



Louisiana Attorney Disciplinary Board Formal Hearing Practice Guide

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Table of Contents

Introduction	1
Chapter 1 – Disciplinary Proceedings	2
I. The Filing of Formal Charges	2
A. <i>Request for Formal Charges</i>	2
B. <i>Filing of Formal Charges</i>	2
C. <i>Answer</i>	2
D. <i>Assignment of Hearing Committee, Scheduling Conference, and Hearing Date</i>	3
E. <i>Rights of the Respondent</i>	4
II. Pre-hearing Procedures and Guidelines.....	4
A. <i>Telephonic Scheduling Conference</i>	4
B. <i>Form of Pleadings</i>	4
C. <i>Discovery</i>	5
D. <i>Subpoenas</i>	6
E. <i>Protective Orders & Redaction Policy</i>	7
F. <i>Other Pre-hearing Motions</i>	8
1. <i>Continuances</i>	8
2. <i>Recusals</i>	8
3. <i>Telephonic Testimony</i>	8
4. <i>Dispositive Motions</i>	8
G. <i>Pre-hearing Memorandum</i>	8
1. <i>Background:</i>	9
2. <i>Evidence:</i>	9
3. <i>Proposed Findings of Fact:</i>	9
4. <i>Discussion of Discipline:</i>	10
5. <i>Proposed Sanction:</i>	10
H. <i>Stipulated Exhibits</i>	10
I. <i>Telephonic Pre-hearing Conference</i>	10
III. The Hearing	11
A. <i>What to Expect</i>	11
B. <i>Preparation</i>	11
1. <i>Exhibits</i>	11
2. <i>Witnesses</i>	12
C. <i>Conduct During the Hearing</i>	12
1. <i>Decorum</i>	12
2. <i>Presentation of Evidence/Testimony</i>	12
3. <i>Mitigation Hearings: Stipulations, Deemed Admitted Matters and Criminal Convictions</i>	13
D. <i>Post-Hearing</i>	13
1. <i>Post-Hearing Memoranda</i>	13
2. <i>Hearing Transcript</i>	14

3.	Hearing Committee Report.....	14
IV.	Appellate Review.....	14
A.	<i>Standard of Review</i>	14
B.	<i>Appellate Review Process & Procedure</i>	15
1.	Notice of Board Argument.....	15
2.	Appellate Briefs.....	15
3.	Additional Appellate Procedure.....	15
4.	Oral Argument.....	16
5.	Board Recommendation/Ruling.....	16
V.	Review by the Court.....	16

Chapter 2 – Reinstatement/Readmission Proceedings..... 18

I.	Introduction.....	18
II.	Suspension of One Year or Less - §23.....	18
A.	The Rule: Louisiana Supreme Court Rule XIX, §23:.....	18
B.	Commentary.....	19
III.	Suspension of More than One Year & Disbarment - §24.....	19
A.	Introduction.....	19
B.	Preliminary Requirements.....	20
1.	Timing of the Petition and Application, and the Effect of Interim Suspension - §24(A) 20	
2.	The Petition and Application - §24(B).....	20
3.	Service, Publication, and Notice - §24(C) & (D).....	21
C.	The Standard, Burden of Proof, and the §24(E) Criteria.....	21
D.	The Response of ODC - §24(F).....	22
1.	Concurrence.....	22
2.	No Position or Opposition.....	23
E.	Formal Hearing.....	23
F.	Board Review - §24(H).....	23
G.	Court Review & Decision - §24(I).....	23
IV.	Conditions of Reinstatement or Readmission - §24(J).....	24
V.	Reciprocal Reinstatement/Readmission - §24(K).....	25

Where the court has imposed a suspension or disbarment solely on the basis of imposition of discipline in another jurisdiction, and where the lawyer gives notice to the court that he or she has been reinstated or readmitted in the other jurisdiction, the court shall determine whether the lawyer should be reinstated or readmitted. Unless disciplinary counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the court shall reinstate or readmit a lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred..... 25

Chapter 3 – Transfers to/from Disability Inactive Status..... 26

I.	Introduction.....	26
II.	Involuntary Commitment or Adjudication of Incompetency: §22(A).....	26
III.	Transfer to Disability Inactive Status When No Disciplinary Proceeding is Pending: §22(B)	27
IV.	Transfer to Disability Inactive Status When Disciplinary Proceeding is Pending: §22(C)..	28

A. The Rule - §22(C)	28
B. The Hearing	28
V. Transfer to Disability Inactive Status When Information Concerning the Incapacity of a Lawyer is Received from a Third Party: §22(D)	29
A. The Rule - §22(D).....	29
B. The Hearing	30
VI. Transfer to Active Status From Disability Inactive Status: §22(G).....	30

Chapter 4 – Interim Suspension..... 32

I. Introduction.....	32
II. Interim Suspension by Consent: §19.3	32
III. Interim Suspension for Threat of Harm: §19.2.....	32
A. Interim Suspension Without a Hearing.....	33
B. Interim Suspension Hearings	33
IV. Dissolution of Interim Suspension: §19.2(D).....	34

Chapter 5 – Revocation of Conditional Admission 35

I. Introduction.....	35
II. Revocation of Conditional Admission: §25.1.....	35

Chapter 6 – Revocation of Probation 37

I. Introduction.....	37
II. Revocation of Probation: Appendix C, Rule 5	37

Introduction

Chapter 1 of this guide covers the procedures of the disciplinary process after formal charges are filed, including the procedural rules and the guidelines governing the form and content of pleadings and exhibits. However, this guide does not cover every section of Louisiana Supreme Court Rule XIX (“Rule XIX”). Thus, the parties are encouraged to become familiar with Rule XIX as a whole.¹

The subsequent Chapters of this guide cover the other proceedings that occur within the disciplinary/disability system. While Chapter 1 serves as the template for all proceedings in the disciplinary/disability system, the subsequent Chapters will cover any additional rules or guidelines for the other proceedings and any deviation from the procedures outlined in Chapter 1.

The hearings within the disciplinary system are public proceedings, with the exception of hearings on disability and other matters that occur before the filing of formal charges.

¹ Nothing in this guide shall constitute legal advice. This is merely a guide to the procedures and policies established by Rule XIX and the Louisiana Attorney Disciplinary Board.

Chapter 1 – Disciplinary Proceedings

I. The Filing of Formal Charges

A. *Request for Formal Charges*

Before the Office of Disciplinary Counsel (“ODC”) can file formal charges, it must receive the permission of a hearing committee chairperson upon showing probable cause. ODC must demonstrate “there is probable cause to believe that a violation or attempted violation of the Rules of Professional Conduct has occurred or that there are other grounds for lawyer discipline pursuant to Section 9.” Rule XIX, §3(E)(1). ODC’s request is presented to the chairperson of a hearing committee (or the regular lawyer member as designated by the Administrative committee of the Disciplinary Board). Rule XIX, §3(D) & (E)(1). The chairperson may “approve, modify, or disapprove the recommendation of disciplinary counsel, or direct that the matter be investigated further.” Rule XIX, §3(E)(1). If the chairperson approves ODC’s request, ODC may proceed with the filing of formal charges. (The chairperson may grant partial approval on whatever portions of the request meet the probable cause standard.)

B. *Filing of Formal Charges*

Upon receiving the permission of a hearing committee chairperson, ODC may file formal charges. The formal charges shall “give fair and adequate notice of the nature of the alleged misconduct.” Rule XIX, §3(E). The charges are filed with the Disciplinary Board² and served upon the respondent pursuant to Rule XIX, §13(A):

Service of Petition. Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by personal service, by any person authorized by the chair of the board, or by mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address.

