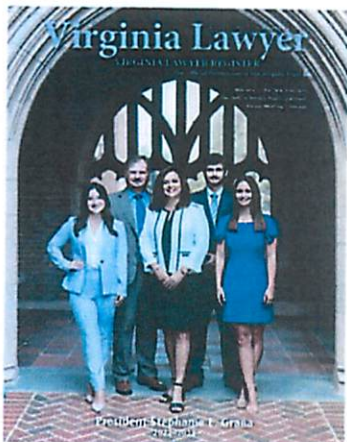


**Additional FREE and low-cost CLE opportunities may be found here.**



Plan on attending the **Solo & Small-Firm Practitioner Forum** on September 20 at Shenandoah University. It's **free**, in-person, and has a virtual option. The forum includes CLE hours, networking, and the opportunity to learn about IOLTA, going paperless, and protecting your data from cyber attacks. **Registration is open now.**

## Virginia Lawyer



**In the mail:** The August *Virginia Lawyer* recaps the first in-person VSB Annual Meeting since 2019; introduces new VSB President Stephanie Grana; features Professor Joe Fore's legal writing column; and Professor Hank Perritt discusses the evolving law of Terry stops.

*Virginia Lawyer* is written by and for lawyers like you, and reaches 50,000 Virginia judges and lawyers, as well as law schools, across Virginia and the country. Contact [Dee Norman](#) for more information on showcasing your firm, your services, or your law school. If you would like to opt out of your paper edition, you may do so in your [lawyer portal](#).

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notices from sections and conferences of which they are a member. [Read the Bar's digital privacy policy.](#)

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EXECUTIVE SECRETARY  
KARL R. HADE  
ASSISTANT EXECUTIVE SECRETARY &

S U P R E M E C O U R T O F V I R G I N I A

JUDICIAL INFORMATION TECHNOLOGY  
MICHAEL J. RIGGS, SR., DIRECTOR  
JUDICIAL SERVICES

LEGAL COUNSEL PAUL F. DELOSH, DIRECTOR  
EDWARD M. MACON LEGAL RESEARCH  
COURT IMPROVEMENT PROGRAM STEVEN L. DALLE MURA, DIRECTOR  
SANDRA L. KARISON, DIRECTOR  
EDUCATIONAL SERVICES LEGISLATIVE ALISA W. a PAOOEN, PUBLIC  
DIRECTOR RELATIONS

BARRY M. WENZIG, DIRECTOR  
HUMAN RESOURCES  
RENEE FLEMING MILLS, DIRECTOR

OFFICE OF J H E EXECUTIVE SECRETARY 1 00  
N O R T H N I N T H S T R E E T  
R I C H M O N D . V I R G I N I A 2 3 2 1 9 - 2 3 3 4  
(804) 786-6455



September 16, 2022

CAROLINE E. KIRKPATRICK, DIRECTOR  
FISCAL SERVICES MAGISTRATE JONATHAN SERVICESE, GREEN, DIRECTOR

VIA ELECTRONIC MAIL

Cameron M. Rountree, Executive Director  
Virginia State Bar  
1 1 1 1 East Main Street, Suite 700  
Richmond, VA 23219-0026  
[CRountree@vsb.org](mailto:CRountree@vsb.org)

Dear Mr. Rountree,

Thank you for taking the time to speak with Jonathan Green, Director of Magistrate Services, and me regarding the proposed amendments to Part 6, section IV, paragraph 3(c) of the Rules regarding judicial membership to the Bar. As we discussed, the Office of the Executive Secretary requests the consideration of the Bench-Bar Relations Committee of the following proposed additional revisions to add Virginia lawyer magistrates to the judicial membership classification. Virginia magistrates are judicial officers with statutory authority to interpret Virginia law and to make many decisions that are final and affect the rights and liabilities of parties. For example, Virginia Code 519.2-45 lists the powers of a magistrate and includes the following language:

- (1) To issue process of arrest in accord with the provisions of §§19.2-71 to 19.2-82 of the code;
- (2) To issue search warrants in accord with the provisions of §§19.2-52 to 19.2-60 of the code;

(3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

(4) The same power to issue warrants and subpoenas as is conferred upon district courts and as limited by the provisions of §§19.2-71 through 19.2-82.

Other Code sections provide additional authority for magistrates and highlight similarities in the judicial authority of magistrates and judges. For example, Subsection A of Virginia Code Letter to Cameron Rountree September 16, 2022  
Page Two

§19.2-152.8 states: 'Sla]ny judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.'

When performing the duties described above, magistrates are required to interpret and apply the laws of the Commonwealth. Before issuing a warrant charging someone with burglary a magistrate must determine that all of the statutory requirements have been met. When making a bail decision, the magistrate must consider all of the factors listed in 19.2-120 and determine what course of action is appropriate. Magistrates look to the language of the Code of Virginia to guide their decisions and may also consider relevant court decisions when making their decisions.

In the summary that accompanied the proposed Rule change, Problem #2 states that the current definition of judicial class members is overinclusive and staff are uncertain that it was meant to include the following office holders/positions:

- Federal and state ALJs
- US Merit System Protection Board members
- Armed Services Board for Contract Appeals members
- Virginia magistrates (which may, categorically: include non-lawyers)
- Private Arbitrators • Patent examiners
- Hearing examiners.

