

**Wyoming Rules of Disciplinary Procedure
(proposed amendments for comment January 2019)**

Rule 3. Confidentiality of Access to Information Concerning Proceedings Under these Rules.

(a) Availability of Information. Except as otherwise provided by these rules, all documents and information in a disciplinary proceeding on file with the BPR, commencing with the filing of the formal charge, shall be available to the public.

(1) A request to inspect or obtain copies of such records shall be in writing on a form provided by the BPR Clerk, and shall include sufficient information to reasonably identify what is being sought.

(2) The BPR Clerk shall comply with such requests within a reasonable time, except requests that are determined to be unduly burdensome or made for the purpose of harassing or substantially interfering with the operations of the BPR. Documents or information not filed with the BPR clerk, filed under seal or subject to a protective order shall not be available to the public.

(3) Any applicant who is denied the right to inspect, receive copies or access any record pursuant to this rule shall be entitled to a review of the decision by the BPR Chair. The request for review shall be filed with the BPR Clerk within 10 business days of such denial. Upon review of the request and related documentation, the BPR Chair will inform the applicant whether the denial is affirmed or reversed.

~~(a)~~(b) Confidentiality. Before the filing of a formal charge, ~~A~~all proceedings pursuant to these rules are confidential ~~unless and until an order of public discipline is issued by the Court,~~ except that the pendency, subject matter, status, and information discovered in the course of an investigation conducted pursuant to these rules may be disclosed by Bar Counsel if:

- (1) The respondent has waived confidentiality;
- (2) The proceeding is based upon allegations that include either the conviction of a crime or public discipline imposed by a foreign jurisdiction;
- (3) The proceeding is based on allegations that have become generally known to the public;
- (4) There is a need to notify another person or organization, including the Client Protection Fund of the Wyoming State Bar, to protect the public, the administration of justice, or the legal profession;
- (5) An Order of Immediate Suspension has been entered pursuant to Rule 17; or

(6) As necessary in Bar Counsel's discretion to conduct any investigation or proceedings pursuant to these rules.

~~(b)~~(c) *Proceedings Regarding Disability.* In proceedings regarding an attorney's disability, all orders transferring an attorney to or from disability inactive status shall be matters of public record, but otherwise, such proceedings shall be confidential and shall not be made public, except by order of the Court.

~~(e)~~(d) *Disclosure to Law Firms.* When Bar Counsel obtains an order transferring the respondent to disability inactive status or is authorized to file a formal charge, the respondent shall make written disclosure to the respondent's current firm and, if different, to the respondent's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within fourteen (14) days of the date of the order or of the date of filing of a formal charge. In the event the respondent fails to provide Bar Counsel with confirmation of such disclosure, Bar Counsel shall make the disclosure.

~~(d)~~(e) *Pending Investigations.* Except as provided by section ~~(a)~~(b) of this rule, Bar Counsel shall treat as confidential investigations pending with Bar Counsel or before the ROC.

~~(e)~~(f) *Cases Dismissed.* Except as provided by section ~~(a)~~(b) of this rule, Bar Counsel shall treat as confidential complaints that have been dismissed.

~~(f)~~(g) *Production of Records Pursuant to Subpoena.* Bar Counsel, pursuant to a valid subpoena, shall not permit access to files or records or furnish documents that are confidential as provided by these rules unless the Court orders otherwise. When Bar Counsel is permitted to disclose confidential documents contained in files or confidential records, a reasonable fee may be charged for identification of and photocopying the documents and records.

~~(g)~~(h) *Response to False or Misleading Statement.* If public statements that are false or misleading are made about any disciplinary investigation or proceeding or disability inactive status proceeding, Bar Counsel may disclose information to the extent necessary to correct the false or misleading statements.

~~(h)~~(i) *Request for Nonpublic Information.* A request for nonpublic information other than that authorized for disclosure under section (a) of this rule shall be denied unless the request is from:

- (1) An agency authorized to investigate the qualifications of persons for admission to practice law;
- (2) An agency authorized to investigate the qualifications of persons for government employment;
- (3) An attorney discipline enforcement agency;
- (4) A criminal justice agency; or

- (5) An agency authorized to investigate the qualifications of judicial candidates. If the Judicial Nominating Commission requests the information it shall be furnished promptly and Bar Counsel shall give written notice to the attorney that specified confidential information has been so disclosed.

