

Memorandum

SUPREME COURT OF WISCONSIN

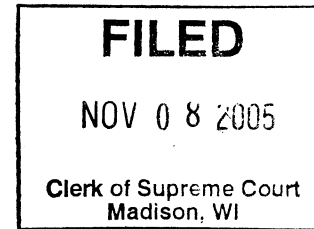
OFFICE OF LAWYER REGULATION

110 EAST MAIN STREET, SUITE 315, MADISON, WI 53703-3383

(608) 267-7274 TOLL FREE (877) 315-6941



DATE: November 8, 2005
TO: Cornelia Clark
FROM: Keith Sellen *11/8/05*
SUBJECT: Multi-state Cost Assessment Information



Please provide this memorandum with its appendices to the Court for its consideration with Rules Petition 05-01.

Appendix A is a spreadsheet developed by reading various states' cost assessment rules. The spreadsheet identifies the state, rule citation, type of cost assessed, type of discretion applied in determining the assessment, and the decision-maker. The rules, Appendix B, were available from the National Organization of Bar Counsel website. Not all state rules are posted.

A review of the spreadsheet reveals:

- 22 of the rules posted provide the decision-maker full discretion; no standards for exercising discretion are contained in the rule.
- 6 of the rules posted provide the decision-maker no discretion; costs either must or must not be assessed. (This category includes rules that have no provision for cost assessments.)
- 10 of the rules posted provide for limited discretion; a single standard or exception is provided in the rule.
- 1 of the rules posted (Alaska) provides for guided discretion; several criteria for determining an appropriate assessment are included in the rule.

The spreadsheet also reveals that 8 rules include attorney fees in the assessment, 14 rules do not, and 15 rules are unclear; 2 other rules do not provide for any assessment.

Some noteworthy rules include:

- Alaska Bar Rule 16 (Appendix B, page 5). This rule includes consideration of 10 factors in determining the appropriate cost assessment.
- Arizona Supreme Court Rule 60 (Appendix B, page 7). Subparagraph (b) 1., page B-9, provides for a statement of costs on "proven or admitted counts."
- Florida Bar Rule 3-7.6 (Appendix B, page 14). Subparagraph (q)(3), pages B-20 & 21, assesses costs unless "unnecessary, excessive, or improperly authenticated."
- Oregon Rule 10.7 (Appendix B, page 62). Subparagraph (c) provides for recovery after an offer of settlement.