Virginia magistrates were included on this list but their authority and responsibilities differ vastly from the other named positions. Of all the listed positions, only Virginia magistrates can authorize the arrest of an individual on a criminal charge. Only a Virginia magistrate can commit an arrested person to jail or release them on bond. Only a Virginia magistrate can authorize the search of a



person's home or order them to receive medical or mental health treatment without their consent. The duties of a Virginia magistrate are quite different from the other listed positions. A Virginia magistrate's duties and authority are sufficiently similar to those of a Virginia judge to allow those magistrates that are lawyers who are admitted to practice law to claim judicial membership status.

The following proposed amendments, in blue, are intended to clarify that Virginia magistrates who are lawyers would qualify as judicial members of the Bar. We are not aware of any non-lawyer Virginia magistrates who have sought judicial membership status and do not believe that they would be entitled to claim such membership under the proposed amendments.

## REDLINE

Judicial Members ~~All full-time judges presiding in the Commonwealth of Virginia~~  
 Letter to Cameron Rountree  
 September 16, 2022  
 Page Two

~~(including federal judges), other officers qualified but forbidden by statute~~ **Lawyers who are admitted to practice law,** and ~~all retired judges who are receiving retirement benefits~~ and are prohibited from appearing as counsel in any case in any court of the Commonwealth under section 5-k4—309 U.S. jurisdiction and who establish their authority to adjudicate the rights and liabilities of parties in adversarial proceedings other than arbitration on a full time basis, and who make final decisions affecting the rights and liabilities of parties, notwithstanding a right of appeal of the Cede-of non-prevailing party, including Virginia magistrates; and, who are Virginia licensed lawyers at the time of application to the judicial class of membership, or preside in a tribunal located in Virginia are, or, by virtue of the applicant's official position, have the authority to, and regularly, judicially interpret Virginia law, qualify for judicial class membership in the Virginia State Bar. They may become judicial members of by filing an annual affirmation with the Virginia State Bar which identifies their tribunal or jurisdiction, address of record, and judicial title. They are not required to pay dues but are entitled to all of the privileges of active members except that they cannot vote nor hold office in the Virginia State Bar and ~~must comply with any statutory limitations regulating the~~ . Former judges who do not engage in the practice of law and are ineligible to transfer to the retired class of membership may retain their judicial class membership by completing the annual affirmation.

We appreciate the consideration of the Bench-Bar Relations Committee of these proposed amendments. Please feel free to contact me at (804) 225-3474 or Jonathan Green at (804) 786-9029 if you have any questions.

Sincerely,



Alisa W. Padden  
Alisa W.

Padden AWP:jrs

cc: The Honorable Bernard S. Goodwyn, Chief Justice  
Karl R. Hade, Executive Secretary



United States Court of Appeals for  
the Seventh Circuit

219 South Dearborn Street  
Chicago, Illinois 60604

Chambers of  
Judge Candace Jackson-Akiwumi

(312) 547-7600

September 16, 2022

Via Email

Cameron M. Rountree  
Executive Director and Chief Operating Officer  
**Virginia State Bar**  
1111 East Main Street, Suite 700  
Richmond, VA 23219-0026

Dear Mr. Rountree:

I am pleased that the Virginia State Bar is undergoing regulatory review of the Supreme Court

Rules defining judicial class I wrote in full support of the proposed amendments to Part 6, Section IV, Paragraph 3(c) of the Rules of the Supreme Court of Virginia.

I believe the document posted on the VSB website on July 22, 2022, outlining the proposed revisions my story (see page 2, the first bullet point, referencing a "Judge on federal Court of Appeals (CA7)"), but I will supply additional information here for your benefit and that of the reviewing committee and staff.

I am a proud native of Norfolk, Virginia, and have been a member of the VSB since I graduated from law school in 2005. I was honored to be appointed by President Biden as a federal appellate judge on July 1, 2021. I serve as a Circuit Judge on the U.S. Court of Appeals for the Seventh Circuit, headquartered in Chicago, Illinois. My duty station is Chicago.

After my ~~appointment~~ to federal bench, I asked the VSB to change my status from Active to Judicial. I was told not—that only judges appointed to preside in Virginia qualify for Judicial status.

I asked whether I may fall under second clause of the rule in Part 6, Section IV, Paragraph 3(c) ("Other officers qualified by statute (law), Title 28, Section 454, of the United States Code expressly prohibits federal judges from practicing law. As such, I am an officer prohibited by statute from practicing law. It does not appear that "office" or "statute" are defined in title in Part 6, Section IV, Paragraph 3(c) to federal judges and federal names.

In response, I received an email answering my question in negative and also stating that one of my options was to resign from the VSB. The email even attached a resignation form. I was

1

dismayed. Not only I am a native who has been a proud member of the VSB for ~~seventeen~~ years, both of my parents, my aunt, and my brother are all members of the VSB (my parents are Judicial members at that). I cannot imagine resigning from the Bar. It does not seem believable that federal judges around the country are not welcome as judicial members in their own state bar.

When I inquired further, the former Regulatory Compliance Director, ~~Demetrius~~ Melis, told me via email on August 31, 2021: "I would expand this class of membership to all federal judges, regardless of the state, to include those with no connection to Virginia. I am able to expand membership. For example, a U.S. Bankruptcy Judge in New Mexico who was never licensed by Virginia Board of Bar Examiners could qualify for this class; the VSB does not believe such expansive inclusion was the intent of the Supreme Court of Virginia."