~~(h)~~(j) *Notice to the Attorney.* Except as provided in section (h)(5) of this rule, if Bar Counsel is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of twenty-one (21) days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Court requiring its release.

~~(h)~~(k) *Release Without Notice.* If an agency otherwise authorized by section (h) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

- (1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;
- (2) The information is essential to that investigation; and
- (3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

~~(k)~~(l) *Notice to National Regulatory Data Bank.* Bar Counsel shall transmit notice of all public discipline imposed against an attorney, transfers to or from disability inactive status, and reinstatements to the National Regulatory Data Bank maintained by the American Bar Association.

~~(h)~~(m) *Duty of Officials and Employees.* All officials and employees within the Office of Bar Counsel, the ROC, the BPR, and a Disciplinary Judge shall conduct themselves so as to maintain the confidentiality mandated by this rule.

~~(m)~~(n) *Evidence of Crime.* Nothing in these rules shall be construed to preclude any person from giving information to authorities authorized to investigate criminal activity.

Rule 6. Board of Professional Responsibility.

(a) *Appointment.* The Court shall appoint, upon the advice of the president of the Wyoming State Bar, a Board of Professional Responsibility (BPR), consisting of ~~seven~~ nine members, ~~five~~ six of whom shall be members of the Wyoming State Bar and ~~two~~ three of whom shall be non-attorneys.

Consideration shall be given to the appointment of members who reside in different parts of the state and who have differing degrees of experience and types of expertise in the practice of law.

(b) *Terms; governance; temporary members.* One member shall be designated by a majority vote of the BPR as Chair, a second as vice-Chair to act in the absence or disability of the Chair, and a third as second vice-Chair to act in the absence or disability of the Chair and vice-Chair.

- (1) Each member of the BPR shall serve a three year term. If a member does not complete a term, the Court shall appoint another person to complete that term.
- (2) Attorneys must succeed attorneys and non-attorneys must succeed non-attorneys on the BPR.
- (3) No member shall serve for more than two consecutive terms, although a former member may be appointed to serve again after having been off the BPR for at least three (3) years.
- (4) The BPR shall act only upon concurrence of a majority of a quorum. A quorum shall be no fewer than five (5) members.
- (5) For good cause shown, the Court may appoint a temporary replacement member or members in situations in which one or more of the regularly-appointed BPR members are not available to serve.

(c) *Powers and duties of members of the BPR. Members of the BPR shall:*

- (1) Hold all necessary hearings upon formal charges and petitions filed pursuant to these rules;
- (2) Assign a Disciplinary Judge to preside over such matters as may be appropriate under these rules;
- (3) With regard to any matter for which a Disciplinary Judge has not been assigned, appoint a member of the BPR designated by the BPR Chair who shall have and exercise all of the powers of a Disciplinary Judge as provided in Rule 7;
- (4) When misconduct has been proved by clear and convincing evidence at a hearing, or misconduct has been established by default, issue a private reprimand or recommend an appropriate public discipline to the Court;
- (5) When the disability of an attorney to continue the practice of law by reason of mental infirmity, illness or substance abuse has been proved by clear and convincing evidence at a hearing, recommend to the Court the placing of the attorney on disability inactive status;

- (6) Approve or disapprove all stipulations relating to public discipline or transfer to disability inactive status and make its recommendations on such stipulations to the Court;
- (7) Rule upon all dispositive motions;
- (8) Make recommendations to the Court regarding the reinstatement of a person to practice law; and
- (9) Take any other action authorized or ordered by the Court.

(d) *Abstention.* A member of the BPR shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain.

(e) *Reimbursement of expenses.* Members of the BPR shall be entitled to reimbursement for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

Rule 12. Stipulated Discipline.

(a) *Acceptance of conditional admission.* A respondent may, at any point in the proceedings prior to final action by the BPR, tender a conditional or unconditional admission of misconduct constituting grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by Bar Counsel prior to being tendered to the ROC or the BPR.

