

# Memorandum

SUPREME COURT OF WISCONSIN

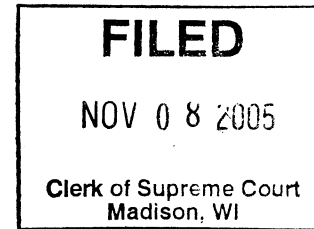
OFFICE OF LAWYER REGULATION

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

IFB709D00EE-E211D7A0BFC-C4C671DE671

Arizona Revised Statutes Annotated CurrentnessRULES OF THE SUPREME COURT OF ARIZONA

Rules of the Supreme Court of Arizona (Refs &amp; 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

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 suspended from the practice of law for a period of (days, months, years), 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 pay the costs and expenses of these proceedings in the amount of \_\_\_\_\_.)

TEXT (a) 3

**3. Censure by the Court or Commission.** Censure may be imposed by the court, by judgment entered in this court following discretionary review of the commission recommendation, or if a commission recommendation of censure is not reviewed, then by judgment of censure signed and entered by the clerk without reference to the court for decision. The form of judgment 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 review occurring, IT IS ORDERED, ADJUDGED AND DECREED that (Respondent), a member of (the State Bar of Arizona), is hereby censured 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) is hereby placed on probation for a period of (days, months, years), under the following terms and conditions:)

(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 the costs and expenses of these proceedings in the amount of \_\_\_\_\_.)

TEXT (a) 4

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4. *Informal Reprimand.* An informal reprimand may be imposed by order of the panelist or appeal panel, the hearing officer, the commission, or this court.

## TEXT (a) 5

5. *Probation.* Probation may be imposed by order of the panel, the hearing officer, the commission or this court as follows:

## TEXT (a) 5 A

A. Probation shall be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period.

## TEXT (a) 5 B

B. Probation may be imposed only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation, and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution and assessment of costs and expenses.

## TEXT (a) 5 C

C. Bar counsel shall be responsible for monitoring and supervising the respondent during the probationary period. Bar counsel shall report material violations of the terms of probation to the imposing entity, which may hold a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, a violation must be proven by clear and convincing evidence. At the end of the probation term, bar counsel shall prepare and forward a report to the imposing entity. This report shall provide information regarding the respondent's completion or non-completion of the imposed terms.

## TEXT (a) 6

6. *Restitution.* Restitution may be imposed by order of the panelist or appeal panel, the hearing officer, the commission or this court to persons financially injured, including reimbursement to the state bar client security fund. If constituting or part of discipline imposed by the court, restitution shall be imposed in the judgment; otherwise, it shall be imposed by order. Restitution and the amount thereof must be proven by clear and convincing evidence.

## TEXT (b)

**(b) Assessment of the Costs and Expenses.** An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the hearing officer, commission or the court, as appropriate, in addition to any other sanction imposed. An assessment may be imposed upon a respondent in a disability proceeding, in the discretion of the commission or the court. An assessment of costs and expenses of proceedings, imposed by order of a panelist, shall be based upon a similar statement of costs and expenses prepared by the state bar.

## TEXT (b) 1

1. *Statement of Costs; Objections.* At the conclusion of the disciplinary proceedings, the state bar shall file an itemized statement of costs and expenses on proven or admitted counts, as set forth below, and shall serve a copy on respondent and the disciplinary clerk. The respondent may file objections within five (5) days of service of the statement of costs and expenses and shall serve a copy on the state bar and the disciplinary clerk.

## TEXT (b) 2

2. Procedure.

## TEXT (b) 2 A

A. Upon Final Order of Hearing Officer. If the disciplinary sanction recommended by the hearing officer is not appealed and does not include a recommendation of censure, suspension or disbarment, the state bar shall file a final statement of costs and expenses with the hearing officer and disciplinary clerk within twenty (20) days after the time to appeal has expired. The hearing officer, after considering the statement of costs and expenses and any objections filed by the respondent, shall prepare a report and order assessing costs and expenses and shall file the same with the disciplinary clerk and serve a copy on the bar and respondent. The respondent or state bar may contest the assessment of costs and expenses by filing a petition for review pursuant to Rule 23, ARCAP. The commission shall affirm or modify the assessment of costs and expenses, without further argument unless specifically requested by the commission, and shall enter an order of costs and expenses to be filed with the disciplinary clerk and served on the parties. The respondent or state bar may appeal the assessment of costs and expenses by the commission by filing a petition for review with the court, pursuant to Rule 21, Ariz. R. Civ. App. P.

## TEXT (b) 2 B

B. Upon Final Order of the Commission. If the disciplinary sanction recommended by the commission is not appealed and does not include a recommendation of censure, suspension or disbarment, the state bar shall file a final statement of costs and expenses with the commission and disciplinary clerk within twenty (20) days after the time to appeal has expired. The commission, after considering the statement of costs and expenses and any objections filed by the respondent, shall prepare a report and order assessing costs and expenses to be filed with the disciplinary clerk and served on the parties. The respondent or state bar may appeal the assessment of costs and expenses by filing a petition for review with the court, pursuant to Rule 21, Ariz. R. Civ. App. P.

## TEXT (b) 2 C

C. Upon Final Order of the Court. Upon imposition of any disciplinary sanction imposed by the court, the state bar shall file a final statement of costs and expenses with the clerk of the court within ten (10) days after the clerk has given notice that a decision has been rendered. The clerk of the court or the court may enter an order assessing costs and expenses or remand the matter to the commission for such a determination.

## TEXT (c)

**(c) Enforcement.** Execution and other post-judgment remedies may issue out of and proceed before the superior court as in civil cases for the enforcement of any judgment entered in this court under these rules. Such matters shall be docketed in the superior court without filing fee as though the complaint had originally been filed in that court.

## CREDIT

## CREDIT(S)

Added June 9, 2003, effective Dec. 1, 2003.

## ANNOTATIONS (Notes of Decisions Index )

Current with amendments received through 8/17/05

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APPENDIX   B   P.   10

AZ ST S CT Rule 60  
END OF DOCUMENT

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PROCEDURES OF THE ARKANSAS SUPREME COURT  
REGULATING PROFESSIONAL CONDUCT  
OF  
ATTORNEYS AT LAW

**SECTION 18. FINES, COSTS, AND RESTITUTION.**

In addition to the Committee's authority set forth in Section 17 of these Procedures, a panel of the Committee in any case where a disciplinary sanction is imposed, may:

- A. Assess the respondent attorney the costs of the proceedings, including the costs of investigations, witness fees, service of process, depositions, and a court reporter's services;
- B. Impose a fine of not more than \$25,000.00; and
- C. Order restitution to persons financially injured by the conduct.

Rule 27. Payment of costs.

Unless otherwise ordered by the Court, costs of all proceedings conducted under these Rules shall be assessed against the respondent in any case where a disciplinary sanction is imposed or where there is a transfer to disability inactive status.

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Home

# Rules Regulating The Florida Bar

## 3 RULES OF DISCIPLINE 3-7 PROCEDURES

### ***RULE 3-7.6 PROCEDURES BEFORE A REFEREE***

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The Florida Bar  
 651 E. Jefferson Street  
 Tallahassee, FL 32399-2300  
 (850) 561-5600

**(a) Referees.** The chief justice shall have the power to appoint referee disciplinary cases and to delegate to a chief judge of a judicial circuit power to appoint referees for duty in the chief judge's circuit. Such appointments shall ordinarily be active county or circuit judges, but the chief justice may appoint retired judges.

**(b) Trial by Referee.** When a finding has been made by a grievance committee or by the board that there is cause to believe that a member of the Florida Bar is guilty of misconduct justifying disciplinary action, and a formal complaint based on such finding of probable cause has been adopted by the chief justice for trial before a referee, the proceeding thereafter shall be an adversary proceeding that shall be conducted as hereinafter set forth.

**(c) Pretrial Conference.** Within 60 days of the order assigning the case to a referee, the referee shall conduct a pretrial conference. The purpose of the conference is to set a schedule for the proceedings, including discovery deadlines and a final hearing date. The referee shall enter a written order reflecting the schedule determined at the conference.

**(d) Venue.** The trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law in Florida, whichever shall be designated by the Supreme Court of Florida; provided, however, that if the respondent is not a resident of Florida and if the alleged offense is not committed in Florida, the trial shall be held in a county designated by the chief justice.

**(e) Style of Proceedings.** All proceedings instituted by The Florida Bar shall be styled as follows:



be styled "The Florida Bar, Complainant, v. (name of respondent), Respondent," and "In The Supreme Court of Florida (Before a Referee)

**(f) Nature of Proceedings.**

(1) *Administrative in Character.* A disciplinary proceeding is neither criminal but is a quasi-judicial administrative proceeding. The Florida Civil Procedure apply except as otherwise provided in this rule.

(2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

**(g) Bar Counsel.** Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned.

**(h) Pleadings.** Pleadings may be informal and shall comply with the following requirements:

(1) *Complaint; Consolidation and Severance.*

(A) *Filing.* The complaint shall be filed in the Supreme Court of Florida.

(B) *Content.* The complaint shall set forth the particular act or conduct for which the attorney is sought to be disciplined.

(C) *Joinder of Charges and Respondents; Severance.* A complaint may embrace any number of charges against 1 or more respondents. Charges may be against any 1 or any number of respondents; but severance may be granted by the referee when the ends of justice require it.

(2) *Answer and Motion.* The respondent shall answer the complaint in whole or in part thereof or by separate motion, may challenge only the sufficiency of the complaint and the jurisdiction of the forum. All other defenses shall be incorporated in the respondent's answer. The answer may invoke any privilege, immunity, or disability available to the respondent. All pleadings of the respondent must be filed within 20 days of service of a copy of the complaint.

(3) *Reply*. If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(4) *Disposition of Motions*. Hearings upon motions may be deferred until the final hearing, and, whenever heard, rulings thereon may be reserved until termination of the final hearing.

(5) *Filing and Service of Pleadings*.

(A) Prior to Appointment of Referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Supreme Court of Florida and shall bear a certificate of service showing parties upon whom service of copies has been made. On appointment of referee, the Supreme Court of Florida shall notify the parties of such appointment and forward all pleadings filed with the court to the referee for action.

(B) After Appointment of Referee. All pleadings, motions, notices, and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on staff counsel and bar counsel of The Florida Bar and on all interested parties to the proceedings.

(6) *Amendment*. Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(7) *Expediting the Trial*. If it shall be made to appear that the date of final hearing should be expedited in the public interest, the referee may, in the referee's discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule.

(8) *Disqualification of Referee*. Upon motion of either party, a referee may be disqualified from service in the same manner and to the same extent that a trial judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification, the chief justice shall appoint a successor.

**(i) Notice of Final Hearing.** The cause may be set down for trial by either party or the referee upon not less than 10 days' notice. The trial shall be held as soon as possible following the expiration of 10 days from the filing of the respondent's answer, or if no answer is filed, then from the date when such answer is due.

**(j) The Respondent.** Unless the respondent claims a privilege or right properly available under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent is subpoenaed to appear and give testimony or to produce books, papers, or documents and refuses to answer or to produce such books, papers, or documents, or, having been duly sworn to testify, refuses to answer any proper question, the respondent may be cited for contempt of the court.

**(k) Complaining Witness.** The complaining witness is not a party to the disciplinary proceeding, and shall have no rights other than those of any other witness. However, unless it is found to be impractical due to unreasonable delay or other good cause, and after the complaining witness has testified during the case in chief, the referee may grant the complaining witness the right to be present at any hearing when the respondent is also present. A complaining witness may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, or restitution will excuse failure to complete any trial. The complaining witness shall have no right to appeal.

**(l) Parol Evidence.** Evidence other than that contained in a written attorney-client contract may not be used in proceedings conducted under the Rules Regulating The Florida Bar to vary the terms of that contract, except competent evidence other than that contained in a written fee contract may be used only if necessary to resolve issues of excessive fees or excessive costs.

**(m) Referee's Report.**

(1) *Contents of Report.* Within 30 days after the conclusion of a trial before a referee or 10 days after the referee receives the transcripts of all hearings,

whichever is later, or within such extended period of time as may be allowed by the chief justice for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include:

- (A) a finding of fact as to each item of misconduct of which the respondent is charged, which findings of fact shall enjoy the same presumption of correctness as the judgment of the trier of fact in a civil proceeding;
- (B) recommendations as to whether the respondent should be found guilty of misconduct justifying disciplinary measures;
- (C) recommendations as to the disciplinary measures to be applied;
- (D) a statement of any past disciplinary measures as to the respondent that are on record with the executive director of The Florida Bar or that otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings (after a finding of guilt, all evidence of prior disciplinary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent); and
- (E) a statement of costs incurred and recommendations as to the manner in which such costs should be taxed.

(2) *Filing*. The referee's report and record of proceedings shall in all cases be transmitted together to the Supreme Court of Florida. Copies of the report shall be served on the parties including staff counsel. The referee shall serve a copy of the record on bar counsel with the report. Bar counsel will make a copy of the record, as furnished, available to other parties on request and payment of the actual costs of reproduction.

**(n) The Record.**

(1) *Recording of Testimony*. All hearings at which testimony is presented shall be attended by a court reporter who shall record all testimony. Transcripts of

such testimony are not required to be filed in the matter, unless requested by a party, who shall pay the cost of transcription directly, or ordered by the referee, in which case the costs thereof are subject to assessment as elsewhere provided in these rules.

(2) *Contents.* The record shall include all items properly filed in the cause including pleadings, recorded testimony, if transcribed, exhibits in evidence, and the report of the referee.