Respectfully, I am not from a New Mexico judge with no ties to VSB, as I was already licensed by and a member of the VSB when elevated to the bench. I immediately suggested, in response to Mr. Melis's email, that perhaps the rule could allow judicial membership to federal judges who are current members of VSB at the time of their appointment. This would restrict any privileges in the way the VSB wants but also preserve ties to the VSB for those members who wish to maintain them and who wish to contribute to Bar when the opportunity presents.

For this reason, I am pleased to see the proposed revisions. I believe the revisions will enable me to remain a member of the VSB, and to enjoy earned judicial status that I now understand (from the proposed revisions document) that other federal judges outside the Commonwealth have been denied for various reasons. I urge the adoption of the proposed amendments.

Thank you for your time and consideration.

Sincerely,



Candace Jackson-Aliwumi

2

From: To: [publiccomment](#)  
"Scott Scher" Ha-11--K21811: Mhz.eDba.u.n.e  
Subject: RE: EXTERNAL SENDER FW: Proposed Amendment to Part 6, sect IV, Para. 3(c) of the Rules of the Supreme  
court of Virginia  
Date: Thursday, August 4, 2022 9:30:57 AM

Dear Mr. Scher,

Thank you for your comment to the Bench Bar Relations Committee's proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar. The Committee will consider your comment at its next meeting.

Best,



**Kristi R. Hall**  
 Executive Assistant/Paralegal  
 Virginia State Bar  
 1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026  
 804/775-0557 Fax 804/775-0507 | [khall@vsb.org](mailto:khall@vsb.org) | [www.vsb.org](http://www.vsb.org)

The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers. The VSB continues to provide essential services to Virginia's lawyers and the public. However, we continue to keep the health and safety of lawyers, employees, and the public at the forefront of our actions. The office remains closed to visitors who have not made prior arrangements until further notice. We urge the use of electronic communication to assist us in providing services. If you need to reach a staff person, please send an email or call the appropriate person. We will provide additional updates on our website.

From: Scott Scher <[sscher@vacourts.gov](mailto:sscher@vacourts.gov)>

Sent: Thursday, August 4, 2022 7:42 AM

To: publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>

Subject: EXTERNAL SENDER FW: Proposed Amendment to Part 6, Sect IV, Para. 3(c) of the Rules of the Supreme Court of Virginia

You don't often get email from [sscher@vacourts.gov](mailto:sscher@vacourts.gov). [Learn why this is important](#)

Dear Cameron M. Rountree,

My name is Scott L. Scher (VA Bar# 79024). I am a Virginia Magistrate and I write concerning the proposed amendments to Part 6, Sect IV, Para. 3(c) of the Rules of the Supreme Court of Virginia.

I have been a magistrate for over 10 years. My inclusion in the Virginia Bar is crucial should I ever leave this job to go into practice. Without this inclusion, it appears that I would have to go inactive or pay for an active membership that the Supreme Court of Virginia bars from using. This is illogical. It interferes with my ability to keep up to date on the latest issues facing attorneys, courts, and the law in the Commonwealth.

After reading the proposed changes, there seems an infinitely simpler solution. Simply state that magistrates who have not passed the bar cannot be members of the Virginia State Bar. This would not require nearly the difficulty of the changes you are thinking of implementing.

Scott L. Scher  
 Magistrate  
 Supreme Court of Virginia  
 Region 5, District 31  
 15948 Donald Curtis Dr.  
 Woodbridge, VA  
 22191 phone: (703)  
 792-7360 fax: (703)

792-7004

August 9, 2022

To: The Virginia State Bar; VSB Bench Bar Committee  
[publiccomment@vsb.org](mailto:publiccomment@vsb.org)  
 From: Avnel A. Coates

Re: Proposed amendments to Part 6. Section IV. Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the VSB

I write in opposition to the proposed amendment noted above. Current and future attorneys who have or attain magistrate authority under Virginia Code section S 19.2-45 should remain eligible for judicial status with the Virginia State Bar. The proposed amendment excluding Virginia magistrates should not be implemented because 1.) those with magistrate authority (magistrate regional supervisors, chief magistrates, and magistrates) are judicial officers who perform judicial functions, and 2.) maintaining good standing membership of the Virginia State Bar is required for a chief magistrate.

In the notes under the existing rule section of the proposed amendments, it states that one of the reasons for the proposed amendments is that the current rule includes positions that are insufficiently judicial. A magistrate is "a judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal". Black's Law Dictionary (11<sup>th</sup> ed. 2019. Magistrate). A judicial officer is "a judge or magistrate". Black's Law Dictionary (11<sup>th</sup> ed. 2019. Judicial Officer). Supreme Court Rule 11 includes magistrates as "judicial officers". Va. Sup. Ct. R. 11 Supreme Court Rule 11 includes the Office of the Executive Secretary as a part of the Virginia Judiciary. Va. Sup. Ct. R. 11 The Department of Magistrate Services is under the Office of the Executive Secretary. The magistrate is a judicial officer and is a part of the Virginia Judiciary.