MULTISTATE COSTS SURVEY

<u>State</u>	<u>Rule</u>	<u>Type of Assessment</u>	<u>Type of Discretion</u>	<u>Who Decides</u>
AL	RDP 8(i) & 33/pp. 1-4	Admin -Y Costs-Y Atty Fees-N	Full: No standards in the rule	Referee / Board / Com'n / Court Review
AK	ABR 16	Admin -N Costs-Y Atty Fees-Y	Guided: Standards in the rule	Board / Court
AZ	SCR 60(b)	Admin -N Costs-Y Atty Fees-?	Limited: For proven counts	Referee / Board / Court
AR	PRPC sec. 18	Admin -Y Costs-Y Atty Fees-N	Full: No standards in the rule	Committee
DE	RDP 27	Admin -N Costs-Y Atty Fees-?	None	Court
FL	Rule 3-7.6 (m), (q)	Admin -Y Costs-Y Atty Fees-N	Limited: No unnecessary or excessive costs	Referee / Court Review
GA	None	None	None	No One
HI	SCR 2.3	Admin -N Costs-Y Atty Fees-N	Full: No standards in the rule	Board / Court
ID	BCR 506(i)	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Board
IN	RABDA 23, sec. 16	Admin -Y Costs-Y Atty Fees-N	Limited: Normally imposed	Court
IO	ADR Rule 35.25	Admin -N Costs-Y Atty Fees-N	None	Court
KS	SCR 224	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Court
KE	SCR 3.370 & 3.450	Admin -N Costs-Y Atty Fees-?	None	Board / Court
LA	RLDE sec 10.1	Admin -N Costs-Y Atty Fees-Y	Full: No standards in the rule	Board / Court
MA	SJCR Rule 4:01, sec 23	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Court
MI	MCR 9.128	Admin -N Costs-Y Atty Fees-N	Limited: Reduced in exceptional circumstances	Panel / Board
MN	RLPR Rule 24	Admin -Y Costs-Y Atty Fees-?	Full: No standards in the rule	Court
MS	SCR 27	Admin -N Costs-Y Atty Fees-N	Full: No standards in the rule	Tribunal / Court
MO	SCR 5.19(h)	Admin -? Costs-Y Atty Fees-?	Full: No standards in the rule	Court
MT	RLDE 9	Admin -N Costs-Y Atty Fees-Y	Limited: Must be reasonable and necessary	Court / Pot'l Remand & Review
NE	NDR 10(P) & 23	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Court
NV	SCR 116 & 120	Admin -N Costs-Y Atty Fees-Y	Full: No standards in the rule	Board / Court
NH	SCR 37 (19)	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Committee / Court
NJ	Rule 1:20-17	Admin -Y Costs-Y Atty Fees-N	Full: No standards in the rule	Board / Court Review
NC	Rule B, sec 0100, 0110	Admin -N Costs-Y Atty Fees-?	Full: No standards in the rule	Committee / Commission
ND	RLD 1.3	Admin -N Costs-Y Atty Fees-N	Limited: Potential offer of settlement exception	Panel / Court
OK	RGDP 6.16	Admin -N Costs-Y Atty Fees-N	Full: No standards in the rule	Tribunal / Court
OR	OSB Rule 10.7	Admin -N Costs-Y Atty Fees-N	Limited: Potential offer of settlement exception	Board / Court
PA	PRDE 208(g)	Admin -? Costs-Y Atty Fees-?	Full: No standards in the rule	Board / Court
RI	None	None	None	No One
SC	RLDE 7(b) & 27	Admin -N Costs-Y Atty Fees-N	Full: No standards in the rule	Court
SD	Sec. 16-19-70, Stats.	Admin -N Costs-Y Atty Fees-Y	Full: No standards in the rule	Court
TN	SCR 24	Admin -N Costs-Y Atty Fees-Y	Full: No standards in the rule	Board / Court Review
TX	TRDP 1.06 Y.	Admin -N Costs-Y Atty Fees-Y	Full: No standards in the rule	Commission / Panel / Court
VT	Rule 8	Admin -N Costs-Y Atty Fees-?	Limited: Only Reinstatements & Prob Rev's	Panel / Court Review
VA	SCR 6:4-13 A. & B. 8.	Admin -Y Costs-Y Atty Fees-N	None	Clerk of the Disciplinary System
WA	ELC 13-9	Admin -N Costs-Y Atty Fees-Y	Limited: Minimum fees depending on stages	Board / Court
WV	RLDP 3.15	Admin -N Costs-Y Atty Fees-?	Limited: Except cases of undue hardship	Panel / Court
WY	DC sec. 3 & 26	Admin -Y Costs-Y Atty Fees-?	Full: No standards in the rule	Board / Court

**RULE 8.
TYPES OF DISCIPLINE****(a) Disbarment**

Disbarment terminates the individual's status as a lawyer and may result from a hearing or by consent as provided in Rule 23. A person who has been disbarred may not apply for reinstatement until the expiration of at least five (5) years from the effective date of disbarment. A lawyer who has been disbarred after reinstatement following a prior disbarment shall not be reinstated.

(b) Suspension

Suspension is the removal of a lawyer from the practice of law for a specified period of time not less than forty-five (45) days and not more than five (5) years, unless the suspension is conditioned upon the satisfaction of some condition, such as restitution of client funds, in which case the suspension shall continue until the condition is satisfied. Suspension may result from a hearing or by consent as provided in Rule 24. A lawyer who has been suspended for ninety (90) days or less will be automatically reinstated upon expiration of the period of suspension and the filing of an affidavit that he or she has complied with all applicable discipline or disability orders and rules. A lawyer who has been suspended for more than ninety (90) days must apply for reinstatement pursuant to Rule 28, unless the order of suspension expressly provides otherwise.

(c) Interim Suspension

(1) Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. The Disciplinary Commission may, pursuant to Rule 20 of these Rules, place a lawyer on interim suspension immediately upon proof that the lawyer has been convicted of a "serious crime" or that the lawyer's continuing conduct is causing or is likely to cause immediate and serious injury to a client or to the public.

(2) A "serious crime" is defined as:

- (A) A felony;
- (B) A lesser crime involving moral turpitude;
- (C) A lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or
- (D) An attempt, a conspiracy, or the solicitation of another to commit a "serious crime."

(d) Indefinite Suspension

A lawyer may be suspended indefinitely from the practice of law for failing to comply with the Client Security Fund Rules, the Mandatory Continuing Legal Education Rules, and the Interest on Lawyer Trust Account Rules of the Alabama State Bar.