- (1) If the form of stipulated discipline is a private reprimand, the conditional or unconditional admission shall be tendered to the ROC for its review. The ROC shall either reject the conditional admission and order the proceedings continued in accordance with these rules, or accept the conditional admission and order a private reprimand imposed.
- (2) If the form of stipulated discipline is disbarment, suspension, public censure, or a range that includes any of the former and a private reprimand, the conditional or unconditional admission shall be tendered to the BPR for review. The BPR Clerk shall appoint a three-member Review Panel of members of the BPR, two of whom shall be attorneys and one of whom shall be a non-attorney, to review the stipulation. BPR members appointed to a Review Panel shall not be members of or eligible for membership on a hearing panel in the matter. The BPR Review Panel shall, after conducting a hearing as provided in this rule, if one is requested or if the BPR Review Panel deems it appropriate, either reject the conditional admission and order the proceedings continued in accordance with these rules, or approve the conditional admission and order a private reprimand or submit an appropriate report and recommendation to the Court.
- (3) Imposition of stipulated discipline pursuant to a conditional or unconditional admission of misconduct shall terminate all proceedings conducted pursuant to these rules and pending against the respondent in connection with that misconduct.

(b) *Conditional and unconditional admission—contents.* A conditional admission of misconduct shall be in the form of an affidavit, submitted by the respondent, and shall contain:

- (1) An admission of misconduct which constitutes grounds for discipline;
- (2) An acknowledgment of the proceedings pending against the attorney; and
- (3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the attorney is fully aware of the implications of the attorney's admission.
- (4) For an unconditional admission only, a statement that the respondent understands that if the Court does not accept the recommendation of the BPR, the respondent has no right to withdraw the unconditional admission.

(c) *Conditional admission—hearing.*

- (1) *Procedure.* A hearing on the conditional admission shall be set promptly. The hearing shall be conducted by telephone conference call unless the **Chair Review Panel** orders otherwise.
- (2) *Notice.* Reasonable notice of such hearing shall be provided to the respondent, the respondent's counsel, and the complainant. The notice shall designate the date, time and manner of the hearing. The notice shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing and to present argument regarding the form of discipline to be ordered.
- (3) *Complainant.* In addition to the foregoing, the notice shall advise the complainant that the complainant has a right to be present at the hearing and to make a statement, orally or in writing, regarding the form of discipline.

(d) *Further proceedings.* If the conditional or unconditional admission of misconduct is rejected and the matter is returned for further proceedings consistent with these rules, the conditional admission may not be used against the respondent. The rejection of a stipulated discipline does not foreclose any further proceedings for a stipulated discipline.

Rule 15. Proceedings Before the BPR.

(a) *Pre-hearing procedures.*

- (1) *Filing of documents.* All documents required to be submitted to the BPR after the filing of a formal charge shall be filed with the BPR Clerk with copies served on all parties as provided in Rule 5, W.R.Civ.P. The provisions of Rules 6, 7, 8, 10, 11 and 15, W.R.Civ.P., apply to documents filed with the BPR Clerk to the extent those rules are in their nature applicable and consistent with these rules.

(2) Appointment of a Hearing Panel. Upon the filing of a formal charge, a petition for disability inactive status or a petition for reinstatement, the BPR Clerk (in consultation with the BPR Chair) shall appoint a Hearing Panel of members of the BPR, two of whom shall be attorneys and one of whom shall be a non-attorney, for purposes of a hearing in the matter. The Hearing Panel shall choose one of its attorney members to serve as Hearing Panel Chair.

(2) (3) Scheduling. The BPR Hearing Panel Chair shall conduct one or more scheduling conferences for purposes of managing the disciplinary proceeding and shall issue ~~an~~ an order establishing dates and deadlines including the time, date and location of any hearing to be held in the matter.

(3) (4) Discovery. Discovery may be had as provided in Rules 26, 29, 30, 32, 33, 34, 35, 36 and 37, W.R.Civ.P., to the extent those rules are in their nature applicable and consistent with these rules. Bar Counsel shall have a continuing obligation to disclose all exculpatory information to the respondent.

(4) (5) Order for examination. When the mental or physical condition of the respondent has become an issue in the proceeding, the BPR Hearing Panel Chair, on motion of Bar Counsel, may order the respondent to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the respondent. The respondent will be provided the opportunity to respond to the motion of Bar Counsel, and the respondent may request a hearing before the BPR Hearing Panel Chair. If requested, the hearing shall be held within fourteen (14) days of the date of the respondent's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(5) (6) Subpoenas. Subpoenas may be issued by Bar Counsel, the respondent, or the BPR Hearing Panel Chair as provided in Rule 45, W.R.Civ.P. Witness fees and mileage shall be the same as those for state district court proceedings.