The magistrate's position is judicial. Judicial is "of, relating to, or involving a judgment. Black's Law Dictionary (11<sup>th</sup> ed. 2019. Judicial). Judicial is "of or relating to a judgment, the function of judging, the administration of justice, or the judiciary". [www.merriamwebster.com/dictionary/judicial](http://www.merriamwebster.com/dictionary/judicial) (accessed August 4, 2022). Those with magistrate authority make probable cause judgments regarding arrest and bail. Judgments are made regarding mental health detentions, whether to allow a search or seizure, and regarding emergency protective orders. Magistrates' orders are judicial orders that require action taken in accordance with the magistrate's judgment. Those with magistrate authority are reading and interpreting the law, applying the law to real-life facts, and making judgments and decisions. These decisions have legal, criminal, and constitutional implications and outcomes. These judgments and decisions change lives. Those with magistrate authority are bound to canons of conduct like judges, Canons of Conduct for Virginia Magistrates, and those with magistrate authority cannot practice law like judges. Va. Ann. Code SSI 9.2-37. Those with magistrate authority are required to be impartial, unbiased, and fair like judges. Canons of Conduct for Virginia Magistrates. All indicators point to those who have magistrate authority being judicial officers.

The proposed amendment seeks to address the inclusion of occupations that do not require a law license under the existing rule, which does not apply to Virginia's chief magistrates who are required to have a law license. The second paragraph of the announcement for the proposed amendment states that the proposed amendments are intended primarily to address concerns related to the existing rule being .overinclusive—by including occupations that do not require a law license." [https://www.vsb.org/site/news/item/proposed\\_amendments\\_para3\\_07222022](https://www.vsb.org/site/news/item/proposed_amendments_para3_07222022) (accessed August 3, 2022). A Virginia chief magistrate "must be a member in good standing of the Virginia State Bar". Va. Ann. Code } 19.2-36. Additionally, chief magistrates and magistrates are prohibited from practicing law, engaging in outside employment without approval, and prohibited from engaging in any activities for financial gain during the hours that he or she is serving. Va. Ann. Code 519.2-37 and Va. Ann. Code 519.2-36.

Eligibility for judicial status is inherent to the magistrate position. Current and future licensed attorneys who successfully complete the magistrate certification process should remain eligible for judicial status with the Virginia State Bar.

Respectfully,  
Avnel A. Coates



From:  
To:  
Subject:  
Date:

[publiccomment](#)

'Tiffany Keffer' zuhlmmgn!;  
Rzun.iL%-Camnn

RE: EXTERNAL SENDER Comment on Judicial Status  
Proposal Monday, August 22, 2022 8:53:41 AM

Dear Ms. Keffer,

Thank you for your comment to the Bench Bar Relations Committee's proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar. The Committee will consider your comment at its next meeting.

Best,



**Kristin Hall**  
Executive Assistant/Paralegal  
Virginia State Bar

1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026  
804/775.0557 | Fax 804/775.0597 | [hallay-sbar-g](mailto:hallay-sbar-g) | [www.vsb.org](http://www.vsb.org)

The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers. The VSB continues to provide essential services to Virginia's lawyers and the public. However, we continue to keep the health and safety of lawyers, employees, and the public at the forefront of our actions. The office remains closed to visitors who have not made prior arrangements until further notice. We urge the use of electronic communication to assist us in providing services. If you need to reach a staff person, please send an email or call the appropriate contact-person we will provide additional updates on our website

From: Tiffany Keffer <[tkeffer@vacourts.gov](mailto:tkeffer@vacourts.gov)>  
Sent: Sunday, August 21, 2022 12:16 AM  
To: publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>  
Subject: EXTERNAL SENDER Comment on Judicial Status Proposal

You don't often get email from [tkeffer@vacowrts.gov](mailto:tkeffer@vacowrts.gov) [Learn why this is important](#)

I am not only against the proposal to remove magistrates from eligibility for judicial status with the Virginia State Bar, I am also offended and confused by the proposal all at the same time. The proposal alleges that non-lawyer magistrates were previously qualified to be members of the Virginia State Bar under judicial status. That is entirely untrue. While some magistrates are not lawyers, the existing rule defining judicial class members states "officers qualified but forbidden by statute-tQ-p-Lacij.ce-lau" are eligible to be judicial status members. There are ZERO cases of non-lawyer magistrates with membership in the Virginia State Bar under this rule since nonlawyer magistrates are NOT qualified to practice law. Therefore they are not "qualified but forbidden by statute to practice law."

Non-lawyer magistrates are not able to practice law or be members of the Virginia State Bar in any capacity under any status. The magistrates that are currently under judicial

status in the

Virginia State Bar ARE lawyers that graduated law school, passed the Virginia State Bar Exam and have gone into public service working for the Magistrate System (under the Supreme Court of the Commonwealth of Virginia). Up until a retention plan that just passed this year, the majority of magistrates that are licensed attorneys were making under \$50,000 a year. They went to law school, passed the Bar Exam, and chose a low-salary public service job in lieu of a high paying job in private practice. The ability to be on judicial status and not have to be concerned with paying dues or paying for expensive bar-approved CLE courses is just a small reward for working in the public service sector as a magistrate. Magistrate's offices are staffed 24/7 365 days a year, during holidays, during bad weather, during COVID, in the middle of the night, etc. I think it is offensive for anybody to allege that somehow non-lawyer magistrates are sneaking into membership with the Virginia State Bar due to overinclusive language. It is absolutely untrue.