(e) Summary Suspension

A member who fails to pay any assessment, costs, or restitution as ordered by the Alabama Supreme Court, the Disciplinary Commission, the Disciplinary Board, or the Board of Disciplinary Appeals within 30 days following entry of the judgment or order or a later time as fixed in the judgment or order, or who fails to participate in formal proceedings or to respond to requests for information concerning a disciplinary matter shall be summarily suspended upon order of the Disciplinary Commission of the Alabama State Bar, pursuant to Rule 20 of these rules.

(f) Public Reprimand

Public reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice. The two versions of public reprimand are:

(1) A public reprimand with general publication requires, in accordance with Rule 33 of these Rules, publication in the official Bar publication and in a newspaper of general circulation in each judicial circuit in the State of Alabama in which the respondent maintained or maintains an office for the practice of law.

(2) A public reprimand without general publication requires, in accordance with Rule 33 of these Rules, a publication in the official Bar publication to include the name of the respondent, but no publication in the newspaper is permitted. This type of public reprimand is nevertheless public and may be released upon request by any interested party.

(g) Private Reprimand

Private reprimand is a form of non-public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

(h) Probation

Probation is a sanction that allows a lawyer to practice law under specified conditions and may be imposed alone or in conjunction with a public reprimand (in which case the probation is public) or a private reprimand (in which case the probation is private). If probation is imposed without other discipline, the probation may be either public or private. Probation may also be imposed as a condition of reinstatement.

Probation should be used only in those cases where there is little likelihood that the respondent lawyer will harm the public during the period of probation and where the conditions of the probation can be adequately supervised. Probation may be appropriate in certain cases of disability, if the condition is capable of treatment without transfer to disability inactive status.

Probation must be imposed for a specified period, not to exceed two (2) years.

(i) Additional Sanctions and Remedies

In conjunction with any of the above punishments, the Disciplinary Board or the Disciplinary Commission may impose any of the following sanctions and remedies:

- (1) Restitution;
- (2) Assessment of cost (not including lawyer's fees);
- (3) Limitation upon practice;
- (4) Appointment of a receiver;
- (5) Requirement that the lawyer retake and pass the State Bar examination or the professional responsibility examination, or both;
- (6) Requirement that the lawyer attend continuing legal education courses approved by the Alabama State Bar; and
- (7) Other requirements that the Disciplinary Board deems consistent with the purposes of lawyer discipline.

“Note from the reporter of decisions: The order adopting Rule 8(e), effective August 1, 2000, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So.2d.”

**RULE 33.
PUBLICATION AND COSTS****(a) Lawyer to Bear Costs of Publication**

In a case involving the imposition of discipline consisting of disbarment, suspension, public probation, or public reprimand with general publication, or the transfer of a lawyer to disability inactive status, notice shall be published in the official Bar publication and in a newspaper of general circulation in each judicial circuit of the State of Alabama in which the disciplined or disabled lawyer or lawyer maintained an office for the practice of law.

The costs of publishing the newspaper notice shall be assessed against the disciplined or disabled lawyer. In a case involving the imposition of a reprimand, without general publication, notice of such reprimand will be published only in the official Bar publication.

(b) Assessment of Research Fee and Recovery of Costs

The cost of production, when photocopying or other document production is performed by the Alabama State Bar for purposes of these Rules, shall be a commercially reasonable rate, not to exceed \$1.00 per page. In addition to reproduction charges, the Bar may charge a reasonable fee incident to a request to review disciplinary records or for research into the records of disciplinary proceedings and identification of documents to be produced. These costs shall include a minimum research fee of \$25.00 per request in addition to the costs of reproduction.

(c) Production of Voluminous Documents

When the Bar is requested to reproduce documents that are voluminous or is requested to produce transcripts in its possession, the Bar may decline to reproduce the documents and shall inform the person requesting the documents of the following options:

- (1) Purchase the transcripts from the court reporter's service that produced them;
- (2) Purchase the document from the third party from whom the Bar received them; or
- (3) Designate a commercial photocopy service to whom the Bar shall deliver the original documents to be copied, at the requesting party's expense, provided the photocopy service agrees to preserve and return the original documents and not to release them to any person without the Bar's consent.