**(o) Plea of Guilty by Respondent.** At any time during the progress of disciplinary proceedings, a respondent may tender a plea of guilty.

(1) *Before Filing of Complaint.* If the plea is tendered before filing of a complaint by staff counsel, such plea shall be tendered in writing to the grievance committee or bar counsel.

(2) *After Filing of Complaint.* If the complaint has been filed against the respondent, the respondent may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial. Such referee shall take such testimony thereto as may be advised, following which the referee will enter a report as otherwise provided.

(3) *Unconditional.* An unconditional plea of guilty shall not preclude review as to disciplinary measures imposed.

(4) *Procedure.* Except as herein provided, all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

**(p) Cost of Review or Reproduction.**

(1) The charge for reproduction, when photocopying or other reproduction is performed by the bar, for the purposes of these rules shall be as determined and published annually by the executive director. 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 reproduced.

(2) When the bar is requested to reproduce documents that are voluminous or

is requested to produce transcripts in the possession of the bar, the bar may decline to reproduce the documents in the offices of the bar and shall inform the requesting person of the following options:

- (A) purchase of the transcripts from the court reporter service that produced them;
- (B) purchase of the documents from the third party from whom the bar received them; or
- (C) designation of a commercial photocopy service to which 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.

**(q) Costs.**

(1) *Taxable Costs.* Taxable costs of the proceedings shall include only:

- (A) investigative costs, including travel and out-of-pocket expenses;
- (B) court reporters' fees;
- (C) copy costs;
- (D) telephone charges;
- (E) fees for translation services;
- (F) witness expenses, including travel and out-of-pocket expenses;
- (G) travel and out-of-pocket expenses of the referee;
- (H) travel and out-of-pocket expenses of counsel in the proceedings, including of the respondent if acting as counsel; and
- (I) an administrative fee in the amount of \$1250 when costs are assessed in favor of the bar.

(2) *Discretion of Referee.* The referee shall have discretion to award costs and, absent an abuse of discretion, the referee's award shall not be reversed.

(3) *Assessment of Bar Costs.* When the bar is successful, in whole or in part,

the referee may assess the bar's costs against the respondent unless it is shown that the costs of the bar were unnecessary, excessive, or improperly authenticated.

(4) *Assessment of Respondent's Costs.* When the bar is unsuccessful in the prosecution of a particular matter, the referee may assess the respondent's costs against the bar in the event that there was no justiciable issue of either law or fact raised by the bar.

#### **Court Comment**

A comprehensive referee's report under subdivision (m) is beneficial to a reviewing court so that the court need not make assumptions about the referee's intent or return the report to the referee for clarification. The referee's report should list and address each issue in the case and cite to available authority for the referee's recommendations concerning guilt and discipline.

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**2.3. Types of discipline.**

(a) Discipline may consist of:

- (1) Disbarment by the supreme court; or
- (2) Suspension by the supreme court for a period not exceeding five years; or
- (3) Public censure by the supreme court; or
- (4) Public reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or
- (5) Private reprimand by the Disciplinary Board with the consent of the respondent and Counsel; or
- (6) Private informal admonition by Disciplinary Counsel or Disciplinary Board.

(b) Where a respondent has, with the written concurrence of the Director of the Attorneys and Judges Assistance Program, proposed a program of monitoring of the respondent's efforts toward rehabilitation from "substance abuse" (as that term is defined in Rule 16.1(a) of this court), this court or the Board may impose such a monitoring program. The monitoring program, which shall in all cases be supervised by the Director of the Attorneys and Judges Assistance Program, may be in lieu of or in addition to a disciplinary sanction. The duration and conditions of monitoring shall be stated in the final order issued by this court or Board. Violation of any conditions shall result in the imposition of disciplinary sanctions, but only to the extent set forth in the order establishing the monitoring program.

(c) Restitution and/or payment of costs (exclusive of attorney's fees) may also be ordered by this court or by the Board. Counsel shall file its verified bill of costs within 60 days after imposition of discipline.

(d) As a condition of reinstatement following suspension or disbarment or as a condition in connection with the imposition of any lesser discipline, the Disciplinary Board or this court may require a respondent, at the respondent's expense, to successfully complete (i) the bar examination or some portion of it, (ii) seminars or classes in particular subjects of the law, (iii) a program specifically designated by the Board or the court to meet some deficiency in the attorney's understanding of the law or the practice of it, (iv) a practice management audit, and/or (v) a trust account audit. In addition, the Disciplinary Board or this court may order the return to the client of all unearned fees or funds and unused deposits against future costs. The Board may consult with the Hawai'i State Bar or others to find or develop such seminars, classes, and programs.



- (d) **Quorum.** All members shall constitute a quorum for the purpose of hearing evidence and issuing findings and conclusions. All decisions of a hearing committee shall be by majority vote of the three committee members. By consent of the hearing committee, the committee chairman may be delegated to rule on motions or other procedural matters.
- (e) **Compensation and Expenses.** Members of hearing committees shall receive no compensation for their services but may be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.
- (f) **Conflict of Interest/Additional Members.** Hearing committee members shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. If hearing committee members are unable to continue service on a hearing committee, the Chairman of the Professional Conduct Board may appoint the additional members necessary to restore the committee to full membership. Substitute members shall familiarize themselves with the record of the proceeding, and such substitution shall not be grounds for restarting a matter.
- (g) **Vacancies.** Vacancies during a term shall be filled by the Board of Commissioners, with the approval of the Supreme Court, for the remainder of the unexpired term.

*\*(Rule 503 amended 5-29-91)*

**RULE 504. Bar Counsel**

- (a) **Appointment and Qualifications.** Bar Counsel shall be appointed by the Board of Commissioners and shall be a member in good standing of the Idaho State Bar.
- \*(b) **Powers and Duties.** With respect to the review of a lawyer's professional conduct, Bar Counsel shall have the following powers and duties:
  - (1) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to budgetary considerations and to the approval of the Board of Commissioners.
  - (2) To investigate all matters involving possible misconduct called to the attention of Bar Counsel.
  - (3) To disregard or dismiss a matter as unfounded, frivolous or beyond the purview of these Rules and discontinue the investigation and proceedings concerning the matter; to issue informal admonitions; to issue private reprimands; to impose probation; to require restitution; to impose costs; and to recommend to the Board of Commissioners the filing of formal charges in all matters in which Bar Counsel deems such action warranted.
  - (4) To prosecute all professional conduct review proceedings before hearing committees of the Professional Conduct Board and the Supreme Court.
  - (5) To prosecute all reinstatement proceedings before the hearing committees, the Professional Conduct Board and the Supreme Court.
  - (6) To maintain permanent records of professional conduct review matters and compile statistics to aid in the administration of the system.
  - (7) To perform all other duties and functions as may be required by these Rules or by the Board of Commissioners.

*\*(Section (b) amended 5-29-91)*

- \*(c) Except in matters where a grievance is disregarded because it is frivolous and clearly unfounded on its face, or falls outside the jurisdiction of said committee and the Professional Conduct Board, no disposition shall be recommended or undertaken by Bar Counsel until the defendant shall have been afforded the opportunity to respond to the allegations.

*\*(Section (c) amended 8-31-95 - effective 4-25-95)*

**RULE 505. Grounds for Sanctions.** The following shall constitute misconduct and shall be grounds for imposition of sanctions:

- \*(a) **General.** Acts or omissions by a lawyer, individually or in concert with any other person or persons, which violate the Idaho Rules of Professional Conduct, as amended, or any other ethical canon or requirement adopted by the Idaho Supreme Court whether or not the acts or omissions occurred in the course of an attorney-client relationship.
  - \*(Section (a) amended 5-29-91)*
- \*(b) **Criminal Conduct.** Commission of a serious crime or other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Failure to report a conviction pursuant to Rule 512(b) shall also constitute grounds for imposition of sanctions.
  - \*(Section (b) amended 3-1-88, and 4-14-93 - effective 7-1-93)*
- (c) **Reciprocal Sanctions.** Conduct which results in the imposition of sanctions by another jurisdiction or by another professional authority.
- \*(d) **Violation of Rules and Orders.** Violation of any rule or order imposed as a result of review of a lawyer's professional conduct.
  - \*(Section (d) amended 5-29-91)*
- (e) **Failure to Respond to Disciplinary Authorities.** Failure to respond to a request from the Supreme Court, the Professional Conduct Board, a hearing committee or Bar Counsel, or failure to assert the grounds for refusing to so respond.
- \*(f) **Failure to Properly Discharge Duties of Supervisory Attorney.** As provided by Rule 221(n), failure to properly discharge the duties of a supervisory attorney for a legal intern shall be the basis for discipline.
  - \*(Section (f) added 3-1-88)*

**RULE 506. Sanctions.** Disciplinary sanctions may consist of any one or more of the following:

- \*(a) **Disbarment.** Disbarment is the revocation of admission to the Idaho State Bar. A lawyer disbarred in this state who desires to again be admitted shall comply with all bar admission requirements found in Section II of these Rules. A disbarred lawyer making such application shall have the burden of overcoming the rebuttable presumption of "unfitness to practice law". In no event shall a disbarred lawyer make application for admission to the Bar sooner than five (5) years from the effective date of disbarment.
  - \*(Section (a) amended 5-29-91)*
- (b) **Suspension.** Suspension is the denial of the right to practice law in the State of Idaho for a specific period of time not to exceed five (5) years, and thereafter until reinstatement as provided for by these Rules.
- \*(c) **Probation.** Probation is the continued right to practice law subject to such conditions as may be imposed by the Supreme Court or as may be imposed by the Professional Conduct Board or Bar Counsel.
  - (1) Probation may be imposed only in those cases in which there is little likelihood that the defendant will harm the public during the period of probation and the conditions of probation can be adequately supervised.
  - (2) Only the Supreme Court can impose conditions of probation which limit the lawyer's license to practice law.
- \*(Section (c) amended 3-1-88)*
- (d) **Public Censure.** Public censure is an official, written reprimand imposed by the Supreme Court, which censure shall be published in the official Idaho State Bar publication, a newspaper of general circulation in the judicial district where the attorney maintains his or her principal place of business; and in the Idaho Reports.

**\*(e) Public Reprimand.** Public reprimand is public, verbal and written discipline imposed by the Professional Conduct Board or its designee, which declares the defendant's conduct to have been improper but does not limit his or her right to practice law in the State of Idaho and which shall be published in the official Idaho State Bar publication.

*\*(Section (e) amended 5-29-91)*

**\*(f) Private Reprimand.** Private reprimand is private, verbal and/or written discipline imposed by Bar Counsel, which declares the defendant's conduct to have been improper but does not limit his or her right to practice law in the State of Idaho and which becomes a part of the defendant's permanent files but is not published.

**\*(g) Informal Admonition.** Informal admonition is private, written discipline imposed by Bar Counsel, which declares the defendant's conduct to have been in violation

of the Rules of Professional Conduct and which is included in the lawyer's permanent files, but which is not published. An informal admonition is lesser in scope than a private reprimand, and is the least severe form of discipline available.

*\*(Sections (f) & (g) amended 3-1-88)*

**\*(h) Restitution.** Restitution is the payment of a loss or losses to persons financially injured and/or reimbursement to the Client Assistance Fund for claims paid from the fund which losses or claims are a result of the lawyer's misconduct. Restitution may be imposed as a condition of any probation and in conjunction with any sanction.

*\*(Section (h) amended 5-29-91 and 12-5-02)*

**\*(i) Imposition of Costs.** Assessment of the expenses and costs of professional conduct investigations and proceedings may be imposed as part of any other sanction.

*\*(Sections (h) amended 5-29-91)*

**\*(j) Unless or until an attorney who has been disbarred or suspended has been reinstated to the practice of law in Idaho he or she:**

- (1) shall not use any sign or advertise that he or she, either alone or with any other person, has, owns, conducts or maintains a law office or office of any kind for the practice of law, or that he or she is entitled to practice law, and he or she shall promptly remove any sign indicating the same;
- (2) shall not use any stationery, bank accounts or checks whereon his or her name appears as a lawyer or attorney at law or in connection with the words "law office";
- (3) shall promptly remove his or her listing from any telephone directory indicating that he or she is a lawyer or attorney or holds a similar title;
- (4) shall promptly contact the publishers of Martindale-Hubbell law directory and any other listing in which his or her name appears and cause the removal of any listing which states that he or she is a member of the Idaho State Bar in good standing;
- (5) shall comply with the provisions of Idaho Code section 30-1309, concerning membership and participation in professional service corporations; and
- (6) shall desist and refrain from the practice of law in any form either as principal, agent, servant, clerk, or employee of another and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency and shall not share in any fee for legal service performed by himself or herself, or any other attorney during the period of his or her suspension.

*\*(Section (j) added 5-29-91 & amended 8-31-95-effective 4-25-95)*

### **RULE 507. Withheld Sanctions**

(a) The following sanctions imposed under these Rules may provide for withholding all or part of the terms of that sanction,

contingent upon the Defendant's observance of specified conditions:

- (1) suspensions,
- (2) public censures,
- (3) public reprimands, or
- (4) court-ordered probation.

**\*(b) Motion for Order to Show Cause.** Upon violation of conditions of withheld sanction, Bar Counsel may file a Motion for Order to Show Cause with the Professional Conduct Board.

