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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

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 §19.2-45 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 a member in good standing of the Virginia State Bar”. Va. Ann. Code §19.2-36. 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 §19.2-37 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 *Cannon 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 (11th ed. 2019. Judicial). Judicial is "of or relating to a judgment, the function of judging, the administration of justice, or the judiciary". www.merriam-webster.com/dictionary/judicial (accessed August 4, 2022). Those with magistrate authority make judgements whether a respondent is detained at a hospital for 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 (11th ed. 2019. Magistrate). A judicial officer is "a judge or magistrate". Black's Law Dictionary (11th ed. 2019. Judicial Officer). Virginia law includes magistrate in the definition of a judge. Va. Ann. Code §19.2-5 (Judge).

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Supreme Court Rule 11 includes magistrates as judicial officers”. Va. Sup. Ct. R. 11:2(d). Supreme Court Rule 11 includes the Office of the Executive Secretary as a part of the Virginia Judiciary. Va. Sup. Ct. R. 11:2(f). 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 §19.2-36” 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 §19.2-45 or Virginia Code §19.2-36 judicial class membership under the Virginia State Bar.

Respectfully,

Virginia Magistrates Association, Inc.