(A) In the event any person fails or refuses to comply with a subpoena, the party causing the subpoena to be issued may file with the BPR Clerk a motion for order to show cause why the person should not be held in contempt of court.

(B) The person against whom the motion is made shall file a written response within ten (10) days of service of the motion.

(C) The motion shall be heard by the BPR Hearing Panel Chair. In the absence of good cause shown, the BPR Hearing Panel Chair shall submit a report and recommendation to the Court. The Court shall then determine whether to impose contempt.

~~(6)~~ (7) *Subpoenas for use in out-of-state attorney discipline matters.* Whenever a subpoena is sought in the State of Wyoming for use in lawyer discipline or disability investigations or proceedings in another jurisdiction, and where the application for issuance of the subpoena has been duly approved or authorized under the law of that jurisdiction, Bar Counsel or the BPR Clerk may issue a subpoena as provided in Rule 45, W.R.Civ.P, to compel the attendance of witnesses and production of documents in Wyoming or elsewhere as agreed by the witnesses, for use in such foreign investigations or proceedings. Service, enforcement and challenges to such subpoenas shall be as provided in these rules.

~~(7)~~ (8) *Motions.* Non-dispositive motions shall be determined by the BPR Hearing Panel Chair. Motions for summary judgment brought pursuant to Rule 56, W.R.Civ.P., shall be decided by the BPR Hearing Panel as a whole, ~~or by a panel of not less than three of its members.~~

(b) *Hearings before the BPR.* Except as otherwise provided in these rules, hearings and all matters commencing with filing the formal charge shall be conducted in conformity with the Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over the respondent's objection if to do so would be in violation of the respondent's constitutional privilege against self-incrimination.

(1) Within a reasonable time in advance of the hearing, the BPR Hearing Panel shall be provided with a copy of the formal charge, the respondent's answer, stipulated exhibits and proposed findings of fact and conclusions of law, if such have been filed pursuant to a scheduling order. Additional documents may be provided to the BPR Hearing Panel in advance of the hearing at the discretion of the BPR Hearing Panel Chair.

(2) The BPR Hearing Panel shall arrange for a complete record, either by stenographic or electronic means, to be made of all evidentiary hearings held in disciplinary proceedings. The respondent may obtain a transcript of such record at the respondent's expense. At the time of ordering the transcript, the respondent shall make arrangements, satisfactory to the reporter, for payment of costs of the transcript.

(3) At the hearing, the BPR Hearing Panel shall first receive evidence regarding whether a violation of the Wyoming Rules of Professional Conduct occurred. When all evidence on that issue has been received, the BPR Hearing Panel shall recess to determine whether a violation has been proved by clear and convincing evidence.

(A) Evidence of prior discipline shall not be admitted in the first phase of the hearing except to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) If the BPR Hearing Panel determines by a majority of a quorum that a violation has not been proved by clear and convincing evidence, the BPR Hearing Panel

shall enter an order dismissing the formal charge. A copy of the order shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings. An order of dismissal is not appealable.

- (C) If the **BPR Hearing Panel** determines by a majority **of a quorum** that there has been a violation, the **BPR Hearing Panel** shall then receive evidence of aggravating or mitigating circumstances before determining the appropriate discipline for the violation. Evidence of prior discipline against the respondent shall be admissible in the second phase of the hearing regarding the appropriate discipline to be ordered or recommended.
 - (D) In imposing a sanction after a finding of misconduct by the respondent, the **BPR Hearing Panel** shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions, which standards shall be applied by the **BPR Hearing Panel** in determining the appropriate sanction:
 - (i) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
 - (ii) Whether the lawyer acted intentionally, knowingly, or negligently;
 - (iii) The amount of the actual or potential injury caused by the lawyer's misconduct; and
 - (iv) The existence of any aggravating or mitigating factors.
 - (E) If the **BPR Hearing Panel** finds the charges have been proved by clear and convincing evidence, and that a private reprimand is warranted, it shall issue an order of private reprimand with its findings of fact, conclusions of law, and the discipline imposed. A copy of the order shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings and shall include a description of any rights of appeal.
 - (F) If the **BPR Hearing Panel** finds the charges have been proved by clear and convincing evidence and that public censure, suspension or disbarment is warranted, it shall issue a report and recommendation with its findings of fact, conclusions of law, and recommended discipline and file such report with the clerk of the Court. The **BPR Hearing Panel** may impose reasonable conditions thereon, including but not limited to those set forth in Rule 9(c)(2). A copy of such report shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings. The Court shall act on the recommendation as it deems appropriate.
- (4) The **BPR Hearing Panel** may announce its decision on the record at the conclusion of the hearing or may take the matter under advisement, provided that a decision shall be