In short, the allegation is that the current Rules of the Supreme Court of Virginia defines judicial status so loosely that it allows for non-lawyer magistrates to be members of the Virginia State Bar. This allegation is 100% untrue so it should not be used as the basis for disallowing future actual bar members that choose to become magistrates from benefiting from classification as judicial status members.

Tiffany Overfelt Keffer, Magistrate

Eastern Magisterial

District

Department of Magistrate Services

Office of the Executive Secretary

Supreme Court of Virginia

Phone:

540.382.6925 Fax:

540.381.2868

[tkeffer@vacourts.g](mailto:tkeffer@vacourts.g)

OV

[publiccomment](#)

[Rowntree, Cameron](#)

[Hall, Kristi](#)

FW: EXTERNAL SENDER Proposed Amendments To supreme court Rules - Judicial Members Monday, August 29, 2022 10:08:38 AM

---

Cameron:

Hope you had a nice weekend.

Please see the comment below from Kevin L. Wiggs in regard to proposed

amendments to the SCV Rules vis-à-vis Judicial Members.

Kristi



**Kristi Hall**  
 Executive Assistant/Paralegal  
 Virginia State Bar  
 1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026  
 804/775.0557 | Fax 804/775.0571 | [hall@vsb.org](mailto:hall@vsb.org) | [www.vsb.org](http://www.vsb.org)

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From: Kevin L. Wiggs <[kwiggs@vacourts.gov](mailto:kwiggs@vacourts.gov)>  
 Sent: Saturday, August 27, 2022 7:18 PM  
 To: publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>  
 Cc: Kevin L. Wiggs <[kwiggs@vacourts.gov](mailto:kwiggs@vacourts.gov)>  
 Subject: EXTERNAL SENDER Proposed Amendments To Supreme Court Rules - Judicial Members

You don't often get email from [kwiggs@v.acourts.gov](mailto:kwiggs@v.acourts.gov) | [learn why this is important](#)  
 Hello Mr. Rountree,

I submit these comments in opposition to the proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia. The contemplated change as it relates to magistrates is unnecessary. Specific limits already exist as to who can be designated as a judicial member. The person must be a member of the Virginia State Bar, who is licensed by the Virginia Board of Bar Examiners or has been admitted by the Supreme Court of Virginia. Magistrates who meet these requirements fall squarely within the category of judicial member; and therefore, should not be precluded now or in the future from qualifying for this specific class. Importantly, a judge is defined as any judge, associate judge or substitute judge of any court or any magistrate". Va. Code S 19.2-5 (1950), as amended. Also, it should be noted that a "judicial officer" means, in pertinent part, "...any magistrate serving the jurisdiction..." Va. Code S 19.2-119 (1950) as amended; and a judge, magistrate, or other person authorized to issue criminal warrants. Va. Code S 19.2-56.2 (1950) as amended. Specific powers of a magistrate include the authority to issue process of arrest and search warrants; and to admit to bail or commit to jail. Additionally, magistrates have the same power to issue warrants and subpoenas as is conferred upon district courts; and have absolute immunity for acts performed in their judicial capacity. See Va. Code S 19.2-45 (1950), as amended; King v. Myers, 973 F.2d 354, 356 (4<sup>th</sup> Cir. 1992); Pressly v. Gregory, 831 F.2d 514, 517 (4<sup>th</sup> Cir. 1987).

These comments reflect my personal thoughts and are submitted in my capacity as a VSB member. Thank you, in advance, for your consideration of my concerns

regarding this proposed amendment.

**Kevin L. Wiggs, Magistrate**  
**19th Judicial District, Region 5**  
**Department of Magistrate Services**  
**Office of the Executive Secretary**  
**Supreme Court of Virginia**  
**Tel: 703-246-2180**  
**Fax: 703-352-5817**  
**[kwiggs@vacourts.g](mailto:kwiggs@vacourts.gov)**  
**ov**

[publiccomment](#)

Rowntree, Cameron

HAIL-KLi5ki; publiccomment

FW: EXTERNAL SENDER comment on Proposed Amendments to Part 6, Section IV, Para. 3(c) Friday, September 16, 2022 8:21:34 AM

Cameron:

Please see the comment below from Taylor Meek to the Bench Bar Relations Committee's proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar.

Best,



**Kristin Hall**  
Executive Assistant/Paralegal  
Virginia State Bar

1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026  
804/775.0557 | Fax 804/775.0597 | [hallavsh.org](mailto:hallavsh@vsb.org) | [www.vsb.org](http://www.vsb.org)

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From: Taylor Meek <[meektaylor95@gmail.com](mailto:meektaylor95@gmail.com)>

Sent: Thursday, September 15, 2022 8:26 PM

To: publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>

Subject: EXTERNAL SENDER Comment on Proposed Amendments to Part 6, Section IV, Para. 3(c)

You don't often get email from [meektaylor95@gmail.com](mailto:meektaylor95@gmail.com) [earn why this is important](#) To Whom it May Concern,

I felt the need to send in a comment to outline my concern about the proposed rule change that would remove judicial class membership from future Magistrates. There are a few potential ramifications that may follow the rule change if implemented in its current form. However, my interest in leaving a comment to the proposed rule change is not limited to the potential ramifications on future Magistrates that wish to have judicial class membership. Judicial class membership aids Magistrates who are VSB Members by lifting some of the burden from ongoing compensation issues Magistrates face, however that is not the only reason that Magistrates should continue to be allowed judicial class membership if they qualify for VSB Membership.