- (1) The motion shall allege that the lawyer has not abided by the conditions set forth in the Supreme Court order disciplining the lawyer.
- (2) The motion shall be served upon:
  - (A) the lawyer at his or her last known address, and
  - (B) the lawyer's counsel of record.
- (3) The Chairman of the Professional Conduct Board, with the approval of the Supreme Court, shall appoint a Hearing Committee, which shall schedule a hearing to ascertain the truth of the allegations set forth by the motion.
- (4) The Bar shall have the burden of proof that the lawyer has failed to adhere to the conditions set forth in the Supreme Court's disciplinary order.
- (5) In the event the Bar carries said burden of proof, the Professional Conduct Board may recommend that the withheld sanction be imposed.

**\*(c) Findings.** Upon making findings and recommendations on the Order to Show Cause, the Clerk of the Professional Conduct Board shall submit the Hearing Committee's findings and recommendations to the Supreme Court as provided for in subsections (o-r) of Rule 511 of these rules and the matter shall thereafter be handled as provided for by those sections.

*\*(Sections (b) & (c) amended 5-29-91)*

**(d) Publication.** Sanctions which are withheld under this rule shall be published in accordance with these rules as if the sanction had not been withheld.

### **\*RULE 508. Petitions Against Members of the Board of Commissioners, Professional Conduct Board, Committees, or Bar Counsel**

**(a) Board of Commissioners - Professional Conduct Board.** Grievances alleging grounds for imposition of sanctions as provided in Rule 505 of these Rules against a member of the Board of Commissioners, a lawyer member of the Professional Conduct Board or alleging misconduct of any non-lawyer member of the Professional Conduct Board in the performance of his or her duties under these Rules shall be submitted directly to the Supreme Court.

**(b) Bar Counsel.** Grievances alleging grounds for imposition of sanctions as provided in Rule 505 of these Rules against Bar Counsel in the performance of his or her duties under these Rules, shall be submitted directly to the Professional Conduct Board, which, with the approval of the Supreme Court, shall appoint a Hearing Committee to consider the complaint. Upon receipt of a complaint against Bar Counsel under this section, a Hearing Committee may:

- (1) Consider the matter on the basis of the complaint; and/or
- (2) Require Bar Counsel to make a response; and/or
- (3) Appoint an investigator; and/or
- (4) Issue an Order from among the options listed in Rule 509(a)(1-7); and/or
- (5) Take such other steps as are necessary to facilitate the prompt resolution of the complaint.

*\*(Rule 508 amended 5-29-91)*

## RULE 23

**Section 16. Expenses.**

The judgment of this Court imposing discipline will normally include an order that the respondent pay the costs and expenses of the proceeding. The Executive Secretary shall prepare an itemized statement of expenses allocable to each case, including expenses incurred in the course of the investigatory, hearing or review procedures under this Rule. The Executive Secretary shall include in the itemized statement of expenses, a fee of \$100 payable to the Clerk of this Court, as reimbursement for the Clerk's processing of all papers in connection with the proceeding. Proceedings for the collection of the costs taxed against the respondent may be initiated by the Executive Secretary on the order approving expenses and costs entered by this Court. An attorney who fails to pay costs and expenses assessed pursuant to this section shall be subject to the provisions of Section 21(j) of this Rule.

e. If the district court concludes the commission erred in issuing the certificate of noncompliance or in refusing to issue a withdrawal of the certificate of noncompliance, the court shall order the commission to file a withdrawal of the certificate of noncompliance with the clerk of the supreme court.

**35.20(3) *Noncompliance certificate withdrawn.*** If a withdrawal of certificate of noncompliance is filed, the supreme court shall curtail any proceedings pursuant to the certificate of noncompliance, or, if necessary, shall immediately reinstate the attorney's license to practice law if the attorney is otherwise eligible under rules of the court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 25, 1998; November 9, 2001, effective February 15, 2002]

**Rule 35.21 Notification of clients and counsel.**

**35.21(1)** In every case in which a respondent is ordered to be disbarred or suspended, the respondent shall do all of the following:

a. Within 15 days notify the respondent's clients in writing, in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer.

b. Within 15 days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

c. Within 30 days refund any part of any fees paid in advance that have not been earned.

d. Within 15 days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the respondent's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline or transfer to disability inactive status.

e. Within 15 days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

f. Keep and maintain records of the steps taken to accomplish the foregoing.

g. Within 30 days file with the board of professional ethics and conduct copies of the notices sent pursuant to the requirements of this rule and proof of complete performance of the requirements, and this shall be a condition for application for readmission to practice.

**35.21(2)** The times set forth in 35.21(1)(c) and 35.21(1)(g) of this rule shall be reduced to 15 days for respondents who are exempted from filing an application for reinstatement under rule 35.12. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; January 15, 1979; April 14, 1989, effective May 15, 1989; December 15, 1994, effective January 3, 1995; April 2, 2001; November 9, 2001, effective February 15, 2002]

**Rule 35.22 Immunity.**

**35.22(1)** Complaints submitted to the grievance commission, or to the board of professional ethics and conduct, or testimony with respect thereto shall be privileged and no lawsuit predicated thereon may be instituted.

**35.22(2)** Members of the grievance commission, members of the board of professional ethics and conduct, and their respective staffs shall be immune from suit for any conduct in the course of their official duties.

**35.22(3)** A true copy of any complaint against a member of the grievance commission or the board of professional ethics and conduct involving alleged violations of an attorney's oath of office or of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; July 31, 1987, effective September 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.23 Reports.** The chair of the grievance commission and the chair of the board of professional ethics and conduct shall, on July 1 of each year, submit to the supreme court a report of the number of complaints received and processed during the prior period, a synopsis of each such complaint, and the disposition thereof. The name of the attorney charged and the name of the complainant shall be omitted, but a synopsis of the charges made and a report of disposition shall be included. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; October 16, 1987, effective December 1, 1987; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002]

**Rule 35.24 Effective dates.** These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; November 9, 2001, effective February 15, 2002]

**Rule 35.25 Costs.**

**35.25(1)** In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the supreme court shall assess against the respondent attorney the costs of the proceeding. For the purposes of this rule costs shall include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

**35.25(2)** Within 30 days of the filing of the commission report, the complainant shall serve the respondent with a bill of costs and file the bill with the clerk of the supreme court. An appeal does not obviate this requirement. The respondent shall have ten days from the date of service to file written objections with the supreme court. Any objections filed shall be considered by the supreme court upon disposition of the matter under rule 35.10 or 35.11. Additional costs associated with an appeal shall be taxed by the clerk as in other civil actions.

**35.25(3)** Concurrently with the filing of the final decision of the supreme court, the supreme court shall order restitution paid by the respondent to the complainant of such costs as the supreme court may approve. No suspended or disbarred attorney may file application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule has been fully

paid, or waived by the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; September 15, 1986, effective October 1, 1986; March 27, 1990, effective May 1, 1990; November 9, 2001, effective February 15, 2002]

**Rule 35.26 Rules.** The grievance commission and the board of professional ethics and conduct shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to approval by the supreme court. [Court Order June 10, 1964; October 8, 1970; November 8, 1974; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; April 9, 2003]

KANSAS

**Rule 224**  
**ADDITIONAL RULES OF PROCEDURE**

(a) Except as otherwise provided in these Rules, time limitations are directory and not jurisdictional.

(b) Except as otherwise provided, the Rules of Civil Procedure apply in disciplinary cases.

(c) In all cases where discipline is imposed or recommended, the Disciplinary Administrator shall certify to the hearing panel or the Supreme Court the costs incurred in connection with the proceedings and the hearing panel or the Court may, in the event discipline is imposed, assess against the respondent attorney the costs so certified. All costs so assessed shall be paid to the Clerk of the Appellate Courts for deposit in the bar disciplinary fee fund.

(d) Any deviation from the rules and procedures set forth herein shall not constitute a defense in a disciplinary proceeding or be grounds for dismissal of any complaint absent actual prejudice to the respondent. The respondent shall have the burden of showing any such prejudice by clear and convincing evidence.

(e) When an attorney surrenders his license, is suspended for reasons other than non-payment of registration fees under Rule 208, or is disbarred, the Clerk of the Appellate Courts shall notify the Clerks of the Supreme Courts of any other state and the Clerks of the federal courts in which it is known that the attorney is licensed to practice law of the fact that the attorney is no longer authorized to practice law in Kansas.

## Rules of the Supreme Court (SCR), Rule 3.370

TEXT

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED  
RULES OF THE SUPREME COURT  
III PRACTICE OF LAW  
**SCR 3.370 Procedure before the Board and the Court**

TEXT (1)

(1) Upon receipt of the report of the Trial Commissioner, the Disciplinary Clerk shall certify the record of the prior proceedings and send notice of certification to the parties. The entire record, together with a certified bill for costs and expenses incurred in the investigation preliminary to and in the conduct of the proceedings, as well as the expenses associated with the Trial Commissioner's hearing, shall be filed with the Disciplinary Clerk.

TEXT (2)

(2) Thirty (30) days after the record is certified, the Appellant shall file a brief supporting his/her position on the merits of the case. Fifteen (15) days thereafter, the Appellee shall file his/her brief. No reply brief shall be permitted.

TEXT (3)

(3) Upon motion by the parties or upon the Board's own motion, oral arguments may be scheduled before the Board.

TEXT (4)

(4) Upon the completion of briefing by the parties, the Board shall within sixty (60) days consider and act upon the entire record. Only the President, the President elect, the Vice President, the fourteen (14) duly-elected members of the Board from their respective Supreme Court Districts, and four (4) adult citizens of the Commonwealth who are not lawyers appointed by the Chief Justice as hereinafter described, shall be eligible to be present, participate in and vote on any disciplinary case. Any member, including a non-lawyer member, who has participated in any phase of a disciplinary case submitted to the Board under this rule, or has been challenged on grounds sufficient to disqualify a Circuit Judge shall be disqualified. In the event of a disqualification, the Chief Justice shall appoint a member to consider and act on the cases. Any challenge to a member's qualifications shall be determined by the Chief Justice in accordance with KRS 26A.015, et seq.

TEXT (5)

(5) Eleven (11) of those qualified to sit in a disciplinary matter must be present to constitute a quorum for consideration of such matters.

TEXT (6)

APPENDIX B P. 29

(6) The Board shall decide, by a roll call vote, whether the decision of the Trial Commissioner as to the finding of a violation and degree of discipline imposed is supported by substantial evidence or is clearly erroneous as a matter of law. The Board, in its discretion, may conduct a review *de novo* of the evidence presented to the Trial Commissioner. Both the findings and any disciplinary action must be agreed upon by eleven (11) or three-fourths (3/4) of the members of the Board present and voting on the proceedings, whichever is less. The result of each of the two (2) votes shall be recorded in the Board's minutes and in a written decision of the Board setting forth the reasons therefore as stated in paragraph seven (7) of this rule. The President shall sign and file with the Disciplinary Clerk an order setting forth the action and decision of the Board. The Disciplinary Clerk shall mail copies of such order and decision, together with a copy of the Trial Commissioner's report, to the Respondent and his/her counsel, and to each member of the Inquiry Commission, and shall place ten (10) copies in the file. The Board by a vote of a majority of the Board present and voting, may remand the case to the Inquiry Commission for reconsideration of the form of the charge, remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report, or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.

## TEXT (7)

(7) The Board shall issue a written decision within thirty (30) days of voting on the cases. The Board shall, in its decision, state wherein it differs with the findings of fact and law of the Trial Commissioner and will state the degree of discipline, if any is imposed.

## TEXT (8)

(8) Bar Counsel or the Respondent may file a notice for the Court to review the Board's decision within thirty (30) days after the Board's decision is filed with the Disciplinary Clerk, stating reasons for review, accompanied by a brief supporting his/her position on the merits of the case. Before the notice for review can be filed, the Respondent shall furnish a bond with surety acceptable to the Disciplinary Clerk, conditioned that if the principal in the bond be disciplined by the Court, he/she will promptly pay all costs incurred in the proceeding, including those certified under Rule 3.370. If Respondent files a response *in forma pauperis*, no bond shall be required.

## TEXT (9)

(9) The Court may within sixty (60) days of the filing of the Board's decision notify Bar Counsel and Respondent that it will review the Board's decision. If the Court so acts, Bar Counsel and Respondent may each file briefs within thirty (30) days, with no right to file reply briefs unless by order of the Court, whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record.

## TEXT (10)

(10) If no notice of review is filed by either one of the parties, or the Court under paragraph nine (9) of this rule, the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters.

## TEXT (11)



(11) When the Respondent is proceeded against by warning order, the notice in paragraph three (3) and paragraph nine (9) of this rule shall be deemed to have been served thirty (30) days after the date of the making of the warning order.

## TEXT (12)

(12) In each case to be presented to the Trial Commissioner, there shall be supplied with the Disciplinary Clerk's file a sealed envelope containing a statement of all orders of unprofessional conduct, years of membership in the association, and withdrawals from the association and reasons therefore, of the Respondent. Same will be opened only if the Trial Commissioner makes a finding of a violation and may be considered in deciding what discipline to impose. Such statement will become part of the record of the case and be transmitted with the rest of the file to the Disciplinary Clerk, Board and/or Supreme Court. Prior to the submission of a case to the Trial Commissioner, who may review documents relative to it at the Bar Center and may comment upon and point out errors contained in the statement.