Please note that “[s]ervice or proof of attempted service at the [respondent’s] primary registration address” constitutes adequate notice for the purposes of Rule XIX. Rule XIX, §8(C). Therefore, lawyers shall inform the Louisiana State Bar Association of any changes to their primary registration address. *See* Rule XIX, §8(C). *See also* Rules of Professional Conduct, Rule 1.1(c).

C. *Answer*

The respondent must file a written answer with the Disciplinary Board and serve a copy on ODC within twenty (20) days after service of the formal charges, unless an extension of time

² The Disciplinary Board acts as the clerk of court.

is granted by a hearing committee chairperson. Rule XIX, §11(E)(3). **If the respondent fails to answer within the twenty-day time period, the formal charges shall become deemed admitted and proven by clear and convincing evidence according to the following procedure:**

Disciplinary counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13(C).^{3]} Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

Rule XIX, §11(E)(3).

If a deemed admitted order is not recalled, the matter typically proceeds without a hearing. Pursuant to the order of the hearing committee chairperson, the parties are provided a time period in which to submit written arguments and supporting evidence on the issue of sanction and/or mitigation. The respondent may also request a hearing in mitigation. Rule XIX, §11(E)(4). If such a request is made, the hearing will be limited to the issue of mitigating circumstances. The respondent will not be allowed to present evidence contrary to the factual allegations that have been deemed admitted pursuant to the order of the hearing committee chairperson. Therefore, it is very important for the respondent to timely file an answer or seek an extension of time in which to file an answer.

D. Assignment of Hearing Committee, Scheduling Conference, and Hearing Date

Once an answer is filed, the Board Administrator will assign the matter to a hearing committee pursuant to Rule XIX, Appendix B, Rule 1:

Assignment of Disciplinary Proceedings to Hearing Committees

A matter in which formal charges are filed shall be assigned to a hearing committee selected in rotation from the roster of committees maintained by the Board and which is as near as reasonably possible to the appellate circuit of the lawyer's registration statement address.

³ Rule XIX, §13(C), states:

Service of Other Papers. Service of any other papers, documents, letters, or notices required by these rules may be made upon respondent or respondent's counsel, or upon third parties. Service may be made by personal service as provided in Section 13A, registered or certified mail (return receipt requested), United States Mail, delivery to the respondent or to the respondent's counsel, or by facsimile transmission to the respondent or respondent's counsel at the number designated for facsimile transmission.

The matter will be assigned to a hearing committee *prior* to the filing of an answer *if* an issue arises that requires a hearing committee's attention, such as ruling on a motion for extension of time in which to answer the formal charges.

Once a hearing committee is assigned, the Board Administrator will schedule a hearing date approximately ninety (90) days from the filing of the answer. The Board Administrator will also schedule a telephonic scheduling conference for the parties and the chairperson of the hearing committee.

Please note that the hearing committee members in the disciplinary system act as adjudicators. Thus, when interacting with hearing committee members, the parties should observe the same level of decorum and respect as they would when interacting with any other adjudicator. This includes avoiding *ex parte* communications.

E. Rights of the Respondent

All attorneys who become the subject of a disciplinary or disability proceeding have the right to be represented by counsel, to cross-examine witnesses, and to present evidence. Rule XIX, §11(E)(4). However, Rule XIX does not grant the Disciplinary Board the ability or authority to appoint counsel for those who do not have the ability or means to retain counsel.

II. Pre-hearing Procedures and Guidelines

A. Telephonic Scheduling Conference

Within approximately twenty (20) days of the filing of an answer, the parties will participate in a telephonic scheduling conference with the hearing committee chairperson. At this conference, general introductions will be made and deadlines will be discussed. The parties should give the chairperson their best estimate as to how long it will take to prepare and present their case and whether the hearing date scheduled should be pushed beyond ninety days. A scheduling order will be issued after this conference pursuant to the discussions and agreements of the parties.

B. Form of Pleadings

The filing of pleadings and other documents with the Disciplinary Board shall comply with the requirements set forth in Rule XIX, Appendix A, Rule 9:

Filing Pleadings and Other Matters with the Board

- a) All pleadings, motions, briefs, and memoranda filed with the board shall be submitted in an original with three (3) additional copies.

- b) All exhibits submitted at hearings before the hearing committees must consist of an original and one copy. The original shall be submitted to the court reporter with a copy of the exhibit submitted to the hearing committee chair.

- c) The administrator will accept pleadings delivered to the board office between

the hours of 8:30 a.m. and 4:30 p.m. on regular working days. The filing of such papers shall be deemed timely when the papers are mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they were timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service. Pleadings and papers forwarded by private delivery or courier service shall be deemed timely filed only if received by the board on or before the last day of the delay for filing. Matters submitted by other means shall be filed effective as of the date received in the administrator's office.

d) Matters may be submitted by facsimile transmission and will be filed effective as of the date received; provided (1) the board will not accept responsibility for equipment malfunction or illegible transmissions, and (2) the filing party shall submit an original and copies as required by paragraph (a) above, promptly following the facsimile transmission.

e) All motions filed with the hearing committees and the board ***shall be accompanied by certificate of counsel for the moving party*** stating: (1) that counsel conferred in person or by telephone with the opposing party regarding the motion and (2) that opposing counsel either has no objection to said motion or does object to the motion. If the opposing party objects to the motion, a telephone conference will be arranged between the chair of the hearing committee or adjudicative board panel assigned to the case to hear both parties' arguments relative to the motion. [Emphasis added.]

f) All pleadings, motions, briefs, and memoranda filed with the hearing committees and the board ***shall contain a certificate of service by the filing party*** stating that he or she has served the opposing party with the document and by what means the opposing party was served. [Emphasis added.]

If a party files a pleading that does not comply with the rules quoted above, the pleading will not be filed and the party will receive a letter of noncompliance from the Board specifying the error.

C. Discovery

Within twenty (20) days of the filing of the answer, the parties shall exchange the names and addresses of all persons having knowledge of relevant facts concerning the disciplinary matter. Rule XIX, §15(A). This exchange should be completed ***prior*** to the scheduling conference to enable the parties to have better understanding of the time needed for discovery and presentation of their case ***before*** scheduling deadlines are discussed with the hearing committee chairperson.

During the discovery process, the parties shall "comply with reasonable requests for (1) non-privileged information and evidence relevant to the charges or the respondent, and (2) other

material upon good cause shown to the chair of the hearing committee within 20 days of the request unless otherwise ordered by the hearing committee chair.” Rule XIX, §15(A).

Within sixty (60) days of receiving the answer, unless extended by the hearing committee chairperson, the parties may take depositions in accordance with the Louisiana Code of Civil Procedure. Rule XIX, §15(A).

If appropriate and necessary, the parties should discuss discovery and discovery deadlines during the scheduling conference and agree on a deadline for the conclusion of discovery, which will be included in the scheduling order.

Disputes regarding discovery matters will be ruled upon by the hearing committee chairperson. The ruling of the chair is interlocutory and may *not* be appealed prior to the entry of the final order. Rule XIX, §15(B).

Furthermore, the Louisiana Code of Civil Procedure does *not* apply to discovery matters in the disciplinary system with the exception of depositions and subpoenas and as otherwise provided in Rule XIX. Rule XIX, §15(C).

D. Subpoenas

All requests for subpoenas shall be directed to the Board Administrator in writing. Rule XIX, Appendix B, Rule 4. The Board Administrator will issue the subpoena(s) at the direction of the parties *and return the subpoenas to the requesting party for service in accordance with the appropriate Rules of Louisiana Civil Procedure. Id. See also* Rule XIX, §14(B). A party may request, via motion filed with the Board, the appointment of a process server to serve a subpoena. *See* Rule XIX, §13(B). Subpoena returns shall be filed with the Board Administrator. Rule XIX, Appendix B, Rule 4.