The proposed rule change states that judicial members who "establish their authority to adjudicate the rights and liabilities of parties in adversarial proceedings other than arbitration on a full time basis, and who make final decisions affecting the rights and liabilities of parties, not withstand a right of appeal of the non-prevailing party; and who are Virginia licensed lawyers at the time of

application to the judicial class membership...or, by virtue of the applicant's official position, have authority to, and regularly, judicially interpret Virginia law, qualify for judicial class membership in the Virginia State Bar." A

Magistrate, by the virtue of their position, has authority to judicially interpret Virginia law. Magistrates are asked daily to apply and interpret Virginia law during probable cause hearings and bail hearings. While Magistrates do not have to be lawyers to be placed in their positions that should not preclude Magistrates who are VSB Members from qualifying for judicial class membership. If a Magistrate meets the definition of a judicial class member, and has obtained VSB Membership, they should not lose that status simply because some of their coworkers are not VSB Members.

I appreciate your consideration,  
Taylor Meek  
Virginia Bar Number: 95895

[publiccomment](#)  
[Rountree, Cameron](#)

Hall-KList1; publiccomment

FW: EXTERNAL SENDER Proposed Rule Change Regarding  
 Judicial Status Friday, September 16, 2022 8:22:29 AM

Cameron:

Please see the comment below from Charles Davis to the Bench Bar Relations Committee's proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar.

Best,



~~Kristin Hall~~

~~Kristin Hall~~  
 Executive Assistant/Paralegal

Virginia State Bar

1111 East Main Street, Ste. 700 | Richmond, VA 23219-0026

804/775.0557 | Fax 804/775.0597 | hall:ausha-g | xau-uy-shag

The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers. The VSB continues to provide essential services to Virginia's lawyers and the public. However, we continue to keep the health and safety of lawyers, employees, and the public at the forefront of our actions. The office remains closed to visitors who have not made prior arrangements until further notice. We urge the use of [electronic communication](#) to assist us in providing services. If you need to reach a staff person, please send an email or call the appropriate [contact person](#). We will provide additional updates on our [website](#).

From: Charles Davis <chwdavis@gmail.com>

Sent: Friday, September 16, 2022 5:29 AM

To: publiccomment <PublicComment@vsb.org>

Subject: EXTERNAL SENDER Proposed Rule Change Regarding Judicial Status

You don't often get email from [chwdavis@gmail.com](mailto:chwdavis@gmail.com) I earn [why this is important](#)

I am writing to register my vigorous opposition to the proposed amendments to Part 6, Sec. IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the VSB, at least as they purport to remove Virginia barred magistrates from judicial status.

I have been a member of the Virginia Bar since the mid-1990's and a magistrate since 2010. I am not writing on behalf of the magistrate system as a whole, but rather in my individual capacity.

I have always thought that magistrates were considered Judicial Status members of the bar because they are statutorily defined judicial officers as well as highly trained members of our legal system, with rigorous yearly legal education requirements. The CLE requirements of magistrates match or exceed those required of most bar members.

In the comments to the proposed change, it is stated that magistrates are considered to be "insufficiently judicial" to qualify for judicial status. I find this assertion to be particularly myopic and offensive.

Magistrates make "judicial" decisions on a daily basis. Among other things, they determine probable cause for the issuance of warrants and search warrants, they make bail decisions which impact the liberty of defendants, and they issue orders of involuntary commitment for persons suffering from mental illness.

**I believe that magistrates are acting in a judicial capacity in nearly everything they do. They are, in fact, statutorily defined as "independent judicial officers." I would argue that the only legitimate reason to deny any magisfrate judicial status in the Virginia State Bar would be because that particular magistrate was not a member of the bar, and thus could not have any status, let alone judicial.**

**I also see that there is a stated intention to "grandfather" lawyer-magistrates who were previously judicial class members. However, since this is not actually stated in the text of the proposed rule, it provided little comfort. I would be opposed to this rule change even if it were.**

**I curious about what motivated this proposed rule change. I wonder if it was proposed by someone who is familiar with the most assuredly judicial work that magistrates do every day. I would welcome the opportunity to sit down and talk with anyone who feels that magistrates are "insufficiently judicial." I believe that I could make a strong case that the independent judicial officers that we call magisfrates are among the most "judicial" members of our criminal justice system.**

**Thank you,**

**Charles Warren Davis**



President  
Avnel Coates

Immediate Past President  
Kara Akins

\*Vice President 2<sup>nd</sup> Vice President Seketta Skoloda Joy Dudley

Secretary Treasurer Alyssa Emery Dru Letourneau



I

Parliamentarian  
Kynnecy Stubbs

Regional Representative  
Claire F. Bonilla —  
Region 3

Regional  
Representative Carrie  
Hodges — Region 4

Tara Estwick — Region 6

P.O. Box 368, Montpelier VA 23192  
<https://www.vamagistrate.org/>

September 14, 2022

To: The Virginia State Bar; VSB Bench Bar Committee

[publiccomment@vsb.org](mailto:publiccomment@vsb.org)

Re: Proposed amendments to Part 6. Section IV. Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the VSB

We, the Virginia Magistrates Association, Inc., submit this comment in opposition to the proposed amendments to Part 6. Section IV. Para. 3(c) of the Rules of the Supreme Court of Virginia. Current and future attorneys who have or attain magistrate authority under Virginia Code section 519.2-45 should remain eligible for judicial status with the Virginia State Bar.