(d) Taxable Costs

Taxable costs of the proceeding shall include:

- (1) Investigative costs, including travel and out-of-pocket expenses;
- (2) Court reporter's fees;
- (3) Copy costs;
- (4) Telephone charges;
- (5) Fees for translation services;
- (6) Witness expenses, including mileage, per diem, and actual and necessary expenses; provided, however, that witnesses may be compensated for travel to and from attendance at hearings only, and shall be compensated in the same manner and at the then prevailing rate of compensation as provided for in-state travel for state employees and for mileage for state employees or as otherwise directed by the Board of Bar Commissioners of the Alabama State Bar;
- (7) Expenses of a Disciplinary Hearing Officer, members of the Disciplinary Board, members of the Disciplinary Commission, members of the Board of Disciplinary Appeals, and members of the Prediscipline Diversion Board;
- (8) Expenses incurred by the Office of General Counsel in the proceedings; and
- (9) An administrative fee in the amount of \$750 when costs are assessed in favor of the Bar.

(e) Discretion to Award Costs

A Disciplinary Hearing Officer, the Disciplinary Board, the Disciplinary Commission, or the Board of Disciplinary Appeals shall each have discretion to award costs. Absent an abuse of that discretion, such an award shall not be reversed.

“Note from the reporter of decisions: The order amending Rule 33, effective August 1, 2000, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So.2d.”

Rule 16. Types of Discipline and Costs.

(a) Discipline Imposed by the Court or Board. A finding of misconduct by the Court or Board will be grounds for

- (1) disbarment by the Court; or
- (2) suspension by the Court for a period not to exceed five years; or
- (3) probation imposed by the Court; or
- (4) public censure by the Court; or
- (5) reprimand by the Disciplinary Board.

(b) Discipline Imposed by the Board or Bar Counsel. When Bar Counsel has made a finding that misconduct has occurred, the following discipline may be imposed:

- (1) reprimand in person by the Board, pursuant to Rule 10(c)(8); or
- (2) written private admonition by Bar Counsel, pursuant to Rule 11(a) (12).

(c) Restitution; Reimbursement; Costs. When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

- (1) restitution to aggrieved persons or organizations;
- (2) reimbursement of the Lawyers' Fund for Client Protection; or
- (3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof. In imposing costs and fees, consideration shall be given to the following factors:
 - (A) the complexity of the disciplinary matter;
 - (B) the duration of the case;
 - (C) the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;
 - (D) the reasonableness of the number of Bar Counsel used;
 - (E) Bar Counsel's efforts to minimize fees;
 - (F) the reasonableness of the defenses raised by the Respondent;
 - (G) vexatious or bad faith conduct by the Respondent;
 - (H) the relationship between the amount of work performed by Bar Counsel and the

significance of the matters at stake;

(I) the financial ability of the Respondent to pay attorney's fees; and

(J) the existence of other equitable factors deemed relevant.

(d) Conditions. Written conditions may be attached to a reprimand or to a private admonition. Failure to comply with such conditions will be grounds for reconsideration of the matter by the Board or Bar Counsel.

TEXT

17A A.R.S. Sup.Ct.Rules, Rule 60

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Arizona Revised Statutes Annotated CurrentnessRULES OF THE SUPREME COURT OF ARIZONA

Rules of the Supreme Court of Arizona (Refs & Annos)

V. REGULATION OF THE PRACTICE OF LAW

V. Regulation of the Practice of Law

I. SANCTIONS

I. Sanctions

Rule 60. Disciplinary Sanctions**Rule 60. Disciplinary Sanctions**

TEXT (a)

(a) Types and Forms of Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

TEXT (a) 1

1. *Disbarment by the Court.* Disbarment may be imposed by the court by judgment entered in this court or, if not before the court sua sponte or on discretionary review of the commission's recommendation, then by judgment signed and entered by the clerk of the court. The form of judgment signed and entered by the clerk shall be:

TEXT

This matter having come on for hearing before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision and no discretionary or sua sponte review occurring. IT IS ORDERED, ADJUDGED AND DECREED that (Respondent), a member of (the State Bar of Arizona), is hereby disbarred for conduct in violation of (his or her) duties and obligations as a lawyer, as disclosed in the commission report attached hereto as Exhibit A.

(IT IS FURTHER ORDERED that (Respondent) shall pay restitution (in the following amounts to the following individual(s):)

(IT IS FURTHER ORDERED that (Respondent) shall pay in full any and all claims paid by the Client Protection Fund, not to exceed the maximum permissible payment of \$100,000.00.)

(IT IS FURTHER ORDERED that (Respondent) shall be assessed the costs and expenses of these proceedings in the amount of _____.)

TEXT (a) 2

2. *Suspension by the Court.* Suspension may be imposed by the court for an appropriate fixed period of time not in excess of five (5) years, by judgment entered in this court or, if not before the court sua sponte or on discretionary review of the commission's recommendation, then by judgment