If a subpoena requires compliance with Louisiana Revised Statute 13:3661, the respondent shall accomplish the required deposit by placing the appropriate amount of funds in a trust or escrow account.⁴ Rule XIX, Appendix B, Rule 5. The party requesting a subpoena requiring compliance with Louisiana Revised Statute 13:3661 shall tender the appropriate funds to the witness at the time of the hearing for which the witness has been subpoenaed. *Id.*

If necessary, a party may seek the enforcement of a subpoena upon proper application to the appropriate court of general jurisdiction in the parish in which the attendance or production is required. Rule XIX, §14(D).

⁴ La.R.S. 13:3661:

Attendance compulsory in civil cases; witnesses outside parish but within state; deposit

A. Witnesses in civil cases who reside or who are employed in this state may be subpoenaed and compelled to attend trials or hearings wherever held in this state.

B. (1) No witness residing and employed outside of the parish and more than twenty-five miles from the courthouse where the trial or hearing is to be held shall be subpoenaed to attend court personally unless the party who desired the testimony of the witness has deposited with the clerk of court a sum of money sufficient to cover:

(a) Reimbursement of the traveling expenses of the witness in traveling to the court and returning, at the rate of twenty cents a mile.

(b) The witness' fee at the rate of twenty-five dollars a day.

(c) Hotel and meal expenses at the rate of five dollars a day.

(2) Such a witness shall be paid his expenses and fee immediately by the clerk of court when the witness has answered the subpoena and has appeared for the purpose of testifying.

The procedure for quashing a subpoena is contained in Rule XIX, §14(E):

Quashing Subpoenas. Any attack on the validity of a subpoena shall be heard and determined by the chair of a hearing committee or by the court wherein enforcement of the subpoena is being sought. An appeal of the action of the chairperson may be taken to the chair of another hearing committee designated by the board, who shall approve or reject the action of the first hearing committee chair. The decision of the second hearing committee chair shall be final within the agency. Any resulting order is not appealable prior to entry of a final order in the proceeding.

Subpoenas shall be requested within a reasonable time period as to allow sufficient time before the hearing for the Board Administrator to prepare the subpoenas and issue them to the requesting parties.

E. Protective Orders & Redaction Policy

The parties, or any other person with an interest in the matter, may seek a protective order to prohibit public disclosure of confidential or privileged information upon motion directed to the hearing committee chairperson. Rule XIX, §16(D).

On December 1, 2010, in order to protect confidential and privileged information, the Board adopted the following policy:

In order to protect privileged and/or confidential information, the parties to a disciplinary matter shall partially redact from all pleadings and exhibits, or otherwise protect from public disclosure, the following information:

Social Security numbers. If an individual's Social Security number must be included in a pleading, only the last four digits of that number shall be used. If an individual's Social Security number appears in an exhibit, the number shall be redacted to only show the last four digits.

Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers shall be used in pleadings. Financial account numbers appearing in any manner in exhibits shall be redacted to only show the last four digits.

Identities of Crime Victims who are Minors and Victim of Sex Crimes. Pursuant to Louisiana Revised Statute 46:1844, the identities of crime victims who are minors under the age of eighteen (18) years and the identities of victims of sex crimes shall be protected from public disclosure. The parties to a disciplinary proceeding shall protect this information contained in any pleadings and exhibits in a manner that complies with La.R.S. 46:1844.

If a party to a disciplinary proceeding maintains that the unredacted/unprotected version of the information referenced above is critical to the appropriate hearing and determination of the disciplinary matter, the party may file, along with the

redacted version, an unredacted/unprotected version of the document under seal pursuant to Louisiana Supreme Court Rule XIX, §16(D).

Thus, the burden is on the parties to a disciplinary proceeding to make sure the information referenced above is redacted from all pleadings and exhibits.

F. Other Pre-hearing Motions

1. Continuances

Motions to continue hearing dates or other scheduled events shall be made as soon as possible after receiving notice of the event. The motion shall specify the reason(s) necessitating the continuance. A request for a continuance will be granted only on a showing of good cause. A request for a continuance ***based upon a prior scheduling commitment*** must be submitted within ten (10) days of the date of the notice of committee hearing.

2. Recusals

Hearing committee members are obligated to recuse themselves from matters in which a judge, similarly situated, would be required to abstain. Rule XIX, §3(F). If a party feels there is sufficient reason to seek the recusal of a hearing committee member, the party should file a motion accordingly. (As a practical matter, the parties should disclose all potential conflicts for the record as soon as practicable after the conflicts become apparent.)

3. Telephonic Testimony

If a witness cannot appear at the scheduled hearing date for good cause, a party may file a motion to allow the witness to testify via telephone, subject to any objection of the other party and the ruling of the hearing committee chairperson. The motion should be filed as soon as practicable to allow the Board Staff to ensure the hearing location is properly equipped for telephonic testimony.

4. Dispositive Motions

Rule XIX prevents the use of dispositive motions during a disciplinary proceeding. “To facilitate the development of a full evidentiary record, dispositive motions by the respondent such as those seeking summary judgment or dismissal prior to completion of the evidentiary record on both charges and defenses shall not be permitted.” Rule XIX, §18(B).

G. Pre-hearing Memorandum

The parties shall file a pre-hearing memorandum in all instances where hearings are to be held. Rule XIX, §18(E). The pre-hearing memorandum should be filed by the deadline stated in the scheduling order, typically 15 days before the scheduled hearing date, or as otherwise

ordered by the chairperson. Copies of the memorandum shall be forwarded to the opposing party. The memorandum should contain the following information:

1. Background:

Case Summary: A description of the party's case (e.g. allegations, defenses, background information, etc.).

Procedural History: A description of the procedural history of the case with special attention to any unusual procedure, prior proceedings, or remands, including copies of all prior Court, Board, and/or Committee orders and decisions (e.g. an order of remand or a prior disciplinary order).

2. Evidence:

Listing of Stipulated Exhibits: If the parties stipulate to the admissibility of some or all of the opposing party's exhibits, the parties shall include a listing of those exhibits. The exhibits should be sequentially numbered (not lettered) with "R" for respondent's exhibits and "ODC" for disciplinary counsel's exhibits (e.g. "R-3" or "ODC-25"). (As will be discussed below, stipulated exhibits must be filed with the pre-hearing memoranda.)

Listing of Disputed Exhibits: If the parties cannot stipulate to the admissibility of certain exhibits, the parties shall include a listing of those exhibits. The listing should contain a brief description of those exhibits. The parties shall also state the basis for their objection, with citations to authority if necessary.

Factual Stipulations: The parties should make a concerted effort to stipulate to all facts not seriously in dispute prior to the hearing.

Listing of Witnesses: Each party should list all witnesses each party expects to call. The list should include: 1) a short identification of the witness, his/her relationship to the case, and a one- or two-sentence description of the witness's expected testimony ("fact witness" is *not* a sufficient description); 2) the mode of testimony (e. live, deposition, telephone, etc.), noting any special arrangements that are necessary; and 3) anticipated objections, problems, or special needs.

Special Evidentiary or Legal Issues: The parties should note and discuss any other special evidentiary or legal issues.

3. Proposed Findings of Fact:

Each party should discuss or list proposed findings of fact for the hearing committee.

4. Discussion of Discipline:

Rules of Professional Conduct at Issue: The parties should list, by number, the Rules of Professional Conduct (“Rule(s)”) at issue, including the full text of the relevant portions of the Rules.

Conduct’s Relation to the Rule: Each party should explain why the conduct does or does not violate the Rule(s) at issue.

ABA Standards⁵ and Baseline Sanction: Each party should apply the ABA Standards to the proposed findings of fact to arrive at a baseline sanction, if any.