The Virginia Magistrates Association, Inc. members consist of attorney and non-attorney magistrates, attorney and non-attorney chief magistrates, and attorney and non-attorney magistrate regional supervisors.

We oppose this comment for the reasons stated below:

1. The proposed amendment states that the amendments seek to address the inclusion of occupations that do not require a law license, but a Virginia chief magistrate "must be

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a member in good standing of the Virginia State Bar". Va. Ann. Code 519.2-36. The proposed amendment, if enacted as written, would exclude an occupation that does require a law license by excluding chief magistrates from judicial class membership.

2. Those with magistrate authority are prohibited from engaging in outside employment without approval and prohibited from engaging in any activities for financial gain during the hours that he or she is serving. Virginia attorney magistrates are prohibited from practicing law. Va. Ann. Code 519.2-37 and Va. Ann. Code \*19.2-36. Those with magistrate authority give up these opportunities and adhere to the Canons of Conduct for



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Virginia Magistrates to ensure and maintain fairness, impartiality. In addition to the Canon of Conduct for Virginia Magistrates, attorney magistrates are also required to adhere to the Virginia Rules of Professional Conduct. These additional requirements for magistrates are similar requirements required on occupations that are included in the VSB's judicial class membership.

3. The magistrate's position is judicial. Judicial is "of, relating to, or involving a judgment. Black's Law Dictionary (11<sup>th</sup> ed. 2019. Judicial). Judicial is "of or relating to a judgment, the function of judging, the administration of justice, or the judiciary". [www.merriamwebster.com/dictionary/judicial](http://www.merriamwebster.com/dictionary/judicial) (accessed August 4, 2022). Those with magistrate authority make judgements whether a respondent is detained at a hospital for

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eight hours for a mental health evaluation or 72 hours for mental health treatment. Those with magistrate authority make judgements determining if someone accused of a criminal offense will be charged and enter the legal/criminal justice system. Those with magistrate authority make judgements whether a defendant will be incarcerated until an arraignment hearing is conducted by the court. Those with magistrate authority make judgements determining when the law enforcement agencies can enter one's private residence to seize or search. Those with magistrate authority make judgements that can result a respondent losing their employment and/or gun rights due to the issuance of an emergency protective order. Those with magistrate authority are reading and interpreting the law, applying the law to real-life facts, and making judgements. These decisions have legal, criminal, and constitutional implications and outcomes. These judgements and decisions are critical to the legal system, criminal justice system, court system, and people's everyday outcomes and lives.

4. A magistrate is commonly known as a judicial officer. A magistrate is "a judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal". Black's Law Dictionary (11<sup>th</sup> ed. 2019. Magistrate). A judicial officer is "a judge or magistrate". Black's Law Dictionary (11<sup>th</sup> ed. 2019. Judicial Officer). Virginia law includes magistrate in the definition of a judge. Va. Ann. Code S 19.2-5 (Judge).



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Supreme Court Rule 11 includes magistrates as judicial officers". Va. Sup. Ct. R. 11 :2(d).

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Supreme Court Rule 11 includes the Office of the Executive Secretary as a part of the Virginia Judiciary. Va. Sup. Ct. R. 1 The Department of Magistrate Services is under the Office of the Executive Secretary. The magistrate is a judicial officer and is a part of the Virginia Judiciary. Those with magistrate authority and who are licensed Virginia attorneys are judicial officers and judicial class membership directly aligns with their duties, responsibilities, and requirements.

One of the stated intents of the committee is to "grandfather lawyer-magistrates, who were previously VSB judicial class members", but the proposed changes do not reflect this intent. There is also the concern raised by the committee regarding non-lawyer magistrates being currently "categorically" included in the judicial class definition. The intention and concern may be addressed by amending the rule to only include magistrates who are or are eligible to become licensed Virginia attorney. We propose adding to the proposed amendment: "or have or attain magistrate authority pursuant to Virginia Code {19.2-45 or Virginia Code 519.2-36" after "appeal of the non-prevailing party" and before "and, who are Virginia licensed lawyers at the time of application to the judicial class of membership". This will allow lawyers who have magistrate authority (magistrates, chief magistrates, and magistrate regional supervisors) to continue to have and be eligible for VSB judicial class membership.

The Virginia Magistrates Association is opposed to the current proposed rule discussed in this comment and propose that the rule continues to afford current and future licensed attorneys who have magistrate authority pursuant to Virginia Code 519.2-45 or Virginia Code SI 9.2-36 judicial class membership under the Virginia State Bar.

Respectfully,

Virginia Magistrates Association, Inc.