## CREDIT

HISTORY: Amended by Order 2003-4, eff. 1-1-04; prior amendments eff. 10-1-98 (Order 98-1), 9-15-90 (Order 90-1), 8-28-89, 1-1-87, 4-1-82, 7-1-79, 1-1-78, 7- 2-71

## ANNOTATIONS (Notes of Decisions Index )

Sup. Ct. Rules, Rule 3.370, KY ST S CT Rule 3.370

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KENTUCKY

Rules of the Supreme Court (SCR), Rule 3.450

## TEXT

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED  
RULES OF THE SUPREME COURT  
III PRACTICE OF LAW  
**SCR 3.450 Recovery of costs**

Every final order of the Board or the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of all costs, including those certified under SCR 3.370. Immediately upon the effective date of the order the Clerk shall furnish a cost bill to the Respondent, and if the bill is not satisfied within ten (10) days thereafter, the Clerk shall issue one or more executions thereon, directed to the sheriffs of the counties in which the Respondent and the sureties on his bond reside. So much of the costs collected by the Clerk as represent those incurred by the Board shall be promptly refunded to the Association.

## CREDIT

HISTORY: Amended by Order 98-1, eff. 10-1-98; prior amendments eff. 4-1-82 (Order 82-1), 1-1-78, 7-2-71

## ANNOTATIONS (Notes of Decisions Index )

Sup. Ct. Rules, Rule 3.450, KY ST S CT Rule 3.450

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APPENDIX 13 P. 32

## SECTION 10.1 REIMBURSEMENT OF COSTS AND EXPENSES

### A. Assessment.

Upon order of the court or the board, or upon stipulation, in any case in which a sanction is imposed upon a lawyer or a lawyer is transferred to disability inactive status, costs and expenses as herein defined may be assessed against the lawyer. Legal interest shall also be assessed on unpaid costs and expenses.

### B. Costs.

The term "costs" for the purposes of this rule shall include all obligations in money reasonably and necessarily incurred by the attorney disciplinary board in the performance of its duties under these rules, whether incurred before or after the filing of formal charges. Costs shall include, by way of illustration and not of limitation:

- (1) investigatory costs;
- (2) charges for service of process;
- (3) witness fees;
- (4) the services of a court reporter;
- (5) copying costs; and
- (6) telephone charges.

### C. Expenses.

"Expenses" for the purposes of this rule shall mean a reasonable charge for attorney fees and administrative and staff expenses incurred by the attorney disciplinary board. The following amounts shall conclusively be presumed to be reasonable expenses:

- (1) For an admonition, \$250;
- (2) For a matter which results in a final order of discipline by consent which is concluded prior to the commencement of a hearing before a hearing committee, \$1,000;
- (3) For a matter which results in a public reprimand, \$1,000;
- (4) For a matter which results in any public sanction other than a reprimand, an order of discipline by consent which is concluded prior to a hearing before a hearing committee, or disbarment, \$1,500;
- (5) For a matter which results in a disbarment or permanent disbarment, \$2,000;
- (6) For a matter which results in permanent resignation from the practice of law in lieu of discipline, \$1,000.

### D. Payment of Costs and Expenses.

A lawyer ordered to pay costs and expenses shall do so within thirty days of the date upon which the assessment becomes final unless a periodic payment plan has been approved by the board and disciplinary counsel.

**E. Failure to Comply with Assessment of Costs and Expenses.**

Any lawyer who fails to pay costs and expenses when ordered to do so or who fails to comply with the terms of an agreed upon periodic payment plan shall be mailed, by first class mail at the attorney's last known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice within thirty days of mailing will be summarily certified ineligible to practice law by the court upon notice of such failure received from the disciplinary board. The certification of ineligibility may be cancelled by the court subsequent to receipt of notice from the board that all outstanding costs and expenses have been paid.

**F. Waiver.**

In any case in which costs and expenses are sought pursuant to this rule, the assessment of any or all such costs and expenses may be waived where it appears in the interests of justice to do so.

*Enacted May 28, 1998; Amended effective June 15, 2005*

MASSACHUSETTS

**Section 23. Costs.**

The court, in its discretion, may direct that a respondent-lawyer pay the costs incurred in connection with the processing of a disciplinary proceeding and information, as well as the costs incurred by the bar counsel and the Board in attempting to gain information from the respondent-lawyer in connection with the processing of a complaint against said lawyer.

MICHIGAN

## Rule 9.128 Costs

(A) Generally. The hearing panel and the board, in an order of discipline or an order granting or denying reinstatement, must include a provision directing the payment of costs within a specified period of time. Under exceptional circumstances, the board may grant a motion to reduce administrative costs assessed under this rule, but may not reduce the assessment for actual expenses. Reimbursement must be a condition in a reinstatement order.

(B) Amount and Nature of Costs Assessed. The costs assessed under these rules shall include both basic administrative costs and disciplinary expenses actually incurred by the board, the commission, a master, or a panel for the expenses of that investigation, hearing, review and appeal, if any.

(1) Basic Administrative Costs:

(a) for discipline by consent pursuant to MCR 9.115(F)(5), \$750;

(b) for all other orders imposing discipline, \$1,500;

(c) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of less than 3 years, \$750;

(d) with the filing of a petition for reinstatement under MCR 9.124(A), where the discipline imposed was a suspension of 3 years or more or disbarment, \$1,500.

(2) Actual Expenses. Within 14 days of the conclusion of a proceeding before a panel or a written request from the board, whichever is later, the grievance administrator shall file with the board an itemized statement of the commission's expenses allocable to the hearing, including expenses incurred during the grievance administrator's investigation. Copies shall be served upon the respondent and the panel. An itemized statement of the expenses of the board, the commission, and the panel, including the expenses of a master, shall be a part of the report in all matters of discipline and reinstatement.

(C) Certification of Nonpayment. If the respondent fails to pay the costs within the time prescribed, the board shall serve a certified notice of the nonpayment upon the respondent. Copies must be served on the administrator and the State Bar of Michigan. Commencing on the date a certified report of nonpayment is filed, interest on the unpaid fees and costs shall accrue thereafter at the rates applicable to civil judgments.

(D) Automatic Suspension for Nonpayment. The respondent will be suspended automatically, effective 7 days from the mailing of the certified notice of nonpayment, and until the respondent pays the costs assessed or the board approves a suitable plan for payment. The board shall file a notice of suspension with the clerk of the Supreme Court and the State Bar of Michigan. A copy must be served on the respondent and the administrator. A respondent who is suspended for nonpayment of costs under this rule is required to comply with the requirements imposed by MCR 9.119 on suspended attorneys.

(E) Reinstatement. A respondent who has been automatically suspended under this rule and later pays the costs or obtains approval of a payment plan, and is otherwise eligible, may seek automatic reinstatement pursuant to MCR 9.123(A) even if the suspension under this rule exceeded 179 days. However, a respondent who is suspended under this rule and, as a result, does not practice law in Michigan for 3 years or more, must be recertified by the Board of Law Examiners before the respondent

may be reinstated.

MINNESOTA

**RULE 24. COSTS AND DISBURSEMENTS**

(a) **Costs.** Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of \$900.

(b) **Disbursements.** Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court, together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) **Time and Manner for Taxation of Costs and Disbursements.** The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) **Judgment for Costs and Disbursements.** Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.



**RULES OF DISCIPLINE FOR THE  
MISSISSIPPI STATE BAR**

**Effective January 1, 1984**

**RULE 27. COSTS AND EXPENSES**

- (a) A Tribunal or the Court may assess costs incurred in the investigation, prosecution and defense of any disciplinary matter as justice may require. Such costs and expenses shall include the actual and reasonably necessary expenses of the Bar, excluding Complaint Counsel's time.
- (b) An attorney exonerated of the charge may recover from the Bar any sums actually paid to the Bar and costs paid to the Clerk of the Court or for service of process in this State. The attorney shall recover no other costs or expenses.
- (c) In reinstatement proceedings, in addition to any investigatory fee, the petitioner shall pay all court costs and expenses of any physical or psychiatric examinations required by the Court.

 **Office of State Courts Administrator**

**Clerk Handbooks**

**Supreme Court Rules**

<p><b>Subject:</b> Rule 5 - Rules Governing the Missouri Bar and the Judiciary - Complaints and Proceedings Thereon</p> <p><b>Topic:</b> Procedure Following Decision of a Disciplinary Hearing Panel</p>	<p>Section/Rule: <b>5.19</b></p> <p>Publication / Adopted Date: <b>June 20, 1995</b></p> <p>Revised / Effective Date: <b>October 23, 2001</b></p>
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**5.19 Procedure Following Decision of a Disciplinary Hearing Panel**

(a) After a hearing, a disciplinary hearing panel may find that the information should be dismissed, a written admonition should be administered to the respondent, or that further proceedings are warranted.

(b) If a written admonition is administered to the respondent, it shall be served upon the respondent as provided in Rule 5.18.

Within fifteen days of the receipt of the admonition, the respondent so admonished shall accept or reject the admonition in writing. If accepted, the written admonition shall become part of the record. Failure of the respondent to timely respond in writing is an acceptance of the admonition.

If the admonition is rejected, the disciplinary hearing panel shall render a written decision within fifteen days of receipt of the rejection or within the time provided for a decision in Rule 5.16, whichever is later. The decision shall include the findings and recommendations required by Rule 5.16.

If the admonition is rejected, the admonition shall not be used as evidence or otherwise for any purpose, except as provided in Rule 5.31.

(c) If the disciplinary hearing panel after a hearing recommends dismissal of the information and the parties concur in the panel's written decision, the chief disciplinary counsel shall dismiss the information.

If the disciplinary hearing panel after a hearing recommends discipline and the parties concur in the panel's written decision, the parties shall file with this Court a copy of the panel's decision and a written stipulation of their concurrence in the panel's written decision including the recommendation for discipline.

The stipulation shall be filed in this Court within thirty days after the date of the panel's decision.

If the Court concurs in the panel's recommendation of discipline, the Court shall adopt the recommendation without further hearing or proceeding.

(d) If:

(1) The chief disciplinary counsel does not concur in the panel's decision to dismiss the information,

(2) The parties do not file a written stipulation within thirty days after the date of the panel's decision, or

(3) This Court does not concur with the panel's recommendation of discipline, the chief disciplinary counsel shall file in this Court the complete record made before the disciplinary hearing panel within thirty days after the deadline for filing a stipulation or as otherwise ordered by this Court. The matter shall be briefed and argued in this Court as though a petition for an original remedial writ has been sustained.

(e) If this Court finds for the respondent, it shall dismiss the information.

If this Court finds the professional misconduct charged in the information, it shall impose appropriate discipline.

(f) When requested by the respondent, and upon a showing of financial inability to employ counsel, this Court shall appoint counsel to represent the respondent in this Court. Compensation shall be fixed by this Court and shall be payable from the Advisory Committee Fund.

(g) If the respondent is a member of the bar of this state and is also licensed in any other state, a copy of this Court's decision to discipline shall be forwarded to the chief disciplinary counsel. The chief disciplinary counsel shall forward the decision to the appropriate disciplinary authorities of the other states wherein the respondent is licensed.

If the respondent is a member of the bar of another state and not of this state and the charges are found to be true, this Court shall render a judgment finding respondent guilty and shall reprimand the respondent or enjoin the respondent from practicing law within the state of Missouri for a time fixed in the discretion of this Court. A copy of this Court's order shall be forwarded to the chief disciplinary counsel. The chief disciplinary counsel shall forward the order to the appropriate disciplinary authorities of the states wherein the respondent is licensed.

(h) Costs in the matter shall be taxed as this Court, in its discretion, may order.

*(Adopted June 20, 1995, eff. Jan 1, 1996.)*

*(Amended March 12, 1996, eff. April 1, 1996; May 31, 2001, eff. July 1, 2001; Oct. 23, 2001, eff. Oct. 23, 2001.)*

▶ Document History:

**RULE 9--DISCIPLINE AND SANCTIONS**

**A. Forms of Discipline.** Discipline may take one or more of the following forms:

- (1) Disbarment.
- (2) Suspension from the practice of law for a definite period of time or for an indefinite period of time with a fixed minimum term.
- (3) Public censure.
- (4) Private admonition.
- (5) Probation.
- (6) Requirement of restitution to persons financially injured.
- (7) Reimbursement to the Lawyers' Fund for Client Protection.
- (8) Assessment of the cost of proceedings, investigations and audits. Whenever costs of proceedings are assessed by the Supreme Court as part of the discipline imposed upon a lawyer, the Disciplinary Counsel shall assemble and serve upon the lawyer an itemized list of those costs. The lawyer shall then have ten days thereafter in which to file written objections and, if so desired, request a hearing before an Adjudicatory Panel on whether the amount of such costs is reasonable and necessary. An Adjudicatory Panel shall thereafter recommend an amount of costs to be imposed, and shall file its recommendation, along with any objections thereto, with the Supreme Court, which shall then issue an appropriate order assessing costs.
- (9) Interim suspension pending final determination of discipline.

**B. Discipline Criteria.** The following factors shall be considered in determining discipline to be recommended or imposed:

- (1) The duty violated;
- (2) The lawyer's mental state;
- (3) The actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of aggravating or mitigating factors.

**C. Probation.** A lawyer against whom disciplinary proceedings are pending, may be placed on probation by the Supreme Court, or, with lawyer's concurrence, by an Adjudicatory Panel. The probation shall be for such time and upon such terms and conditions as are determined appropriate in the case. Discipline may be imposed for violation of any of the terms and conditions of such probation, including satisfactory completion of a diversion or treatment program.

**D. Procedure for Discipline for Willful Contempt of Court and Failure to Purge the Contempt.** Upon receipt of a certified copy of an order of contempt that has become final, the Supreme Court may, in its discretion, issue an order to show cause why the lawyer's license to practice law should not be suspended or other discipline should not be imposed. The lawyer against whom such an order has been entered in district court shall not have the right or opportunity to re-litigate the merits of the contempt order, the right to hearing and due process having been afforded him or her in the district court.