Louisiana Jurisprudence⁶: Each party should discuss and apply any relevant Louisiana jurisprudence.

Aggravating and Mitigating Factors: Each party should list *and discuss* any applicable aggravating or mitigating factors, which are found in the ABA Standards for Imposing Lawyer Sanctions.

5. Proposed Sanction:

Each party should discuss what he/she believes is the appropriate sanction, if applicable, and explain why. The discussion should expressly consider all types of sanctions and conditions available (*see, e.g.*, Rule XIX, §10 and §10.1) and why the proposed sanction is especially suited to the facts of the case.

H. Stipulated Exhibits

As noted above, if a party stipulates to the admissibility of some or all of the opposing party’s exhibits, the introducing party shall file a copy of those exhibits with the pre-hearing memoranda or as otherwise ordered by the chairperson. The exhibits shall comply with the form requirements discussed below.

I. Telephonic Pre-hearing Conference

The Board Administrator will schedule a telephonic pre-hearing conference approximately ten (10) days prior to the scheduled hearing date(s) for the parties and the hearing committee chairperson. All pre-hearing motions and the pre-hearing memoranda should be filed *before* the pre-hearing conference, unless otherwise ordered in the scheduling order.⁷

⁵ The ABA Standards for Imposing Lawyer Sanctions can be found at www.ladb.org.

⁶ Hearing Committee Reports, Disciplinary Board Recommendations, and Court Opinions can be found at www.ladb.org.

⁷ Only in cases of demonstrated emergency or exigency should motions be filed after the pre-hearing conference.

During the conference, the parties should inform the chairperson of the witnesses expected to testify and the estimated length of the testimony. The parties should also discuss any evidentiary issues or objections that have not been addressed. Also, if it has not already been done, the parties should stipulate to the admission (or conditional admission) of exhibits. Resolving all evidentiary issues before the hearing will allow the hearing to proceed and conclude in a more efficient and timely manner.

III. The Hearing

A. What to Expect

Attorney disciplinary hearings in Louisiana are held throughout the state before a hearing committee composed of two lawyers and one non-lawyer. The hearing committee members are volunteers. They take time away from their law practices and careers to conduct hearings as the initial triers-of-fact in the disciplinary system. Therefore, the time of the hearing committee members is very valuable. The parties should be cognizant of this fact and take all reasonable efforts to ensure that their actions allow for an efficient and expeditious hearing.

Typically, the hearing will be held within the appellate circuit of the lawyer's registration statement address. *See* Rule XIX, Appendix B, Rule 1. The Board Administrator maintains a list of various locations within each appellate circuit to accommodate the needs of the respondent, the hearing committee, and the witnesses. For the First, Second, and Third Appellate Circuits, the hearing locations are primarily various local, state, and federal courthouses. For the Fourth and Fifth Appellate Circuits, the hearings are typically held in the courtroom attached to the offices of the Disciplinary Board in Metairie, Louisiana.

If either party has special needs regarding the use of technology during the hearing, those needs should be communicated to the Board Administrator early in the pre-hearing process to ensure an appropriately equipped location is selected.

Each hearing is recorded by a court reporter. At the conclusion of the hearing, a copy of the transcript will be forwarded to the parties.

B. Preparation

On the scheduled hearing date, each party should appear at the hearing location fully prepared to proceed with opening arguments and the presentation of testimony/evidence. As stated above, all evidentiary issues or objections should be resolved before the hearing whenever possible.

1. Exhibits

Each party shall appear at the hearing with *all* original exhibits and are encouraged to bring copies for each hearing committee member.⁸ Even though stipulated exhibits may be submitted to the hearing committee beforehand, the exhibits are formally admitted at the

⁸ Rule XIX, Appendix A, Rule 9 states that the parties shall bring the original and *one* copy of the exhibits to the hearing. However, customarily, the parties bring copies for each hearing committee member.

hearing.⁹ Therefore, if copies of stipulated exhibits have been submitted to the hearing committee beforehand, each party shall still bring the original exhibits to the hearing. The originals of the exhibits that are admitted into evidence shall be presented to the court reporter at the conclusion of the hearing for preparation of the transcript. When possible, the parties are encouraged to stipulate to the admissibility of the exhibits before the hearing to expedite the proceedings on the day of the hearing.

The exhibits should be grouped together into volumes of a manageable size (i.e. no volume should be larger than a two (2) inch three ring binder). Each exhibit shall be marked with an exhibit tag that clearly indicates the exhibit number (e.g. “R-3” or “ODC 25”). If the exhibits are particularly voluminous, Bates stamping is encouraged.

The parties should avoid large, compound, or *in globo* exhibits, such as attaching the entire undifferentiated record of a prior civil or criminal proceeding. Instead, the parties are encouraged to attach only those pertinent portions of such records, or to “tab” them separately to facilitate easy reference.

Any confidential or privileged information contained in the exhibits shall be redacted in accordance with the Board’s redaction policy discussed above.

If an exhibit is not admitted into evidence for any reason, the exhibit shall be separated from the other exhibits before they are presented to the court reporter at the conclusion of the hearing. Likewise, if an exhibit is proffered or admitted under seal, it shall be segregated from the other exhibits and clearly marked as a proffer or sealed before it is presented to the court reporter.

With regard to audio and video recordings as exhibits, the party seeking to introduce this type of evidence should also provide a transcript of the recording.

2. Witnesses

Each party should ensure that their witnesses are present at the hearing and understand the nature of the proceeding.

C. Conduct During the Hearing

1. Decorum

Although an attorney disciplinary proceeding is neither civil nor criminal, the parties and witnesses shall exercise the same level of decorum and formality as would be mandated by the district and appellate courts in Louisiana.

2. Presentation of Evidence/Testimony

Unless otherwise provided, the Louisiana Code of Evidence applies to proceedings within the disciplinary system. Rule XIX, §18(B). However, “[n]o provision of the Louisiana Code of Evidence shall prevent the introduction of sworn testimony from administrative proceedings, civil or criminal trials, or hearings of a contradictory nature where the respondent has cross-examined or had the opportunity to cross-examine the witnesses whose testimony is sought to be

⁹ The parties should have exchanged exhibits during the pre-hearing process.

introduced.” *Id.* Furthermore, the Louisiana Supreme Court has held that proceedings in the disciplinary system are not confined to a strict application of the Code of Evidence.

We note ... that the purpose of rules of evidence primarily intended to govern jury trials, particularly the hearsay rules, are less compelling in the context of imposing discipline on members of the legal profession. This Court retains power to determine the ultimate question of admissibility under its original jurisdiction as the triers of fact in disciplinary proceedings, and it may well be more appropriate in disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence.

In re Quaid, 1994-1316 (La. 11/30/94), 646 So.2d 343, 348. *See also In re Stamps*, 2003-2985 (La. 4/14/04), 874 So.2d 113 (affirming the Court’s position in *Quaid*).

Recently, the Court has also held that the exclusionary rule in criminal proceedings does not apply to attorney disciplinary proceedings. *In re Clark*, 2009-1631 (La. 12/1/09), 25 So.3d 728.

3. Mitigation Hearings: Stipulations, Deemed Admitted Matters and Criminal Convictions

Under certain circumstances, the respondent may be limited to presenting evidence only on the issue of mitigation. First, if the respondent stipulates to the allegations in the formal charges but would like to present mitigating evidence, the respondent may request a hearing for the purpose of presenting mitigating evidence and testimony.

Second, if the respondent fails to file an answer and the formal charges become and remain deemed admitted, the respondent may still request a hearing in mitigation. At the hearing, however, the respondent should only present evidence on the issue of mitigation. The respondent may not offer evidence that is contrary to the allegations in the formal charges.