President  
Avnel Coates

Immediate Past President  
Kara Akins

2<sup>nd</sup> Vice President Seketta Skoloda Joy Dudley

Secretary      Treasurer Alyssa Emery      Dru Letourneau  
From:            [publiccomment](#)  
To:                [Rountree, Cameron](#)  
                      [Hall, Kristi](#); Moue-Shaun  
Subject:         FW: EXTERNAL SENDER Comment to proposed amendments to Part 6. Section IV. Para. 3(c) Of the Rules  
                      Of the Supreme Court of Virginia  
Date:             Wednesday, September 14, 2022 8:21:13 AM  
Attachments:   [VMA letter to VSB regarding VSB proposed rule 2022.pdf](#)

Good morning, Cameron:

Attached is a comment on behalf of the Virginia Magistrates Association, Inc. to proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar.

Best,



**KRISTI PAH**  
Executive Assistant/Paralegal  
Virginia State Bar  
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The Virginia State Bar is a state agency that protects the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers. The VSB continues to provide essential services to Virginia's lawyers and the public. However, we continue to keep the health and safety of lawyers, employees, and the public at the forefront of our actions. The office remains closed to visitors who have not made prior arrangements until further notice. We urge the use of [electronic communication](#) to assist us in providing services. If you need to reach a staff person, please send an email or call the appropriate [contact person](#). We will provide additional updates on our website.

From: Virginia Magistrates <[va.mag.assoc@gmail.com](mailto:va.mag.assoc@gmail.com)>  
Sent: Wednesday, September 14, 2022 8:00 AM  
To: publiccomment <[PublicComment@vsb.org](mailto:PublicComment@vsb.org)>  
Subject: EXTERNAL SENDER Comment to proposed amendments to Part 6. Section IV. Para. 3(c) of the Rules of the Supreme Court of Virginia

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Good morning,

Attached is a comment regarding the proposed amendments to Part 6. Section IV. Para. 3(c) of the Rules of the Supreme Court of Virginia.

Thank you.  
Virginia Magistrates Association, Inc.

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Secretary      Treasurer Alyssa Emery    Dru Letourneau  
To:                Rountree, Cameron  
cc:                Hall, Kristi; Moore, Shawna  
Subject:        FW: EXTERNAL SENDER Comment in Opposition to Judicial Class Member Amendment  
Date:            Thursday, September 15, 2022 9:34:47 AM

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Good morning Cameron:

Please see the comment below from Ms. Emery to the Bench Bar Relations Committee's proposed amendments to Part 6, Section IV, Para. 3(c) of the Rules of the Supreme Court of Virginia defining Judicial class members of the Virginia State Bar.

Best,

Kristi R. Hall  
Executive Assistant/Paralegal  
Virginia State Bar

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Original Message-m-

From: Alyssa DE <alyssade2@gmail.com>

Sent: Thursday, September 15, 2022 9:27 AM

To: publiccomment <PublicComment@vsb.org>

Subject: EXTERNAL SENDER Comment in Opposition to Judicial Class Member Amendment

[You don't often get email from alyssade2@gmail.com. Learn why this is important at [https://aka.ms/learn\\_AboutSenderIdentification](https://aka.ms/learn_AboutSenderIdentification) ]

Good morning,

I write to express my opposition to the proposed amendment to the Supreme Court Rules defining judicial class members. In particular, the alleged over inclusiveness of Virginia magistrates.

Part (ii) of the Rules state, "other officers qualified but forbidden by statute to practice law,". It is unclear to me how a magistrate who is not an attorney, licensed by the Virginia State Bar, would be qualified. To be qualified, one must be licensed.

Since magistrates are prohibited from practicing law and because their salaries, in my personal opinion, are embarrassingly low, many attorney magistrates opt to hold a judicial membership to save money on dues, which has been a fantastic benefit. However if they job search, many will reactivate their membership if applying for a job that requires an active bar membership.

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Should the magistrate then decide to remain a magistrate, under the proposed change, they would lose their grandfathered status and not be able to change back to judicial. I, myself, have made this transition a time or two in my 12 years with the magistrate system.

As a Chief Magistrate, I am required by Va. Code Sec. 19.2-36 to be a member in good standing of the Virginia State Bar. However, I am restricted from the practice of law, just as all magistrates are, by Va. Code Sec. 19.2-37. It is not a magistrate's choice to not practice law, so we shouldn't be classified as an Associate member, who are nonpracticing lawyers, presumably by choice.

Magistrates hold a judicial function, as defined in the code. Va. Code Sec. 19.2-5 defines "Judge" as "any judge, associate judge or substitute judge of any court or any magistrate." Va. Code Sec. 19.2-119 defines "Judicial officer" as "any magistrate serving the jurisdiction, any judge of a district court.. i" We have the same power to issue warrants and subpoenas as is conferred upon district courts, Va. Code Sec. 19.2-45, and under Va. Code Sections 16.1-253.4 and 19.2-152.8, the same power to issue emergency protective orders as any judge of a circuit court, general district court, or juvenile and domestic relations district court. Magistrates also have the same authority as the general district court and circuit court to issue search warrants under Va. Code Sec. 19.2-52, emergency substantial risk orders under Va. Code Sec. 19.2-152.13, and fire inspection warrants under Va. Code Sec. 27-95. We have the unique authority to issue involuntary mental health detention orders under Va. Code 37.2-809 and contingent authority, based on the availability of the court, to issue medical detention orders under Va. Code Sec. 37.2-1104.

Because magistrates are defined as judges in the code and hold a judicial function, attorney magistrates who are licensed through the Virginia State Bar should retain their judicial class membership.

Thank you for your consideration.

Alyssa D. Emery  
Virginia Bar Number 77874