rendered within ten days following conclusion of the hearing. The **BPR's Hearing Panel's** written order of private reprimand or report and recommendation shall be issued within thirty (30) days of the hearing. If the **BPR Hearing Panel** allows the parties to submit post-hearing, proposed findings of fact and conclusions of law, the written order of private reprimand or report and recommendation shall be issued within thirty days of the date such proposed findings of fact and conclusions of law are filed.

- (5) *Hearing decorum.* Proceedings before the **BPR Hearing Panel**, like any proceeding before a tribunal, are formal occasions. All participating in the process are expected to conduct themselves in a manner consistent with the solemnity of the occasion. Off-the-record socializing between or among participants is not appropriate. The **BPR Hearing Panel** Chair shall take such action as is necessary and appropriate to assure compliance with this rule.

Rule 16. Proceedings Before the Court.

(a) *Jurisdiction.* Review by the Court of an order of private reprimand by the **BPR Hearing Panel**, or of the **BPR's Hearing Panel's** report and recommendation for a public censure, suspension, disbarment, order of reciprocal discipline, transfer to disability inactive status, or a denial of reinstatement shall be allowed as provided by these rules.

(b) *Standard of review.* The BPR is an ancillary body structured by the Court and has no independent power, jurisdiction, or authority other than that specifically delegated to it in accordance with these rules. The Court will give due consideration to the findings and recommendations of the **BPR Hearing Panel**, but the ultimate judgment in proceedings under these rules is vested in the Court. Accordingly, the Court will examine the evidence, make findings, determine whether there has been an infraction of the Wyoming Rules of Professional Conduct, and impose the discipline which the Court considers appropriate.

(c) *Appeals and objections —how taken.*

(1) *Appeal from order of private reprimand.* The respondent or Bar Counsel (in consultation with the ROC) may appeal an order of private reprimand issued by the **BPR Hearing Panel** by filing a Petition for Review of Private Reprimand, which shall set forth the specific exceptions to the private reprimand. The petition shall be accompanied by a brief complying with W.R.A.P. 7.01 through 7.04. The petition and brief must be filed within thirty (30) days of service of the order of private reprimand. The opposing party may file a responsive brief within ~~20~~ thirty (30) days of service of the petition. If the responsive brief raises a cross-appeal, the petitioner may file a reply to the cross appeal within twenty (20) days of service of the responsive brief.

(2) *Objections to report and recommendation for public discipline.* The respondent or Bar Counsel (in consultation with the ROC) may object to a report and recommendation of the **BPR Hearing Panel** for public censure, suspension or disbarment by filing a brief complying with W.R.A.P. 7.01 through 7.04, except that instead of the statement of issues required by 7.01(d), the brief shall set forth the specific exceptions to the report

and recommendation. The brief must be filed within thirty (30) days of service of the report and recommendation. The opposing party may file a responsive brief within ~~20~~ thirty (30) days of service of the objecting party's brief. If the responsive brief raises a cross-appeal, the petitioner may file a reply to the cross appeal within twenty (20) days of service of the responsive brief.

(3) *Objections to report and recommendation in reinstatement proceedings, to transfer to disability inactive status, or for discipline pursuant to Rule 19.* The respondent or Bar Counsel (in consultation with the ROC) may object to a report and recommendation of the **BPR Hearing Panel** regarding a petition for reinstatement, a petition for transfer to disability inactive status, or a formal charge brought pursuant to Rule 19 by filing a brief complying with W.R.A.P. 7.01 through 7.04, except that instead of the statement of issues required by 7.01(d), the brief shall set forth the specific exceptions to the report and recommendation. The brief must be filed within thirty (30) days of service of the report and recommendation. The opposing party may file a responsive brief within twenty (20) days of service of the objecting party's brief.

(4) *Extensions.* The Court may extend the time for filing of briefs for good cause shown.

(5) If an appeal or objection is filed, the Court shall calendar the matter for such proceedings or argument as it may deem appropriate and shall thereafter enter its judgment.