Third, if a respondent is convicted of a crime, the certificate of conviction constitutes “conclusive evidence of [the respondent’s] guilt of the crime for which he/she has been convicted.” Rule XIX, §19(E). The only issue for determination by the hearing committee is whether the crime warrants discipline and, if so, to what extent. *Id.* Accordingly, at the hearing, the respondent may not offer evidence that is contrary to the criminal conviction. “[T]he respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime.” *Id.*

D. Post-Hearing

1. Post-Hearing Memoranda

The hearing committee chairperson has discretion to order the parties to submit post-hearing memoranda. Post-hearing memoranda are typically reserved for specific issues that arise during the hearing that need additional briefing before the hearing committee deliberates. The parties should submit the memoranda within the timeframe ordered by the chairperson.

2. Hearing Transcript

The Board Administrator will forward a paper copy of the transcript to the parties once it is received from the court reporter. The parties may request an electronic copy.

3. Hearing Committee Report

The hearing committee will submit its report to the Board Administrator within, approximately, thirty (30) to sixty (60) days of the conclusion of the hearing. In the case of a lengthy hearing or a hearing dealing with complex issues, the hearing committee may need more time to prepare the report. Once the report is received by the Board Administrator, it will be issued to the parties.

IV. Appellate Review

The Adjudicative Committee of the Disciplinary Board (“Board”) is charged with performing “appellate review functions, consisting of review of the findings of fact, conclusions of law and recommendations of hearing committees with respect to formal charges, petitions for transfer to and from disability inactive status, and petitions for reinstatement, and prepare and forward to the court its own findings, if any, and recommendations, together with the record of the proceedings before the hearing committee.” Rule XIX, §2(G)(2)(a). The Adjudicative Committee consists of nine members – six lawyers and three non-lawyers - and is divided into three three-member panels, each composed of two lawyers and one non-lawyer.

As will be discussed in greater detail below, the Adjudicative Committee of the Disciplinary Board conducts an appellate review of the hearing committee report in the types of proceedings listed above. This includes holding oral arguments before a three-member panel of the Adjudicative Committee and issuing a recommendation to the Louisiana Supreme Court concerning the matter.

A. Standard of Review

With regard to the hearing committee’s findings of fact, the Board applies a “manifest error” standard. Rule XIX, §11(F)(1). The Board, as does the Court, gives great deference to the factual findings of the hearing committee. In fact, the Court has stated:

Although this court is the trier of fact in bar disciplinary cases, we are not prepared to disregard the credibility evaluations made by those committee members who were present during respondent's testimony and who act as the eyes and ears of this court.

In re Bolton, 2002-0257 (La. 6/21/02), 820 So.2d 548, 553. Thus, the Board will not disturb the factual findings of the hearing committee unless the findings are clearly wrong. When reviewing the hearing committee’s application of the Rules of Professional Conduct, however, the Board conducts a *de novo* review.

B. Appellate Review Process & Procedure

1. Notice of Board Argument

After the Board Administrator has issued the hearing committee's report, the Board Administrator will set the matter for oral argument before a panel of the Adjudicative Committee.

The parties will receive notice of the date of oral argument. Typically, the date of oral argument will be no less than forty-five (45) days from the date of the notice.

2. Appellate Briefs

Any objections to the hearing committee report and the grounds thereof shall be addressed in a brief filed with the Board. The briefs are due thirty (30) days before the date on which oral argument is first assigned to a Board panel. The parties may also file reply briefs, which shall be filed within fifteen (15) days following the filing of the brief to which a party is replying. Rule XIX, Appendix A, Rule 2.

3. Additional Appellate Procedure

Motions and other pleadings filed at the appellate level must comply with the requirements outlined in Rule XIX, Appendix A, Rule 9, *supra*.

a) Continuances

Motions to continue the date of oral argument, for reasons other than those of an emergency nature, *must* be filed within ten (10) days of receiving notice of oral argument. Rule XIX, Appendix A, Rule 1.

b) Waiver of Appearance

Any party may file a motion to waive the right to appear at oral argument, which will be ruled on by the panel chairperson. The motion should be filed with the Board well in advance of the scheduled date of oral argument to allow the Board Administrator to amend the docket accordingly if the motion is granted.

c) Recusal

The members of the Adjudicative Committee are subject to the same rules governing recusal as hearing committee members. Rule XIX, §2(F). Motions to recuse members of the Adjudicative Committee should be filed in a timely manner after a party has received notice of oral argument.

Please note: All Adjudicative Committee members are involved in the appellate review process. Thus, the parties should not limit considerations of recusal to the members of the Board panel assigned to hear oral argument.

d) New Evidence

The Board shall not receive or consider evidence that was not submitted to the hearing committee without giving notice to the parties and allowing them an opportunity to respond. Rule XIX, §11(F)(2). Usually, the Board will not allow new evidence to be admitted into the record unless both parties agree. If newly discovered evidence is significant enough to warrant the reopening of the proceeding, the matter may be remanded to the hearing committee. *Id.*

4. Oral Argument

Oral argument is held before a three-member panel of the Adjudicative Committee. Oral argument is held in the Board Administrator's office in Metairie, Louisiana, unless otherwise indicated by the Board Administrator in the Notice of Board Argument. Typically, each party is allowed fifteen (15) minutes for argument. However, it is within the discretion of the panel chairperson to control the time period. The party who has the burden in the proceeding will proceed first and may reserve time for rebuttal. Typically, surrebuttal is not allowed.

5. Board Recommendation/Ruling

After oral argument, the Board panel assigned to a matter will draft a recommendation or ruling for consideration by the other Adjudicative Committee members. The draft will be circulated to the other Adjudicative Committee members along with the underlying record. Each member will vote to approve, modify, or disapprove of the recommendation or ruling. A majority of the Adjudicative Committee must concur in order to issue a recommendation or ruling. Rule XIX, §2(D). The Board Administrator will issue a copy of the Adjudicative Committee's recommendation / ruling to the parties.

If the Adjudicative Committee recommends a sanction of suspension, disbarment, or permanent disbarment, the recommendation and the underlying record will be filed with the Court for consideration. Rule XIX, §11(G). The Adjudicative Committee has the authority to issue a public reprimand and dismiss the formal charges. If the Adjudicative Committee issues a public reprimand or dismisses the charges, the parties must appeal the ruling for it to be considered by the Court. *Id.* A party wishing to appeal a ruling of the Board must file a notice of appeal with the Board. Upon receiving a notice appealing a ruling of the Board, the Board staff will prepare the record and file it with the Court.

V. Review by the Court

Recommendations and rulings of the Adjudicative Committee are reviewed by the Court pursuant to Rule XIX, §11(G). Rule XIX, §11(G), states:

Review by the Court. The board shall promptly submit to the court a report containing its findings and recommendations on each matter heard other than those that have been remanded, dismissed and not appealed, or concluded by probation or a reprimand that is not appealed. A copy of the report shall be served on disciplinary counsel and the respondent. The court shall notify disciplinary counsel and the respondent that the report of the board has been filed.

(1) The respondent and disciplinary counsel may file objections to the report within twenty days from the date of notification by the court that the report has been filed. If only one party objects within the aforesaid twenty-day time period, the other party shall be given an additional ten days from the date of service of the objections in which to file objections.

(a) No objections. In the event no objections to the findings and recommendations of the disciplinary board are filed, the court may enter an order based on the recommended discipline with written reasons, which may be summary in nature. If the court determines that a different disposition may be appropriate, or for any other reason desires briefs or oral argument, the court will notify respondent and disciplinary counsel of the date for submission of briefs and/or oral argument, and may also designate the issue or issues which especially interest the court.