In the alternative, the Supreme Court may direct an Adjudicatory Panel to issue the order to show cause or direct the lawyer to appear before the Adjudicatory Panel. In that event, the Adjudicatory Panel shall make a written recommendation to the Supreme Court regarding suspension of the

lawyer's license or other discipline.

An attorney who has been purged of the contempt order may be reinstated to practice law. Prior to reinstatement, the lawyer shall be required to pay the costs of any proceedings before the Commission on Practice.

## RULE 10. PROCEDURE

## Nebraska Supreme Court

(A) Proceedings for discipline of members shall be considered civil in their nature and for the purpose of protecting the public and the good name of the members, and may be instituted against any person who has been licensed to practice in the courts of the State of Nebraska.

(B) Proceedings for discipline of members may be instituted and prosecuted in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court without leave of court.

(C) Proceedings shall be initiated by the Counsel for Discipline filing a Formal Charge setting forth the grounds thereof with reasonable definiteness. The Formal Charge shall be filed with the Clerk who shall then docket the cause as an original proceeding in the Court. No initial filing fee shall be charged in these actions.

(D) Upon the filing in the Court of a Formal Charge as contemplated and provided for by these rules against any member, Counsel for Discipline shall prosecute the Formal Charge against the Respondent. If the Court is advised by Counsel for Discipline by written notice or by a motion filed by the Respondent that, for reasons specified therein, a conflict exists or Counsel for Discipline cannot otherwise carry out such duty, the Court within ten days, in its discretion, may appoint any member to prosecute the Formal Charge.

(E) The Counsel for Discipline or any member so appointed may within thirty days, in his or her discretion, prepare and file an amended Formal Charge. Within five days after the time fixed for filing an amended Formal Charge, service shall be made upon the Respondent as provided for in paragraph (G) below.

(F) If the Counsel for Discipline or the member so appointed has in his or her possession evidence which, in his or her opinion, warrants any additional Charge or Charges, the Counsel for Discipline or the member so appointed may incorporate such additional Charge or Charges in the Formal Charge and prosecute the same, despite the fact that they may not have been presented to the Committee on Inquiry or the Disciplinary Review Board.

(G) Service upon the Respondent may be had by serving upon him or her a copy of the Formal Charge or any amended Formal Charge and notice of the time for answer in the same manner as service of summons is had in civil proceedings in the district courts of the State, in which case it shall be proved by the official return of the officer making such service. Service shall be deemed to have been waived if the Respondent shall sign a written receipt for a copy of the Formal Charge and notice. Service may likewise be had by the mailing by the Clerk of a certified copy of said Formal Charge and notice by certified mail, return receipt requested, to the Respondent at his or her last known address; and in that event the official return card of the United States mail, signed by the Respondent, acknowledging receipt of the envelope containing the copy of said Formal Charge and notice, shall be deemed sufficient proof of service. In the event that it shall appear by affidavit that personal service cannot be had upon the Respondent and that letters to the Respondent's last known address are returned unclaimed, service may be had upon the Respondent by publication of notice for two successive weeks in some legal newspaper published in the county wherein the Respondent last resided. Such notice shall state that Formal Charge for disciplinary action has been filed in the Court against the Respondent and shall give the date of filing and the time within which Respondent is required to answer.

(H) The answer of the Respondent shall be filed within thirty days after service of summons and a copy of the Formal Charge or within thirty days after service by publication, as herein provided, shall have been completed. For good cause shown the Court may extend the time to answer.

(I) If no answer be filed within the time limited therefor, or if the answer raises no issue of fact or of law, the matter may be disposed of by the Court on its own motion or on a motion for judgment on the pleadings, but in either case there shall be an opportunity for oral argument prior to entry of an order of disbarment by the Court.

(J) Upon the filing of an answer raising an issue of fact, the Court shall refer the matter to a member as referee. It shall be the duty of such referee to fix an early date for hearing, notify the relator and the Respondent or their respective attorneys of record, and without delay to hear such testimony as may be introduced under the pleadings. The referee shall have all powers of a referee in civil actions in the courts of Nebraska. The referee shall observe the rules of evidence, discovery rules, and motion practice applicable in civil actions in the district courts of the State of Nebraska. The standard of proof in hearings before the referee shall be clear and convincing. The referee shall have a competent reporter present who shall take in shorthand or by any mechanical device and transcribe in typewriting all oral evidence adduced at the hearing had before the referee. The referee may continue the hearing from time to time as circumstances may require, but shall not delay his or her proceedings unless justice and equity so require. The referee shall make a written report within four months of the referee's appointment, unless extended by order of the Court, stating his or her findings of fact and recommendations. The typewritten record of the proceedings shall have attached to it all of the exhibits offered at the hearing, and shall be certified by the referee. The referee shall promptly transmit to the Court the referee's report, together with such record so certified, and shall transmit a copy of the report to the Respondent.

(K) Upon the filing of an answer raising an issue of law only, the Court may, in its discretion, refer the matter to a member as referee for such action in relation thereto as the Court may by its order of reference direct.

(L) Within ten days after the filing of the report of the referee, any party thereto may file written exceptions to such report. If no exceptions are filed, the Court, in its discretion, may consider the findings final and conclusive, and on motion shall enter such order as the evidence and law require.

(M) If exceptions be filed to the findings or report of the referee, briefs and arguments shall be filed and oral arguments made in the Court as required by the rules of the Court in civil cases. The party filing exceptions to the findings and report of the referee shall serve and file his or her brief within thirty days after the filing of such report and the brief of the adverse party shall be served and filed within thirty days thereafter. The case shall thereupon be placed upon the Court call for hearing.

(N) The Court may disbar, suspend, censure, or reprimand the Respondent, place him or her on probation, or take such other action as shall by the Court be deemed appropriate. All orders of public discipline shall be forwarded by the Clerk to the membership secretary of the Nebraska State Bar Association.

(O) Any party thereto may file a motion for rehearing at any time within twenty days from the filing of the opinion or rendition of the judgment of the Court.

(P) Costs of these actions may be taxed by the Court as the Court shall see fit.

(Q) The Counsel for Discipline shall prosecute any case referred to him or her by the Court for



prosecution.

(R) No application for modification of judgment pursuant to Rule 4 of these rules shall be made prior to the expiration of one year after the final order in such proceedings shall have been entered except in cases where the only service upon Respondent has been by publication, and no appearance has been made by Respondent, and except where the application is made under the terms of Neb. Rev. Stat. §§ 25-2001 to 25-2009.

(S) No application for reinstatement from an order of suspension shall be made prior to the expiration of the period of suspension unless otherwise provided by the Court in said order.

(T) No application for reinstatement from an order of disbarment shall be made prior to the expiration of five years after the final order in such proceedings shall have been entered.

(U) A member seeking reinstatement must inform the Counsel for Discipline of all prior discipline taken against him or her in any jurisdiction.

(V) Copies of every such application shall be furnished the Relator, the Counsel for Discipline, the current Chairperson of the Committee on Inquiry for the District which exercised original jurisdiction, and the Chairperson of the Disciplinary Review Board, any one or more of whom may appear and resist such application. Any other persons may likewise appear upon obtaining leave of the Court and make such resistance. Within twenty days thereafter, the Counsel for Discipline and the District Committee on Inquiry, by its Chairperson, shall each file a written statement recommending the application be granted or denied and the reasons therefor. The Court may deny such application without a hearing if justice and equity require it. If the application or the showing in resistance thereto shall require the taking of evidence, the matter may be referred to a referee and the proceedings shall be the same as in the case of original disciplinary proceedings.

## RULE 23. EXPENSES

(A) Actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry or the Disciplinary Review Board in connection with any investigations or Inquiries, as provided by these rules and incurred prior to the filing of the Formal Charge in the Court, shall be paid by the Office of the Counsel for Discipline. If a private reprimand is issued to a member, the Court may enter judgment in favor of the Office of the Counsel for Discipline, for such costs and expenses upon request of and proof by the Counsel for Discipline.

(B) Upon request of and proof by the Counsel for Discipline, a disciplined member shall be required to reimburse the Office of the Counsel for Discipline for the actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry, or the Disciplinary Review Board in connection with any investigations, hearings, or proceedings leading to the imposition of a sanction, if the disciplinary action is heard by the Nebraska Supreme Court. The Court may enter judgment for court costs and costs and expenses approved by the Court.

**Rule 116. Reinstatement.**

1. **Order of Supreme Court required.** An attorney disbarred or suspended for more than 6 months may not resume practice until reinstated by order of this court.

2. **Three-year waiting period.** A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least 3 years from the effective date of disbarment.

3. **Procedure for reinstatement.** Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the disciplinary board governing the county in which the attorney resides; a copy of the petition shall be served on bar counsel. The board shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, schedule a hearing at which the petitioner has the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest. Within 60 days after the conclusion of the hearing, the panel shall file the record of the proceedings, together with its findings and recommendation with the supreme court, which may set the matter for argument at its convenience.

4. **Bar counsel to appear.** In proceedings for reinstatement, cross-examination of the petitioning attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by bar counsel.

5. **Tender of costs in advance.** Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the disciplinary board to cover anticipated costs of the reinstatement proceeding.

6. **Decision on reinstatement; conditions.** If the petitioner does not meet the burden of proof to justify reinstatement, the petition shall be dismissed. If the petitioner meets the burden of proof, a judgment of reinstatement shall be entered; provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceeding, and upon the making of partial or complete restitution to parties injured by the petitioner's misconduct which led to suspension or disbarment; and further provided that if suspension of the petitioner has continued for more than 5 years, reinstatement may be conditioned on the furnishing of such proof of competency as may be required by the court, which proof may include certification by the bar examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

7. **Successive petitions.** A petition for reinstatement under this rule shall not be filed within 1 year following an adverse judgment on a petition for reinstatement filed by or on behalf of the same person.

**Rule 120. Costs; bar counsel conflict or disqualification.**

1. An attorney subjected to discipline under these rules may be assessed the costs, in full or in part, of the disciplinary proceeding, including, but not limited to, reporter's fees, investigation fees, bar counsel and staff's salaries, and witness expenses allocable to the proceeding.
2. If, for any reason, bar counsel is disqualified to proceed under these rules, or if to proceed would give rise to a conflict of interest, the board of governors shall appoint an attorney, ad hoc, to act in the place of bar counsel.

**(19) Expenses Relating to Discipline Enforcement:**

All expenses incurred by the attorney discipline system in the investigation and enforcement of discipline may, in whole or in part, be assessed to a disciplined attorney to the extent appropriate.

NEW JERSEY

**From:** David E. Johnson Jr. <directordj@HOME.COM>  
**Date:** 11/16/2001 8:23:00 PM  
**Subject:** Re: Cost Assessments

Message Date: 11/16/2001 20:23

From: David E. Johnson Jr. <directordj@HOME.COM>  
To: [NOBC@MAIL.ABANET.ORG](mailto:NOBC@MAIL.ABANET.ORG) <[NOBC@MAIL.ABANET.ORG](mailto:NOBC@MAIL.ABANET.ORG)>

John -

Generally, New Jersey assesses 1) disciplinary expenses (i.e. out-of-pocket costs) and 2) a flat administrative fee ranging from \$500 for consent discipline to \$750 for reciprocal discipline and criminal convictions to \$1,500 for all other public discipline including Disbarment By Consent (if tendered after the commencement of hearing). The collection is done by our Disciplinary Review Board. They collect about \$200,000 per year. Of course, we don't collect much from disbarred attorneys, since disbarment is permanent in New Jersey. Other states offering reinstatement may see greater collections in this area.

Our rule language is set out below.

#### 1:20-17. Reimbursement of Disciplinary Costs

(a) Generally. Except in extraordinary cases, the final order of discipline or final order of transfer to disability-inactive status, shall impose costs as recommended by the Disciplinary Review Board.

(b) Amount and Nature of Costs Assessed. In calculating its recommendation the Disciplinary Review Board shall assess both basic administrative costs and disciplinary expenses actually incurred. Basic administrative costs shall be assessed as follows:

(1) For final Discipline By Consent (including Disbarment by Consent, if tendered prior to hearing), \$500. There shall, however, be no basic administrative costs assessed for admonition by consent.

(2) For a Motion for Final Discipline or a Motion for Reciprocal Discipline, \$750.

(3) For other final discipline or transfer to disability-inactive status ordered by the Board or the Court, including Admonition, Public Reprimand, Suspension, Transfer to Disability-Inactive Status, Disbarment and Disbarment By Consent (if tendered after the commencement of hearing), \$1,500.

Disciplinary expenses actually incurred shall be separately assessed, including, but not limited to, the following:

- (1) Costs of any outside experts, such as accountants, auditors, interpreters, physicians, and other consultants;
- (2) Charges for service of process and notice by publication;
- (3) Transcript and recording or court reporter costs;

(4) Costs of a special ethics master;

(5) Disciplinary Review Board reproduction costs at 10 cents per page;

(6) Costs and fees paid to witness;

(c) Disputes; Procedure. On the entry of an order imposing final discipline or final transfer to disability inactive status by the Supreme Court which includes an authorization for imposition of costs, Counsel to the Board shall promptly furnish the respondent with a statement of disciplinary costs. Within 20 days thereafter the respondent shall reimburse in full all basic administrative costs and such disciplinary expenses actually incurred as to which there is no dispute. A respondent disputing any included actually-incurred disciplinary expense shall, within that time, specifically detail in writing the items disputed and the factual basis for the dispute. The timely filing of a letter of dispute shall be reviewed by the Board without oral argument. Board Counsel shall notify respondent of the Board's decision, which shall be final and not subject to appeal. Respondent shall remit full payment of any balance due within 20 days after receipt of said notice.