(d) *Record on appeal.* The record on appeal shall consist of all pleadings; all orders entered by the **BPR Hearing Panel** or a Disciplinary Judge; the **BPR's Hearing Panel's** report and recommendation; all hearing transcripts and exhibits; and all other documents on file with the BPR Clerk. The record shall be properly paginated, fully indexed and bound for transmission to the Court.

(e) *No other evidence to be considered.* During its review, the Court shall not receive or consider any evidence that was not presented to the **BPR Hearing Panel**, except upon notice to the respondent and Bar Counsel and opportunity to respond.

(f) *Publication and Notice of Orders.* The Clerk of the Court shall release for publication orders of disbarment, suspension, or transfer to disability inactive status, and shall promptly transmit such orders to all courts in this state.

Rule 19. Discipline Imposed by Foreign Jurisdiction.

(a) *Proof of Discipline Imposed.* Except as otherwise provided by these rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these rules, conclusively establish such misconduct.

(b) *Duty to Report Public Discipline Imposed.* Any attorney subject to these rules against whom any form of public discipline has been imposed by the authorities of another jurisdiction,

or who voluntarily surrenders the attorney's license to practice law in connection with disciplinary proceedings in another jurisdiction, shall notify Bar Counsel of such action in writing within fourteen (14) days thereof.

(c) *Commencement of Proceedings Upon Notice of Voluntary Surrender of License.* Upon receiving notice that an attorney subject to these rules has voluntarily surrendered his or her license to practice law in another jurisdiction, Bar Counsel shall, following investigation pursuant to these rules, refer the matter to the ROC for further proceedings consistent with Rule 10(f).

(d) *Commencement of Proceedings Upon Notice of Discipline Imposed.* Upon receiving notice that an attorney subject to these rules has been publicly disciplined in another jurisdiction, Bar Counsel shall obtain the disciplinary order and prepare and file a formal charge against the attorney as provided in Rule 13. If Bar Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the formal charge. If the attorney intends to challenge the validity of the disciplinary order entered in the foreign jurisdiction, the attorney must file with the BPR Clerk an answer and a full copy of the record of the disciplinary proceedings which resulted in the imposition of that disciplinary order within twenty-one (21) days after service of the formal charge or such greater time as the BPR Chair may allow for good cause shown. At the conclusion of proceedings brought under this Rule, the **BPR Hearing Panel** shall issue a report and recommendation that the same discipline be imposed as was imposed by the foreign jurisdiction, unless it is determined by the **BPR Hearing Panel** that:

- (1) The procedure followed in the foreign jurisdiction did not comport with requirements of due process of law;
- (2) The proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the **BPR Hearing Panel** cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;
- (3) The imposition of the same discipline as was imposed in the foreign jurisdiction would result in grave injustice; or
- (4) The misconduct proved warrants that a substantially different form of discipline be recommended by the **BPR Hearing Panel**.

(e) If Bar Counsel does not seek substantially different discipline and if the respondent does not challenge the order based on any of the grounds set forth in (d)(1) through (4) above, then the BPR may, without a hearing, issue a report and recommendation for the same discipline as imposed by the foreign jurisdiction.

Rule 20. Disability Inactive Status.

(a) *Disability Inactive Status.* Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney shall be transferred to disability inactive

status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law. Proceedings instituted regarding an attorney pursuant to this rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings provided for by this rule shall not defer or abate other proceedings conducted pursuant to these rules, unless after a hearing the **BPR Hearing Panel** determines that the attorney is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided in Rule 23.

(b) *Transfer to Disability Inactive Status Without a Hearing.* Where an attorney who is subject to these rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the BPR, upon proper proof of the fact, shall issue a report and recommendation that the attorney be transferred to disability inactive status. The matter shall proceed before the Court as provided in Rule 16. If the Court orders the attorney transferred to disability inactive status, such order shall remain in effect unless altered by the Court. A copy of the order transferring an attorney to disability inactive status shall be served upon the attorney and upon either the attorney's guardian or the superintendent of the hospital in which the attorney is confined.