(b) Objections. In the event objections to the findings and recommendations of the disciplinary board are filed, the matter shall be assigned for oral argument and notice mailed to all counsel of record (or to the respondent, if not represented by counsel). The brief of the objecting party (or parties) shall be filed with the clerk of court within twenty days of the date of mailing of notice. The brief of the opposing party (or parties) shall be filed within twenty days after the mailing of the objecting party's brief.

(2) Briefs and objections shall be accompanied by a certificate showing that a copy was delivered or mailed to opposing counsel or to the opposing respondent, if not represented by counsel.

(3) After the case is taken under advisement, the court shall enter an appropriate order in due course and issue written reasons, which may be summary in nature.

(4) During its review, the court shall not receive or consider any evidence that was not presented to the hearing committee, except upon notice to the respondent and disciplinary counsel and opportunity to respond.

(5) If new evidence warranting a reopening of the proceeding is discovered, the case shall be remanded to the hearing committee.

Chapter 2 – Reinstatement/Readmission Proceedings

I. Introduction

This chapter will cover the reinstatement/readmission procedures allowed by Rule XIX, §23 and §24. Discussed below are the procedures contained in §23 and §24 and the other administrative processes employed by the Board relative to the reinstatement/readmission process. A lawyer seeking to initiate a reinstatement/readmission proceeding should review the full text of §23 and/or §24 in conjunction with this guide.

If the attorney has served a suspension of one year or less, *exclusive of any waivers or periods of deferral*, the attorney must comply with summary procedure outlined in §23. If the attorney has served a suspension of more than one year, *exclusive of any waivers or periods of deferral*, the attorney must comply with the formal procedure outline in §24.¹⁰ If an attorney has been disbarred, the attorney must also comply with the formal procedures outlined in §24.¹¹ The reinstatement and readmission procedures outlined in §24 are identical but for the timing of the petition. *See* §24(A).

The procedure outlined in §23 is a summary procedure that does not require a formal hearing. Rather, the petitioner must merely demonstrate compliance with the suspension order and that he/she fulfilled his/her other professional obligations.

On the contrary, the procedure outlined in §24 requires the petitioner to establish his/her fitness to return to the practice of law by clear and convincing evidence. In most instances, a formal evidentiary hearing before a hearing committee is required. The burden of proof is on the petitioner. Rule XIX, §18(D). Petitions for reinstatement/readmission pursuant to §24 must be established by clear and convincing evidence. Rule XIX, §18(C).

II. Suspension of One Year or Less - §23

A. *The Rule: Louisiana Supreme Court Rule XIX, §23:*

A lawyer who has served a suspension period of one year or less pursuant to disciplinary proceedings, exclusive of any waivers or periods of deferral, shall be reinstated at the end of the period of suspension by filing with the court and serving upon disciplinary counsel an affidavit stating that the lawyer has fully complied with the requirements of the suspension order, has filed the attorney registration statement required by Rule XIX, § 8(C) of these rules, and has paid

¹⁰ For example, if the Court orders a suspension of two years, with eighteen months deferred, the attorney must comply with the summary procedure in §23 in order to return to the practice of law. If the Court orders a suspension of three years, with one year deferred, the attorney must comply with the formal procedure in §24 in order to return to the practice of law. This is why the Court imposes suspensions of one year and one day. The “one day” will require the attorney to file a formal petition for reinstatement pursuant to §24.

¹¹ Lawyers who have been permanently disbarred are not eligible to be readmitted. *See* Rule XIX, §10(A). *See also* Rule XIX, §24(A).

currently owed bar dues, disciplinary administration and enforcement fees, filing fees and disciplinary costs. A certificate from the Administrator of the Disciplinary Board shall be attached to such affidavit evidencing that the lawyer has paid all disciplinary costs.

B. Commentary

As can be seen above, the attorney seeking reinstatement pursuant to §23 files the request with the Louisiana Supreme Court, not the Board. However, the attorney must obtain a certificate from the Board Administrator evidencing the payment of all disciplinary costs. This certificate must be attached to the affidavit when filed with the Court. The certificate can be requested by calling the Board's office in Metairie, Louisiana. Please note that the Board's Administrator's certificate only pertains to the costs and expenses of the underlying disciplinary proceeding. Payment of bar dues and the disciplinary assessment and the filing of the registration statement are completed with the Louisiana State Bar Association.

III. Suspension of More than One Year & Disbarment - §24

A. Introduction

An attorney who has served a suspension of more than one year, *exclusive of any waivers or periods of deferral*, or who has been disbarred must comply with the formal requirements detailed in §24 in order to be reinstated (suspension) or readmitted (disbarment) to the practice of law. As stated above, the procedures for reinstatement and readmission are identical except for the timing of the petition.

The formal reinstatement/readmission process is initiated by the filing of a petition and application for reinstatement/readmission with the Disciplinary Board. *See* §24(B) & (C). However, prior to filing the petition and application, the petitioner should contact the Board's office in Metairie, Louisiana to request a copy of the application. Upon receiving this request, the Deputy Board Administrator will verify whether the petitioner has completed some of the administrative tasks required for reinstatement/readmission, namely: the payment of bar dues and disciplinary assessment; compliance with the MCLE requirements; the payment of disciplinary costs; and the payment of filing fees with the Louisiana Supreme Court. *See* §24(E)(7)-(10). The Deputy Board Administrator will communicate any deficiencies to the petitioner. Please note that this verification process is done as a courtesy by the Board. The Board will *not* reject a petitioner's application if he/she fails to complete any of these administrative tasks prior to the filing of the petition and application. However, failure to complete these administrative tasks prior to the filing of the petition will delay the filing process. Furthermore, the verification process does *not* make the completed tasks a matter of record. It is the petitioner's responsibility to obtain and provide evidence of the completion of these tasks.

B. Preliminary Requirements

1. Timing of the Petition and Application, and the Effect of Interim Suspension - §24(A)

A suspended lawyer who must petition for reinstatement pursuant to §24 may not file a petition until six months before the period of suspension is scheduled to expire. If the petitioner was placed on interim suspension and subsequently suspended for misconduct upon which the interim suspension was based, the Court *may* apply the suspension retroactively to the effective date of the interim suspension.

A disbarred lawyer may not file a petition for readmission until five years after the effective date of the disbarment. If the petitioner was placed on interim suspension and subsequently disbarred for misconduct upon which the interim suspension was based, the disbarment is *automatically* applied retroactively to the effective date of the interim suspension.

2. The Petition and Application - §24(B)

The petitioner must file two documents with the Board in order to initiate a reinstatement/readmission proceeding – a petition and an application. Both must be drafted under oath or affirmation under penalty of perjury. The petition must “specify with particularity the manner in which the lawyer meets each of the criteria specified in [§24(E)] or, if not, why there is good and sufficient reason for reinstatement or readmission.” The application is divided into two parts. Part I contains general personal, employment, and legal information regarding the petitioner. Part I is public record. Part II contains financial, tax, and any pertinent medical information. Part II is confidential and is placed under seal by the Board Administrator.¹² A copy of the application can be obtained from the Board Administrator’s office.

In conjunction with the filing of the petition and application, the petitioner must submit an advance cost deposit to cover the anticipated costs of the proceeding. *See* Rule XIX, Appendix A, Rule 3:

Advance Deposit Requirement for Readmission Petitions

The conditions set forth in Supreme Court Rule XIX, Section 24(B) require that all petitions for reinstatement or readmission must be accompanied by an Advance Cost of Hearing Deposit to cover the anticipated costs of the proceedings unless abated under Section 25. The amount of Five-hundred dollars (\$500.00) shall be deposited by petitioner with the board administrator at the time of filing the petition for reinstatement and service of a copy upon disciplinary counsel. The amount includes a Fifty-dollar (\$50.00) nonrefundable docket fee. The balance of the fee shall be applied to the hearing costs, if any. The petitioner shall be responsible for any costs in excess of the initial deposit. Any monies in

¹² The application and the documents the application requests as attachments become part of the record in a reinstatement/readmission proceeding. Thus, typically, there is no need to introduce the application and/or its attachments as exhibits at the hearing. Furthermore, if ODC or petitioner attempts to introduce Part II of the application or its attachments as an exhibit at the hearing, the introducing party must also move for a protective order or redact the exhibit to protect confidential information.

excess of the deposited amounts shall be refunded to the petitioner after all expenditures are tabulated.