Interest shall be charged on the unpaid balance of costs assessed beginning 10 days after the date the assessment becomes final. The rate of interest charged shall be 10% per annum, or such other rate established by the Supreme Court from time to time.

(d) Claims of Extraordinary Financial Hardship. Service on respondent of the statement of disciplinary costs shall be accompanied by a notice advising that, in the event of inability to make payment by reason of extraordinary financial hardship, an installment payment schedule may be requested in writing. The request shall be made in writing within 20 days after service of the statement on respondent and shall include a proposed payment plan and be supported by a detailed statement of reasons together with such information specified in the notice. Respondent shall certify the truth of the information provided.

A timely request under this section shall be reviewed by the Board whose decision shall be final and not subject to appeal. On respondent's failure to comply with the schedule of payments, the entire unpaid balance of disciplinary costs shall become immediately due and payable.

(e) Failure to Pay Disciplinary Costs.

(1) Temporary Suspension. On a default in payment required by this rule, Board Counsel, on 10 days notice to the respondent, may file with the Supreme Court a certification of the default. The Supreme Court shall forthwith enter an order temporarily suspending the attorney from the practice of law until payment is made and until further order of the Court.

(2) Denial of Reinstatement. The Supreme Court shall not consider a recommendation for reinstatement unless accompanied by a Board certification that all assessed disciplinary costs have been paid.

(3) Docketing Judgment. Upon certification of the amount of disciplinary costs assessed and due, the Clerk of the Superior Court shall, without fee, enter on the civil judgment and order docket both the order authorizing costs and Board's Counsel's certification of the amount due. Upon payment a warrant for

satisfaction shall be executed by Board Counsel.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraph (f) deleted July 10, 1998 to be effective September 1, 1998.

----- Original Message -----

From: John Van Bolt

To: [NOBC@MAIL.ABANET.ORG](mailto:NOBC@MAIL.ABANET.ORG)

Sent: Friday, November 16, 2001 9:44 AM

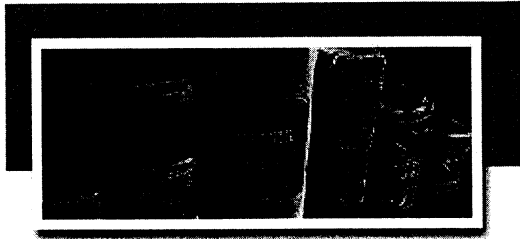
Subject: Cost Assessments

I know that this may have been discussed before but I would appreciate hearing from jurisdictions which assess some type of standard, flat, or minimum costs as part of a disciplinary order. We assess only actual out of pockets--primarily transcript costs, witness fees and mileage for panelists and discipline counsel. If that is essentially what you do, or if you collect no costs, there is no need to reply. I'm only interested in info related to our Court's instructions to find ways to increase revenue (other than by increasing dues) Thanks



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### SUBCHAPTER B

#### Discipline and Disability Rules

#### Section .0100 Discipline and Disability of Attorneys

#### .0105 Chairperson of the Grievance Committee: Powers and Duties

- (a) The chairperson of the Grievance Committee will have the power and duty
- (1) to supervise the activities of the counsel;
  - (2) to recommend to the Grievance Committee that an investigation be initiated;
  - (3) to recommend to the Grievance Committee that a grievance be dismissed;
  - (4) to direct a letter of notice to a respondent or direct the counsel to issue letters of notice in such cases or under such circumstances as the chairperson deems appropriate;
  - (5) to issue, at the direction and in the name of the Grievance Committee, a letter of caution, letter of warning, an admonition, a reprimand, or a censure to a member;
  - (6) to notify a respondent that a grievance has been dismissed, and to notify the complainant in accordance with Rule .0121 of this subchapter;
  - (7) to call meetings of the Grievance Committee;
  - (8) to issue subpoenas in the name of the North Carolina State Bar or direct the secretary to issue such subpoenas;
  - (9) to administer or direct the administration of oaths or affirmations to witnesses;
  - (10) to sign complaints and petitions in the name of the North Carolina State Bar;
  - (11) to determine whether proceedings should be instituted to activate a suspension which has been stayed;

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(12) to enter orders of reciprocal discipline in the name of the Grievance Committee;

(13) to direct the counsel to institute proceedings in the appropriate forum to determine if an attorney is in violation of an order of the Grievance Committee, the commission, or the council;

(14) to rule on requests for reconsideration of decisions of the Grievance Committee regarding grievances;

(15) to tax costs of the disciplinary procedures against any defendant against whom the Grievance Committee imposes discipline, including a minimum administrative cost of \$50;

(16) in his or her discretion, to refer grievances primarily attributable to unsound law office management to a program of law office management training approved by the State Bar and to so notify the complainant;

(17) to dismiss a grievance upon request of the complainant, where it appears that there is no probable cause to believe that the respondent has violated the Rules of Professional Conduct and where counsel consents to the dismissal;

(18) to dismiss a grievance where it appears that the grievance has not been filed within the time period set out in Rule .0111 (e);

(19) to dismiss a grievance where it appears that the complaint, even if true, fails to state a violation of the Revised Rules of Professional Conduct and where counsel consents to the dismissal;

(20) to dismiss a grievance where it appears that there is no probable cause to believe that the respondent has violated the Revised Rules of Professional Conduct and where counsel and a member of the Grievance Committee designated by the committee consent to the dismissal.

(21) to appoint a subcommittee to make recommendations to the council for such amendments to the Discipline and Disability Rules as the subcommittee deems necessary or appropriate.

(b) The president, vice-chairperson, or a member of the Grievance Committee designated by the president or the chairperson or vice-chairperson of the committee may perform the functions, exercise the power, and discharge the duties of the chairperson or any vice-chairperson when the chairperson or a vice-chairperson is absent or disqualified.

(c) The chairperson may delegate his or her authority to the president, the vice chairperson of the committee, or a member of the Grievance Committee.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amended February 20, 1995  
Amended March 6, 1997  
Amended October 2, 1997  
Amended December 30, 1998  
Amended March 3, 1999  
Amended February 3, 2000

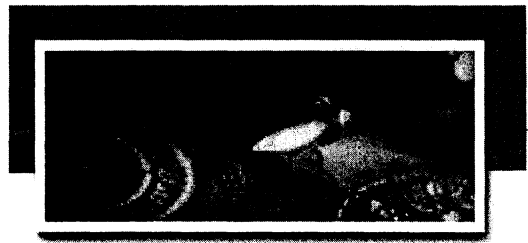


North Carolina State Bar  
208 Fayetteville Street Mail  
PO Box 25908  
Raleigh, NC 27611-3908  
919.828.4620

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### SUBCHAPTER B

#### Discipline and Disability Rules

#### Section .0100 Discipline and Disability of Attorneys

#### .0110 Secretary: Powers and Duties in Discipline and Disability Matters

The secretary will have the following powers and duties in regard to discipline and disability procedures:

- (1) to receive grievances for transmittal to the counsel, to receive complaints and petitions for transmittal to the commission chairperson, and to receive affidavits of surrender of license for transmittal to the council;
- (2) to issue summonses and subpoenas when so directed by the president, the chairperson of the Grievance Committee, the chairperson of the commission, or the chairperson of any hearing committee;
- (3) to maintain a record and file of all grievances not dismissed by the Grievance Committee;
- (4) to perform all necessary ministerial acts normally performed by the clerk of the superior court in complaints filed before the commission;
- (5) to enter orders of reinstatement where petitions for reinstatement of suspended attorneys are unopposed by the counsel;
- (6) to dismiss reinstatement petitions based on the petitioner's failure to comply with the rules governing the provision and transmittal of the record of reinstatement proceedings;
- (7) to determine the amount of costs assessed in disciplinary proceedings by the commission.

History Note - Statutory Authority G.S. 84-22; G.S. 84-23; G.S. 84-32(c)

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Readopted Effective December 8, 1994



North Carolina State Bar  
208 Fayetteville Street Mall  
PO Box 25908  
Raleigh, NC 27611-5908  
919.828.4620

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*NORTH DAKOTA***RULE 1.3. FORMS OF DISCIPLINE.**

**A. Forms.** Misconduct is grounds for one or more of the following forms of discipline:

- (1) Disbarment by the court, in which case the lawyer is not eligible for readmission for five years;
- (2) Suspension by the court for an appropriate fixed period of time not in excess of three years;
- (3) Immediate interim suspension imposed by the court, pending final determination of discipline;
- (4) Probation imposed by the court not in excess of two years, or imposed by a hearing panel or district inquiry committee with the consent of the respondent not in excess of two years. The probation may be renewed for an additional two-year period by consent or after a hearing to determine if there is a continued need for supervision;
- (5) Admonition by the district inquiry committee;
- (6) Reprimand by the court or a hearing panel;
- (7) Restitution to persons financially injured;
- (8) Reimbursement to the client protection fund;
- (9) Assessment of costs and expenses of proceedings against the lawyer; or
- (10) Limitation by the court on the nature or extent of the lawyer's future practice.

**B. Conditions.** Conditions may be attached to an admonition, a reprimand, or probation. Failure to comply with a condition is a ground for reconsideration of the matter and imposition of further discipline against the lawyer.

**C. Mitigation or Aggravation.** Mitigating or aggravating circumstances affecting the nature or degree of discipline to be imposed must be fully set forth in the opinion disposing of the matter.

**D. Costs.** Unless otherwise ordered by the court or the a hearing panel, costs and expenses of all disability or discipline proceedings, including, without limitation, the costs of investigations, service of process, witness fees, and a court reporter's services, must be assessed against the lawyer in any case where discipline is imposed or there is a transfer to disability inactive status or incapacitated status. In assessing costs and expenses, the court or hearing panel may consider as a mitigating factor the lawyer's tender of a conditional admission under Rule 4.2 that is consistent with or less than the discipline imposed. All expenses so assessed must be paid to the secretary of the board.

[Amended effective July 1, 1999. Adopted effective January 1, 1995.]

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Title 5. Attorneys and the State Bar

**Oklahoma Statutes Citationized**

**Title 5. Attorneys and the State Bar**

**Chapter 1**

**App. 1-A Rules Governing Disciplinary Proceedings.**

**Article Rule 6. Formal Proceedings Before Supreme Court and Professional Responsibility**

**Tribunal**

**Section Sec 6.16 - Cost of Investigations and Disciplinary Proceedings Where Discipline Results**

Cite as: O.S. §, \_\_\_

Rules Governing Disciplinary Proceedings.

Chapter 1, App. 1-A

Rule 6. Formal Proceedings Before Supreme Court and Professional Responsibility Tribunal.

§6.16. Cost of Investigations and Disciplinary Proceedings Where Discipline Results.

The costs of investigation, the record, and disciplinary proceedings shall be advanced by the Oklahoma Bar Association (or the Professional Responsibility Commission, if provision therefor has been made in its budget). Where discipline results, the cost of the investigation, the record, and disciplinary proceedings shall be surcharged against the disciplined lawyer unless remitted in whole or in part by the Supreme Court for good cause shown. Failure of the disciplined lawyer to pay such costs within ninety (90) days after the Supreme Court's order becomes effective shall result in automatic suspension from the practice of law until further order of the Court.

**Historical Data**

Adopted by orders February 23, 1981; eff. July 1, 1981.

**Citationizer® Summary of Documents Citing This Document**

**Oklahoma Supreme Court Cases**

Cite	Name	Level
<a href="#">2002 OK 84, 60 P.3d 1024,</a>	STATE ex. rel. OKLAHOMA BAR ASS'N v. SHOFNER	Cited
<a href="#">2002 OK 86, 60 P.3d 1030,</a>	STATE ex. rel. OKLAHOMA BAR ASS'N v. PHILLIPS	Cited
<a href="#">2003 OK 31, 72 P.3d 10,</a>	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. ARNOLD	Cited
<a href="#">2003 OK 56, 71 P.3d 18,</a>	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. TAYLOR	Discussed
<a href="#">2003 OK 61, 72 P.3d 27,</a>	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. GIGER	Discussed
<a href="#">2003 OK 15, 65 P.3d 281,</a>	STATE ex rel. OKLAHOMA BAR ASSOCIATION v. McLAIN	Discussed at Length

**Citationizer: Table of Authority**

None Found.

**Rule 10.7 Costs And Disbursements.**

(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the cost of a copy of the transcript if a copy has been provided by the Bar to an accused without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05(5)(a). Lawyer fees are not recoverable costs and disbursements either at the hearing or on appeal nor are prevailing party fees recoverable by any party.

(b) Allowance of Costs and Disbursements. In any contested admission, discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the court or Disciplinary Board. An accused or applicant prevails when the charges against the accused are dismissed in their entirety or the applicant is unconditionally admitted or reinstated to the practice of law in Oregon. The bar shall be considered to have prevailed in all other cases.

(c) Recovery After Offer of Settlement. An accused may, at any time up to 14 days prior to hearing, serve upon Bar Counsel and Disciplinary Counsel an offer by the accused to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the written offer by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB, and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or of the court imposing a sanction no greater than that to which the accused was willing to plea no contest or stipulate based on the charges the accused was willing to concede or admit, the Bar shall not recover and the accused shall recover actual and necessary costs and disbursements incurred after the date the accused's offer was rejected by the SPRB.

(d) Procedure for Recovery and Collection. The procedure set forth in the Rules of Appellate Procedure of the Supreme Court regarding the filing of cost bills and objections thereto shall be followed except that in matters involving final decisions of the Disciplinary Board cost bills and objections thereto shall be resolved by the state chairperson of the Disciplinary Board. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk with proof of service on the state chairperson of the Disciplinary Board and the other party and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536(5).