(c) *Procedure When Disability is Alleged.* After a petition for disability inactive status has been filed, the **BPR Hearing Panel** Chair shall direct such action as is deemed necessary or proper to determine whether the attorney is incapacitated, including an examination of the attorney by qualified medical experts designated by the **BPR Hearing Panel** Chair; provided, however, that before any medical examination or other action may be ordered, the **BPR Hearing Panel** Chair must afford the attorney an opportunity to show cause why such examination or action should not be ordered. An attorney against whom disability proceedings are pending shall be given notice of such proceedings. The **BPR Hearing Panel** Chair may appoint counsel to represent the attorney if the attorney is without adequate representation. If, following a hearing and upon due consideration of the matter, the **BPR Hearing Panel** determines that the attorney is incapable of continuing to practice law or is incapable of defending in proceedings conducted pursuant to these rules, the **BPR Hearing Panel** shall issue a report and recommendation that the attorney be transferred to disability inactive status. The matter shall proceed before the Court as provided in Rule 16.

(d) *Procedure When Attorney During Course of Proceedings Alleges a Disability that Impairs the Attorney's Ability to Defend Himself.* If in the course of proceedings conducted pursuant to these rules the attorney alleges disability by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend adequately in such proceedings, such proceedings shall be suspended and the **BPR Hearing Panel** Chair shall order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the **BPR Hearing Panel** Chair may do any of the following:

- (1) Order a hearing on the issue of whether the attorney suffers from a disability that requires the attorney to be transferred to disability inactive status;

- (2) Order that the proceedings pending against the attorney be resumed;
- (3) Enter any other appropriate order, including an order directing further examination of the attorney.

(e) *Burden of Proof.* In a disability proceeding seeking the transfer of an attorney to disability inactive status Bar Counsel shall bear the burden of proof by clear and convincing evidence.

(f) *Hearings.* Any hearings held pursuant to this Rule shall be conducted in the manner prescribed by Rule 15.

Rule 22. Reinstatement After Disciplinary Suspension or Disbarment.

(b) *Reinstatement after disbarment or suspension for more than six months.* ***

(6) *Reinstatement proceedings following disciplinary suspension or disbarment.*

- (A) Immediately upon receipt of a verified petition for reinstatement, Bar Counsel shall conduct any investigation Bar Counsel deems necessary. The petitioner shall cooperate in any such investigation.
- (B) Following investigation, Bar Counsel and the attorney may stipulate to reinstatement by submitting to the BPR a written stipulation and affidavit of the attorney which provides a detailed description of the factual basis for compliance with the requirements for reinstatement. Any such stipulation shall be approved or disapproved by the BPR a Review Panel. If the stipulation is approved, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue its order stating that the attorney is reinstated to the practice of law, which may include any conditions the Court deems appropriate.
- (C) If Bar Counsel and the attorney do not reach a stipulation for the attorney's reinstatement within 60 days of the filing of the verified petition for reinstatement and, if applicable, receipt of the character report of the National Conference of Bar Examiners, Bar Counsel shall file an answer to the petition. Thereafter, the petition for reinstatement shall proceed to a hearing before the BPR Hearing Panel as provided in Rule 15.
- (D) In deciding whether to recommend reinstatement, the BPR Hearing Panel shall consider the attorney's past disciplinary record. The BPR Hearing Panel may condition a recommendation for reinstatement upon compliance with any additional requirements it deems appropriate, including but not limited to the payment of restitution to any person harmed by the misconduct for which the petitioner was suspended.

Rule 23. Reinstatement After Transfer to Disability Inactive Status.

(h) *Reinstatement proceedings following transfer to disability inactive status.*

- (1) Immediately upon receipt of a verified petition for reinstatement, Bar Counsel shall conduct any investigation Bar Counsel deems necessary. The petitioner shall cooperate in any such investigation.
- (2) Following investigation, Bar Counsel and the attorney may stipulate to reinstatement by submitting to the BPR a written stipulation and affidavit of the attorney which provides a detailed description of the factual basis for compliance with the requirements for reinstatement. Any such stipulation shall be approved or disapproved by the BPR a Review Panel. If the stipulation is approved, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue an order stating that the attorney is reinstated to the practice of law, which may include any conditions the Court deems appropriate.
- (3) If Bar Counsel and the attorney do not reach a stipulation for the attorney's reinstatement within 60 days of the filing of the verified petition for reinstatement, Bar Counsel shall file an answer to the petition. Thereafter, the petition for reinstatement shall proceed to a hearing before the BPR Hearing Panel as provided in Rule 15.
- (4) In deciding whether to recommend reinstatement, the BPR Hearing Panel may condition a recommendation for reinstatement upon compliance with any additional requirements it deems appropriate.
- (5) An attorney for whom the BPR Hearing Panel does not recommend reinstatement may proceed before the Court as provided in Rule 16.