3. Service, Publication, and Notice - §24(C) & (D)

As stated above, the petitioner must file a copy of the petition and application with the Board. The petitioner must also serve copies of the same on ODC. ODC, in turn, will serve a copy of the petition upon each complainant in the underlying disciplinary matter that led to the suspension or disbarment of the petitioner. §24(C).

Contemporaneous with the filing of the petition and application, the petitioner must publish a notice of his/her petition and application in the Louisiana Bar Journal and in a “newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law when the lawyer was suspended or disbarred.” §24(D).

C. The Standard, Burden of Proof, and the §24(E) Criteria

In a reinstatement/readmission proceeding, the burden of proof is on the petitioner. Rule XIX, §18(D). The petitioner must establish by clear and convincing evidence *each* of the eleven criteria listed in §24(E) or present “good and sufficient reason why [he/she] should nevertheless be reinstated or readmitted.” *See* §18(C) and §24(G).

The eleven criteria are as follows:

- (1) The lawyer has fully complied with the terms and conditions of all prior disciplinary orders except to the extent that they are abated under Section 25.
- (2) The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.
- (3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:
 - (a) the lawyer has pursued appropriate rehabilitative treatment;
 - (b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and
 - (c) the lawyer is likely to continue to abstain from alcohol or other drugs.
- (4) The lawyer recognizes the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred.
- (5) The lawyer has not engaged in any other professional misconduct since suspension or disbarment.

(6) Notwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite honesty and integrity to practice law.

(7) The lawyer has kept informed about recent developments in the law and is competent to practice and has satisfied MCLE requirements for the year of reinstatement or readmission.

(8) The lawyer has paid to the Louisiana State Bar Association currently owed bar dues.

(9) The lawyer has paid all filing fees owed to the Clerk of Court and all disciplinary costs to the Disciplinary Board.

(10) The lawyer has paid to the Disciplinary Board currently owed disciplinary administration and enforcement fees required under Section 8(A) of this rule and has filed the registration statement required under Section 8(C) of this rule.

(11) The lawyer shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the lawyer's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the lawyer shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund.

§24(E). As mentioned above, the Deputy Board Administrator will verify criteria 7-10 as a courtesy to the petitioner. However, the petitioner must gather the necessary documentation establishing these criteria for presentation to the hearing committee and/or Board. If any of the criteria in §24(E)(7)-(10) are not met upon the filing of the petition, the filing of the petition will be delayed by the Board Administrator.

D. The Response of ODC - §24(F)

Within sixty (60) days of receiving a petitioner's petition and application for reinstatement/readmission, ODC must file a response to the petition and application with the Board. ODC may request additional time in which to file a response, subject to the objection of the petitioner and the ruling of the Board. With regard to the substance of its response, ODC has three options: concur, oppose, or take no position.

1. Concurrence

If ODC concurs with the reinstatement/readmission, the petitioner and ODC must file a signed concurrence with the Board within thirty (30) days of disciplinary counsel's notification that he/she will concur. The signed concurrence will be submitted to the Chairperson of the Adjudicative Committee of the Board for review. If the Chairperson approves, the matter will be submitted to the Court for review and determination. §24(H)(1). If the Chairperson disapproves, the matter will be set for a hearing before a hearing committee. *Id.*

2. No Position or Opposition

If ODC files an opposition to the reinstatement/readmission, ODC must request the Board to set a formal hearing before a hearing committee. §24(F). Likewise, if ODC takes no position, the Board will schedule a formal hearing before a hearing committee. *Id.* In these instances, a full evidentiary hearing will be conducted before a hearing committee.

E. Formal Hearing

If ODC files an opposition or takes no position, a formal hearing will be conducted before a hearing committee within sixty (60) days of the filing of ODC's response. §24(G). The hearing will be conducted in the same manner as described more fully in Chapter 1 of this Guide, with a few exceptions.

First, the pre-hearing process will be conducted on an expedited timeframe in order to comply with the sixty (60) day time period mandated in §24(G). Thus, it will be left to the discretion of the hearing committee chairperson and/or to the request of the parties whether a scheduling and pre-hearing conference will be held or just a pre-hearing conference.

Second, the pre-hearing memoranda should be drafted in a manner that reflects the subject and substance of the reinstatement/readmission. For instance, the memoranda should summarize the reasons for the underlying suspension/disbarment, address the eleven (11) criteria, and provide any other information justifying the granting or denial of the reinstatement/readmission. As with a disciplinary hearing, any stipulations regarding the admission of evidence or the facts will greatly assist the hearing committee in efficiently managing the hearing and promptly issuing its findings and recommendation.

Third, at the hearing, the petitioner will present his/her case first as he/she is the mover in this proceeding. ODC will then present its case in opposition. Otherwise, the hearing will be conducted in the normal manner, as described more fully in Chapter 1 of this Guide.

After the hearing, the hearing committee will file a report with the Board containing its findings and recommendation. If no objection to the report is filed by ODC or petitioner, the record will be sent directly to the Court for review and determination.

F. Board Review - §24(H)

If either ODC or petitioner file an objection to the hearing committee's report, the Board will conduct an appellate review as described in Chapter 1, which includes oral argument. However, the Board must file its recommendation with the Court within ninety (90) days of receiving the record and hearing committee report. Thus, the Board will not grant continuances that prevent it from meeting the ninety (90) day deadline.

G. Court Review & Decision - §24(I)

The Court will review the underlying record, the hearing committee report and the Board's recommendation (if any), and/or ODC's concurrence. The Court will issue a decision on the reinstatement/readmission as follows:

If the court finds that the lawyer has complied with each of the criteria of paragraph E, or has presented good and sufficient reason for failure to comply, the court shall reinstate or readmit the lawyer and may issue written reasons. If the court denies reinstatement or readmission, the court may issue written reasons and shall identify the period after which the lawyer may reapply. Generally, no lawyer will be permitted to reapply for reinstatement or readmission within one year following an adverse judgment upon a petition and application for reinstatement or readmission.

IV. Conditions of Reinstatement or Readmission - §24(J)

The hearing committee and Board may recommend and the Court may impose conditions on a reinstatement/readmission.

The conditions shall be imposed in cases where the lawyer has met the burden of proof justifying reinstatement or readmission, but the court reasonably believes that further precautions should be taken to insure that the public will be protected upon the lawyer's return to practice.

The court may impose any conditions that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement or readmission. The conditions may include any of the following: passing the bar examination as a condition to readmission following disbarment; limitation upon practice (to one area of law or through association with an experienced supervising lawyer); participation in continuing legal education courses; monitoring of the lawyer's practice (for compliance with trust account rules, accounting procedures, or office management procedures); abstention from the use of drugs or alcohol; active participation in Alcoholics Anonymous or other alcohol or drug rehabilitation program; monitoring of the lawyer's compliance with any other orders (such as abstinence from alcohol or drugs, or participation in alcohol or drug rehabilitation programs). If the monitoring lawyer determines that the reinstated or readmitted lawyer's compliance with any condition of reinstatement or readmission is unsatisfactory and that there exists a potential for harm to the public, the monitoring lawyer shall notify the court.