*(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989. Rule 10.7 (a) amended by Order dated October 1, 1990; amended by Order dated June 28, 2001.)*

*(Rule 10.7(d) amended by Order dated June 17, 2003, effective July 1, 2003.)*



(g) *Costs.*

(1) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses taxed under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

(2) In the event a proceeding is concluded by informal admonition or private reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel or the Board for informal admonition or private reprimand. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules.



# South Carolina Judicial Department

## RULE 7 GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE AGREEMENT

- Appellate Court
- Civil Procedure
- Criminal Procedure
- Family Court
- Probate Court
- Magistrates Court
- Arbitration /Mediation
- Evidence
- Printer Friendly Version

**(a) Grounds for Discipline.** It shall be a ground for discipline for a lawyer to:

(1) violate or attempt to violate the Rules of Professional Conduct, Rule 407, SCACR, or any other rules of this jurisdiction regarding professional conduct of lawyers;

(2) engage in conduct violating applicable rules of professional conduct of another jurisdiction;

(3) willfully violate a valid order of the Supreme Court, Commission or panels of the Commission in a proceeding under these rules, willfully fail to appear personally as directed, willfully fail to comply with a subpoena issued under these rules, or knowingly fail to respond to a lawful demand from a disciplinary authority to include a request for a response or appearance under Rule 19(b)(1), (c)(3) or (c)(4);

(4) be convicted of a crime of moral turpitude or a serious crime;

(5) engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law;

(6) violate the oath of office taken to practice law in this state and contained in Rule 402(k), SCACR;

(7) willfully violate a valid court order issued by a court of this state or of another jurisdiction;

(8) employ a person in violation of Rule 34;

(9) willfully fail to comply with the terms of a finally accepted deferred disciplinary agreement or any terms of a finally accepted agreement for discipline by consent; and,

(10) willfully fail to comply with a final decision of the Resolution of Fee Disputes Board.

**(b) Sanctions.** Misconduct shall be grounds for one or more of the following sanctions:

(1) disbarment;

- (2) suspension for an indefinite period from the office of attorney at law;
- (3) suspension for a definite period from the office of attorney at law. The period of the suspension shall not exceed 2 years and shall be set by the Supreme Court;
- (4) public reprimand;
- (5) admonition by an investigative panel of the Commission or by the Supreme Court with the consent of the lawyer, provided that an admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of sanction to be imposed;
- (6) deferred discipline agreement;
- (7) restitution to persons financially injured, repayment of unearned or inequitable attorney's fees or costs advanced by the client, and reimbursement to the Lawyers' Fund for Client Protection;
- (8) assessment of the costs of the proceedings, including the cost of hearings, investigations, service of process and court reporter services;
- (9) limitations on the nature and extent of the lawyer's future practice;
- (10) any other sanction or requirement as the Supreme Court may determine is appropriate.

Amended by Order issued August 20, 2003, effective September 1, 2003. This amendment added Rule 7(a)(9) and (10).

Amended by Order Dated September 22, 2004, effective immediate. This amended changed the language in Rule (7)(a)(6) to recognize the Court's adoption of a new Lawyer's Oath.



# South Carolina Judicial Department

## RULE 27 REVIEW BY SUPREME COURT

- Appellate Court
- Civil Procedure
- Criminal Procedure
- Family Court
- Probate Court
- Magistrates Court
- Arbitration /Mediation
- Evidence
- Printer Friendly Version

**(a) Briefs of Disciplinary Counsel and Respondent.** Within 30 days of the service of the hearing panel report, disciplinary counsel and/or respondent may serve and file a brief setting forth and arguing any exceptions taken to the findings, conclusions or recommendations made by the hearing panel. Within 30 days after service of the brief, the opposing party may serve and file a brief in response. Within 15 days of the service of the response, the party who filed the brief containing exceptions may serve and file a reply brief. The failure of a party to file a brief taking exceptions to the report constitutes acceptance of the findings of fact, conclusions of law, and recommendations.

**(b) Form, Content and Number of Briefs.** The form and content of the briefs shall, to the extent possible, comply with the requirements of Rules 208 and 238, SCACR. The number of briefs to be served and filed shall be the same as that required for final briefs under Rule 211(a), SCACR.

**(c) Supplementary Filings and Oral Argument.**

**(1)** If the Supreme Court desires an expansion of the record or additional findings, it shall remand the case to the hearing panel with appropriate directions and withhold action pending receipt of the additional filing.

**(2)** The Supreme Court may order additional briefs or oral arguments as to the entire case or specified issues.

**(d) Stay for Further Proceedings.** If, during review by the Supreme Court, the Commission receives another complaint against the respondent, disciplinary counsel shall advise the Supreme Court. The Supreme Court may stay its review pending the Commission's determination of the second complaint. The Supreme Court may impose a single sanction covering all recommendations for discipline from the Commission against a respondent.

**(e) Decision.**

**(1)** The Supreme Court shall file a written decision dismissing the case, containing a letter of caution, imposing a sanction (s), or transferring the lawyer to incapacity inactive status. Any order relating to incapacity shall comply with Rule 28(g). Unless otherwise ordered by the Supreme Court, the decision shall be effective upon filing.

**(2)** The Supreme Court may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the Commission.

(3) The Supreme Court may assess costs against the respondent if it finds the respondent has committed misconduct. Unless otherwise ordered by the Court, costs shall be paid within 30 days of the filing of the opinion or order assessing costs.

(f) **Rehearing.** A petition for rehearing must be served and filed within 15 days after the filing of the decision or order.

(g) **Recusal.** A justice of the Supreme Court shall not participate in any proceeding involving allegations of misconduct or incapacity against the justice, or in any proceeding where recusal is required under the Code of Judicial Conduct.

(h) **Notice of Decision.** The Commission shall transmit notice of all public discipline imposed against a lawyer, transfers to and from incapacity inactive status, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association, the disciplinary enforcement agency of every other jurisdiction in which the lawyer is admitted, and the South Carolina Bar. The Commission shall transmit notice of a decision suspending, disbaring or transferring a lawyer to disability inactive status to the clerk of court in each county in which the lawyer maintained an office and the chief judge for administrative purposes having authority over any county in which the lawyer maintained an office. The Commission may also establish policies for giving notice of public discipline to other courts, agencies and organizations. The Commission shall not provide notice when an admonition is imposed.

16-19-70.1. Costs and expenses of disciplinary proceedings. (a) **State Bar of South Dakota.** Costs and expenses incurred by the Disciplinary Board of the State Bar of South Dakota in the investigation or prosecution of any disciplinary or reinstatement proceeding under this chapter shall be paid by the state bar, provided, however, that the expenses of a disciplinary proceeding may, in the discretion of the Supreme Court, be assessed against the attorney who is the subject of such proceeding, and further provided that an advance deposit to cover the unreimbursed costs of any prior proceedings and the anticipated costs of a reinstatement proceeding may be required by the disciplinary board from an attorney petitioning for reinstatement as provided in § 16-19-84.

(b) **Attorney General.** The attorney general shall pay the costs and expenses his office incurs in the investigation or prosecution of any disciplinary proceeding under this chapter.

(c) **Unified Judicial System.** The Unified Judicial System shall pay the costs and expenses incurred by the referee, the court reporter and witnesses when a disciplinary action is referred to a referee under § 16-19-68.

**Source:** SL 1990, ch 439 (Supreme Court Rule 89-21).

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16-19-70.2. Allowable costs and expenses. Expenses incurred by the Disciplinary Board of the State Bar, the Office of the Attorney General, or the Unified Judicial System that were not covered by advance deposit and that have not been previously paid by the attorney who is the subject of a disciplinary or reinstatement proceeding may be assessed by the Supreme Court against said attorney in favor of the State of South Dakota and/or the State Bar of South Dakota according to their respective interests to cover the costs of a referee's mileage, meals, and rooms; a court reporter's mileage, meals, rooms, and transcript preparation; disciplinary counsel's mileage, meals, rooms, telephone charges, copying fees, and hourly charges for investigation and preparation for hearings, trials, and appeals, and appearances at hearings, trials, and appeals; witnesses' fees and mileage; and the Disciplinary Board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

**Source:** SL 1990, ch 440 (Supreme Court Rule 89-22).

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16-19-70.3. Proof of costs and expenses required. An assessment for costs and expenses against an attorney requires the following proof:

(a) **State Bar of South Dakota.** A sworn statement of unreimbursed allowable costs filed with the clerk of the Supreme Court by the state bar prior to issuance of a final judgment.

(b) **Attorney General and Unified Judicial System.** Copies of approved expense vouchers for reimbursement of allowable costs and expenses associated with the disciplinary proceeding filed with the clerk of the Supreme Court by the attorney general or the finance office of the Unified Judicial System prior to issuance of a final judgment.

**Source:** SL 1990, ch 441 (Supreme Court Rule 89-23).

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16-19-70.4. Judgment for costs against attorney. When judgment is rendered against an accused attorney or whenever judgment for reinstatement of an attorney is entered, said attorney may, at the discretion of the Supreme Court, be directed to make appropriate reimbursement of costs and expenses as provided in §§ 16-19-70.1 and 16-19-70.2.

**Source:** SL 1990, ch 442 (Supreme Court Rule 89-24).

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## Sec. 24. Expenses, Audit and Reimbursement of Costs

**24.1 Expenses.** The salaries of Disciplinary Counsel and staff, their expenses, administrative costs and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of Rule 9.

**24.2 Audit.** The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with this Court.

**24.3 Reimbursement of Costs.** In the event that a judgment of disbarment, suspension, public censure, private reprimand, temporary suspension, disability inactive status, reinstatement, or denial of reinstatement results from formal proceedings, the Board shall assess against the respondent attorney the costs of the proceedings, including court reporter's expenses for appearances and transcription of all hearings and depositions, the expenses of the hearing committee in the hearing of the cause, and the hourly charge of disciplinary counsel in investigating and prosecuting the matter.

The respondent attorney may petition the Board for relief from costs within thirty days of receipt of the final bill of costs or on the termination of any action upon which the disciplinary proceeding was based, whichever occurs last. In seeking relief, the respondent attorney shall have the opportunity to appear and be heard before the Board or a duly constituted panel thereof. Having conducted such a hearing, the Board shall file an order within thirty days; this order must include the basis for the Board's decision. An order reflecting the decision shall be treated as a decree of the circuit or chancery court and, as such, is appealable to the Tennessee Supreme Court under Rule 9, § 1.3, Rules of the Supreme Court.

The hourly charges of disciplinary counsel, on formal proceedings filed prior to January 27, 1992, shall be assessed at \$20 per hour for investigative time and \$30 per hour for trial time. The hourly charges of disciplinary counsel, on formal proceedings filed on or after January 27, 1992, shall be assessed at \$30 per hour for investigative time incurred prior to the filing of formal proceedings and \$80 per hour in connection with formal proceedings.

Payment of the costs assessed by the Board pursuant to this rule shall be required as a condition precedent to reinstatement of the respondent attorney. [As amended by order entered January 27, 1992 and by order filed April 28, 2000, effective May 25, 2000.]

1.05 Texas Disciplinary Rules of Professional Conduct: Nothing in these rules is to be construed, explicitly or implicitly, to amend or repeal in any way the Texas Disciplinary Rules of Professional Conduct.

1.06 Definitions:

- A. "Address" means the address provided by the attorney the subject of a Grievance as shown on the membership rolls maintained by the Clerk of the Supreme Court at the time of receipt of the Grievance by the Chief Disciplinary Counsel.
- B. "Board" means the Board of Directors of the State Bar of Texas.
- C. "Chief Disciplinary Counsel" means the person serving as Chief Disciplinary Counsel and any and all of his or her assistants.
- D. "Commission" means the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- E. "Committee" means any of the grievance committees within a single District.
- F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.
- G. "Complaint" means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.
- H. "Director" means a member of the Board of Directors of the State Bar of Texas.
- I. "Disability" means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney's inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.
- J. "Disciplinary Action" means a proceeding brought by or against an attorney in a district court or any judicial proceeding covered by these rules other than an Evidentiary Hearing.
- K. "Disciplinary Petition" means a pleading that satisfies the requirements of Rule 3.01.
- L. "Disciplinary Proceedings" includes the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel.
- M. "District" means disciplinary district.

N. "Evidentiary Hearing" means an adjudicatory proceeding before a panel of a grievance committee.

O. "Evidentiary Panel" means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

P. "Evidentiary Petition" means a pleading that satisfies the requirements of Rule 2.17.

Q. "General Counsel" means the General Counsel of the State Bar of Texas and any and all of his or her assistants.

R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

S "Inquiry" means any written matter concerning attorney conduct received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability.

T. "Intentional Crime" means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.

U. "Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

V. "Professional Misconduct" includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.

2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

3. Violation of any disciplinary or disability order or judgment.

4. Engaging in conduct that constitutes barratry as defined by the law of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.
8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

W. "Reasonable Attorneys' Fees," for purposes of these rules only, means a reasonable fee for a competent private attorney, under the circumstances. Relevant factors that may be considered in determining the reasonableness of a fee include but are not limited to the following:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services;
3. The amount involved and the results obtained;
4. The time limitations imposed by the circumstances; and
5. The experience, reputation, and ability of the lawyer or lawyers performing the services.

X. "Respondent" means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

Y. "Sanction" means any of the following:

1. Disbarment.
2. Resignation in lieu of discipline.
3. Indefinite Disability suspension.
4. Suspension for a term certain.

5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

6. Interim suspension.

7. Public reprimand.

8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements:

a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

Z. "Serious Crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

AA. "State Bar" means the State Bar of Texas.

BB. "Summary Disposition Panel" means a panel of the Committee that determines whether a Complaint should proceed or should be dismissed based upon the absence of evidence to support a finding of Just Cause after a reasonable investigation by the Chief Disciplinary Counsel of the allegations in the Grievance.

## PART II

### The District Grievance Committees

2.01 Disciplinary Districts and Grievance Committee Subdistricts: The State of Texas is geographically divided into disciplinary districts that are coextensive with the districts of elected Directors of the State Bar. One or more Committee subdistricts shall be delineated by the Board within each such District. From time to time, if the Commission deems it useful for the efficient operation of the disciplinary system, it shall recommend to the Board that a redelineation be made of one or more subdistricts within a District. All Committees within a single disciplinary district have concurrent authority within the District but once a matter has been assigned to a Committee, that Committee has dominant jurisdiction, absent a transfer.

2.02 Composition of Members: Each elected Director of the State Bar shall nominate, and the President of the State Bar shall appoint, the members of the Committees within the District that coincides with the Director's district, according to rules and policies adopted from

## Rule 8. Sanctions

A. **Types of Sanctions.** Misconduct shall be grounds for one or more of the following sanctions:

(1) Disbarment, in which case the lawyer shall not be eligible for readmission for at least five years;

(2) Suspension for an appropriate fixed period of time not in excess of three years;

(3) Immediate interim suspension, pending final determination of discipline;

(4) Public reprimand, which shall be published in the Vermont Reports and in a newspaper of general circulation in the geographical area in which the lawyer practices law;

(5) Admonition. Two types of admonition may be imposed:

(a) Admonition by disciplinary counsel imposed with the consent of the respondent and the approval of a hearing panel. Admonitions by disciplinary counsel cannot be imposed after formal charges have been issued.

(b) Admonition by a hearing panel imposed only after formal charges have been issued.

All admonitions shall be in writing and served upon the respondent. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed. A summary of the conduct for which an admonition was imposed shall be published for the education of the profession, but the lawyer shall not be identified in the published decision. Admonitions may be used in subsequent proceedings in which the respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

(6) Probation:

(a) Imposition of Probation. Probation may be imposed only in conjunction with any other sanction, reinstatement from disability, and reinstatement from disbarment or suspension. It shall be used only in those cases in which there is little likelihood that the respondent will harm the public during the

period of probation and the conditions of probation can be adequately supervised. Probation shall be imposed for a specific period and on notice and opportunity to be heard may be renewed for an additional period.

(b) Conditions in Writing. The conditions of the probation shall be in writing. Only the Court may impose conditions of probation which limit the lawyer's practice of law in this jurisdiction, except that the hearing panel may do so with the lawyer's consent. All or some of the costs of probation may be assessed against the lawyer. The probation will be supervised by a probation monitor approved by the hearing panel or disciplinary counsel, with any expense borne by respondent. Probation shall be terminated upon the filing of an affidavit by the respondent showing compliance with the conditions and an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that conclusion.

(c) Violation of Probation. A violation of probation may be the basis for interim suspension pursuant to Rule 18 or may be the basis of independent disciplinary charges which shall be proven by clear and convincing evidence under the same procedures as for charges of misconduct. Upon proof of a probation violation, any sanction under these rules may be imposed. Allegations of violation of probation imposed in conjunction with a reprimand, suspension, or reinstatement shall proceed as public proceedings.

(7) Reimbursement of retainers, fees, trust funds, or other monies collected or received by the lawyer on a client's behalf, but reimbursement shall not be imposed unless some other sanction is imposed;

(8) Assessment of the costs of proceedings, but only in reinstatement or probation violation proceedings.



§ vs-cr-6:4-13

Procedure for Disciplining, Suspending, and Disbarring Attorneys.

A. Definitions

As used in this Paragraph, the following terms shall have the meaning herein stated unless the context clearly requires otherwise:

"Adjudication of a Crime Proceeding" means the proceeding which follows the summary Suspension of an Attorney after receipt by the Clerk of the Disciplinary System of initial notification from any court of competent jurisdiction stating that an Attorney has been found guilty of a Crime, irrespective of whether sentencing has occurred.

"Admonition" means a private sanction imposed by a Subcommittee sua sponte, a private or public sanction based upon an agreed disposition approved by a Subcommittee, or a public sanction imposed by a District Committee or the Board upon a finding that Misconduct has been established, but that no substantial harm to the Complainant or the public has occurred, and that no further disciplinary action is necessary.

"Agreed Disposition" means the disposition of a Complaint or Charge of Misconduct agreed to by Respondent and Bar Counsel and approved by a Subcommittee, District Committee, or the Board.

"Attorney" means a member of the Bar and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia.

"Bar" means the Virginia State Bar.

"Bar Counsel" means the Attorney who is appointed as such by Council and who is approved by the Attorney General pursuant to Va. Code {2.1-122(c) and such deputies, assistants, and Investigators as may be necessary to carry out the duties of the office, except where the duties must specifically be performed by the individual appointed pursuant to Va. Code {2.1-122(c).

"Bar Official" means any Bar officer or any member, employee, or counsel of Council, the Board, a District Committee, or COLD.

"Board" means the Bar Disciplinary Board.

"Certification" means the document issued by a Subcommittee or a District Committee when it has elected to certify the Charges of Misconduct to the Board for its consideration, which document shall include sufficient facts to reasonably notify Bar Counsel and Respondent of the basis for such Certification and the Disciplinary Rules alleged to have been violated.

"Certification for Sanction Determination" means the document issued by a District Committee to certify to the Board that a sanction within the power of the Board is in order where the District Committee has found that Respondent failed to fulfill the terms of a Public Reprimand with Terms issued either by a Subcommittee or on the basis of an Agreed Disposition or by a District Committee.

"Chair," unless otherwise specified, means the Chair, Vice Chair, or Acting Chair of a District Committee, or a Section, Panel, or Subcommittee of a District Committee, or of the Board or any Panel of the Board.

"Charge of Misconduct" means the notice given by the Bar to a Respondent, setting forth generally the Misconduct alleged to have been committed by the Respondent, and identifying the specific Disciplinary Rule(s) alleged to have been violated by the Respondent. The Charge of Misconduct shall also include the date, time, and place of the hearing.

"Circuit Court" means a court designated as such by Va. Code {17.1-500.

"Clerk of the Disciplinary System" means the employee of the Bar who, together with such assistants as may be required, provides administrative support to the disciplinary system and serves as official custodian of the Disciplinary Records.

"COLD" means the Standing Committee on Lawyer Discipline.

"Complainant" means the initiator of a Complaint.

"Complaint" means any written communication to the Bar alleging Misconduct or from which allegations of Misconduct reasonably may be inferred.

"Committee Counsel" means an Attorney District Committee member assigned to prosecute a Complaint.

"Costs" means reasonable costs paid by the Bar to outside experts or consultants; reasonable travel and out-of-pocket expenses for witnesses; Court Reporter and transcript fees; copying, mailing, and required publication costs, and an administrative charge determined by Council.

## 8. Authority and Duties of the Clerk of the Disciplinary System:

The Clerk of the Disciplinary System shall maintain a docket of current Attorney discipline and CRESPA matters pending before the District Committees, the Board or courts of this Commonwealth.

### b. Records Retention

(1) The Clerk of the Disciplinary System shall retain all Files with respect to any Disciplinary Record for a period of at least five years from the date of the final Order in the Disciplinary Proceeding that created that Disciplinary Record. The Clerk may destroy all other Files upon the expiration of one year after the Dismissal.

(2) Whenever a File is destroyed, the following information shall be preserved:

- (a) the name and Bar identification number of Respondent;
- (b) the name and last known address of the Complainant;
- (c) the date the matter was initially received by the Bar;
- (d) a summary of the Complaint or Charge of Misconduct;
- (e) the date of the Dismissal or any sanction(s) imposed; and
- (f) the disposition of the matter, including the basis for Dismissal or the sanction(s) imposed.

Such summary information shall be retained for at least five years whenever the Complaint or Charge of Misconduct is dismissed with no Disciplinary Record having been created, and for at least ten years whenever a Disciplinary Record has been created, an Impairment determined, a Reinstatement Proceeding held or a finding of Misconduct involving a CRESPA violation made.

(3) The Clerk of the Disciplinary System shall preserve a copy of all District Committee Determinations and Board or court orders in which an Attorney has been found to have engaged in Misconduct, to be disabled, to have committed a violation of CRESPA or requested Reinstatement.

The Clerk of the Disciplinary System shall assess Costs against the Respondent in the following cases.

- (1) All cases in which a final determination of Misconduct is made by a Subcommittee, District Committee, three-judge Circuit Court, the Disciplinary Board or this Court.
- (2) All cases against a Respondent who surrenders his or her License to practice law at a time when charges are pending.
- (3) All proceedings under this Paragraph in which there is a finding that a Respondent has been found guilty of a Crime.
- (4) All reciprocal cases under this Paragraph in which a final determination imposing discipline is made.
- (5) All Reinstatement cases under this Paragraph.
- (6) All cases before the Disciplinary Board in which sanctions were imposed for violations of CRESPA and/or the bar's CRESPA regulations.

If the Respondent disagrees with the amount of Costs as calculated by the Clerk, or if the Respondent asserts that the immediate payment thereof would constitute a hardship, the Respondent may petition the Board for review within ten days of the notice assessing Costs. The Chair, upon written request of Respondent, included

with his petition, may grant Respondent a hearing on the Costs issue. The decision of the Chair shall be final and non-appealable. Interest at the judgment rate shall commence on the Costs assessed 30 days after the issuance of the notice of assessment, unless otherwise prescribed by the Board. If the Respondent fails to pay the Costs and interest so assessed within 30 days of the notice of assessment or within such other time as the Board may order, then the Costs assessed and interest shall be a debt subject to collection by the Bar, and the Board shall issue an order of Suspension against the Respondent until such time as Respondent shall pay all of the Costs and accrued interest.

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ELC 13.9  
COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent lawyer who is ordered sanctioned or admonished.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

- (1) court reporter charges for attending and transcribing depositions or hearings;
- (2) process server charges;
- (3) necessary travel expenses of hearing officers, hearing panel members, disciplinary counsel, adjunct investigative counsel, or witnesses;
- (4) expert witness charges;
- (5) costs of conducting an examination of books and records or an audit under title 15;
- (6) costs incurred in supervising probation imposed under rule 13.8;
- (7) telephone toll charges;
- (8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;
- (9) costs of copying materials for submission to a review committee, a hearing officer or panel, or the Board; and
- (10) compensation provided to hearing officers or panel members under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

- (1) for an admonition that is accepted under rule

13.5(a), \$750;

- (2) for a matter that becomes final without review by the Board, \$1,500;
- (3) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of \$2,000;
- (4) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of \$2,500; and
- (5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of \$3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

- (1) Timing. Disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:
  - (A) an admonition is accepted;
  - (B) the decision of a hearing officer or panel or the Board imposing an admonition or a sanction becomes final;
  - (C) a notice of appeal from a Board decision is filed and served; or
  - (D) the Supreme Court accepts or denies discretionary review of a Board decision.
- (2) Content. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. Disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.
- (3) Service. The Clerk serves a copy of the statement on the respondent.
- (4) Exceptions. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.
- (5) Reply. Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

- (1) Matters Reviewed by Court. In matters reviewed by

the Supreme Court under title 12, the Chair's decision is subject to review only by the Court.

- (2) All Other Matters. In all other matters, the following procedures apply:
  - (A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.
  - (B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Association's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or panel or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.
- (g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.
- (h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.
- (i) Payment of Costs and Expenses.
  - (1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel.
  - (2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.
  - (3) Disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.
    - (A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

[Adopted effective October 1, 2002.]

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**Rule 3.15. Permissible sanctions.**

A Hearing Panel Subcommittee may recommend or the Supreme Court of Appeals may impose anyone or more of the following sanctions for a violation of the Rules of Professional Conduct or pursuant to Rule 3.14: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment. When a sanction is imposed, the Hearing Panel Subcommittee or the Court shall order the lawyer to reimburse the Lawyer Disciplinary Board for the costs of the disciplinary proceeding unless the Panel or the Court finds the reimbursement will pose an undue hardship on the lawyer. Willful failure to reimburse the Board may be punished as contempt of the Court.

**Section 26. Expenses and Costs.**

- (a) The expenses of members of the BPR and the Panel, Bar Counsel, and Special Bar Counsel, costs of a Disciplinary Judge, and other expenses incurred in the implementation or administration of these rules, shall be paid with funds allocated for that purpose by the Wyoming State Bar. The Wyoming State Bar shall compensate and pay the expenses of Disciplinary Judges.
- (b) When an attorney is privately disciplined, the BPR may assess against the attorney the costs incurred in connection with the investigation and disciplinary proceeding.
- (c) When public discipline is recommended by the BPR, it shall certify to the Court the costs incurred in connection with the investigation and disciplinary proceeding, together with the administrative fee. The BPR may recommend to the Court the assessment of those costs and fees and, if the Court imposes discipline, the Court may assess all or any part of the certified costs and fees against respondent.
- (d) In any case where costs and fees are assessed, they shall be paid to the Wyoming State Bar.
- (e) In addition to any costs or fees assessed by the BPR or the Court, an administrative fee of five hundred dollars (\$500.00) shall be imposed by the BPR in all cases where private discipline, diversion, or public discipline is ordered.