V. Reciprocal Reinstatement/Readmission - §24(K)

Reciprocal reinstatement/readmission is available to lawyers who have been disciplined in Louisiana based upon the imposition of discipline in another jurisdiction and the lawyer has been reinstated/readmitted in the other jurisdiction.

Where the court has imposed a suspension or disbarment solely on the basis of imposition of discipline in another jurisdiction, and where the lawyer gives notice to the court that he or she has been reinstated or readmitted in the other jurisdiction, the court shall determine whether the lawyer should be reinstated or readmitted. Unless disciplinary counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the court shall reinstate or readmit a lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred.

Chapter 3 – Transfers to/from Disability Inactive Status

I. Introduction

This chapter will cover the procedures relating to disability inactive status, which are found in Rule XIX, §22. Discussed below are the procedures contained in §22 and the other administrative processes employed by the Board relative to disability inactive status. A lawyer seeking to initiate a disability proceeding or who is the subject of a disability proceeding should review the full text of §22 in conjunction with this guide.

Disability proceedings are a means by which an attorney suffering from a mental or physical disability can seek to be transferred or can be transferred to disability inactive status. Any disciplinary proceeding pending at the time of the transfer will be stayed until the lawyer is returned to active status.

A disability proceeding can be initiated by an attorney seeking the transfer or by ODC upon receiving information relating to a lawyer's "physical or mental condition and which adversely affects the lawyer's ability to practice law." §22(D). Also, if an attorney is declared incompetent or is involuntarily committed based upon incompetency or disability, "the court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until the further order of the court." §22(A). The procedure used depends upon how the matter is initiated. Not all disability proceedings result in a formal hearing before a hearing committee. Rather, some matters are handled by a motion to and an order from the Court.

The party initiating a disability proceeding has the burden of proof. §18(D). Petitions for transfer to or from disability inactive status shall be established by clear and convincing evidence. §18(C). Furthermore, proceedings for transfer to or from disability inactive status are confidential. §16(C). However, all orders granting a transfer are public. *Id.*

This chapter will cover all forms for disability proceedings, but will focus on proceedings that result in a formal evidentiary hearing before a hearing committee.

II. Involuntary Commitment or Adjudication of Incompetency: §22(A)

Rule XIX, §22(A) states:

Involuntary Commitment or Adjudication of Incompetency. If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until the further order of the court. A copy of the order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian, or the director of the institution to which the lawyer has been committed.

Pursuant to this rule, the Court will act upon receipt of proper proof. Thus, there will be no proceeding before the Board or a hearing committee regarding the transfer *to* disability inactive status.

If the lawyer is later judicially declared competent, “the court *may* dispense with further evidence that his disability has been removed and *may* immediately direct his transfer to active status upon terms as are deemed proper and advisable.” §22(G)(8). (Emphasis added.) Thus, this rule suggests that the Court, in its discretion, *may* allow the lawyer to return to active status without complying with the other requirements of §22(G). However, as is apparent from the rule, the Court will make this decision on a case-by-case basis.

III. Transfer to Disability Inactive Status When No Disciplinary Proceeding is Pending: §22(B)

Rule XIX, §22(B), pertains to lawyers seeking a transfer to disability inactive status when the lawyer is not the subject of a pending disciplinary proceeding or investigation. §22(B) states as follows:

Transfer to Disability Inactive Status When No Disciplinary Proceeding is Pending. Any lawyer claiming that he/she should be transferred to disability inactive status, when there is no disciplinary proceeding or investigation pending, shall file an appropriate pleading in this court. The lawyer shall append to the pleading pertinent information, documentation, and evidence which supports the lawyer's claim that he/she should be transferred to disability inactive status. The lawyer shall also certify in the pleading that there is no disciplinary proceeding or investigation pending against him/her. The pleading and attachments shall be filed under seal. A copy of the pleading, and any attachments thereto, shall be served upon disciplinary counsel.

Within fifteen days after being served with the lawyer's pleading, disciplinary counsel shall file under seal and certify to this court that no disciplinary proceeding or investigation is pending, and may file under seal an objection, concurrence, or other appropriate response to the lawyer's pleading. A copy of disciplinary counsel's filing shall be served upon the lawyer claiming that he/she should be transferred to disability inactive status.

The court may then summarily transfer the lawyer to disability inactive status, without the need for a hearing, or take any other action the court deems appropriate.

The Court will typically rule on the petition of the lawyer after receiving the pertinent information. However, as the rule suggests, the Court *may* order the lawyer to present his/her case before a hearing committee.

IV. Transfer to Disability Inactive Status When Disciplinary Proceeding is Pending: §22(C)

A. The Rule - §22(C)

While a disciplinary proceeding or investigation is pending, the respondent lawyer cannot petition for disability inactive status unless the lawyer alleges an “inability to assist in his/her defense due to mental or physical incapacity.” §22(C). Upon receiving such an allegation, the Court will transfer the lawyer to interim disability inactive status and order a hearing on the issue. The underlying disciplinary proceeding or investigation will be stayed pending the outcome of the disability hearing.

C. Transfer to Disability Inactive Status When Disciplinary Proceeding is Pending. When a disciplinary proceeding or investigation is pending, a lawyer may not apply for disability inactive status unless he/she alleges an inability to assist in his/her defense due to mental or physical incapacity. When such an allegation is made, the court shall immediately transfer the lawyer to interim disability inactive status pending a hearing to determine the validity of the claim, and all disciplinary proceedings will be stayed pending this determination. Any lawyer transferred to interim disability inactive status shall comply with the notice requirements of Section 26.

(1) The hearing shall be conducted before a hearing committee on an *expedited* basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, *under seal*, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the claim of inability to defend is valid, the disciplinary proceeding or investigation shall be deferred and the respondent shall be transferred to disability inactive status until the court subsequently considers a petition for transfer to active status. In the event the respondent is transferred back to active status, the interrupted disciplinary proceeding or investigation may be resumed.

(3) If the court determines the claim of inability to defend to be invalid, the disciplinary proceeding or investigation shall resume immediately. A finding by the court that the lawyer's claim of an inability to assist in his/her defense due to mental or physical incapacity was frivolous may be considered by the hearing committee in recommending discipline in the underlying proceeding. [Emphasis added.]

B. The Hearing

Upon receiving an order of the Court directing a disability hearing to be held, the Board Administrator will schedule a hearing before a hearing committee as soon as possible (typically

within thirty (30) days of receiving the order). Given the shortened timeframe, the regular pre-hearing procedures will not be strictly applied. Rather, the parties and hearing committee chairperson should discuss what will be required of the parties prior to the hearing at a telephone conference (e.g. pre-hearing memorandum, witnesses, etc.).

The hearing will be conducted in the normal manner, except that the lawyer, who is alleging a disability, will have the burden. Thus, the lawyer will present his/her case first, followed by ODC's presentation. As stated above, the lawyer must prove the disability and his/her inability to defend against the disciplinary charges by clear and convincing evidence. The hearing committee may take appropriate steps, including the examination of the lawyer by qualified medical experts, to determine whether the claim of inability to defend is valid. §22(E).

After the hearing, the hearing committee will issue its findings and recommendation, which will be filed directly with the Court. The hearing committee's report is usually issued within fifteen (15) days of the hearing or as otherwise ordered by the Court. The report and the record are filed with the Court under seal.

If the Court finds the claim of inability to defend to be valid, the lawyer will be transferred to disability inactive status and the underlying disciplinary proceeding will be stayed until the lawyer is transferred to active status. If the Court claim is deemed invalid, the underlying disciplinary proceeding will resume.

V. Transfer to Disability Inactive Status When Information Concerning the Incapacity of a Lawyer is Received from a Third Party: §22(D)

A. The Rule - §22(D)

ODC is charged with investigating allegations of disability that affect a lawyer's ability to practice law. If ODC becomes aware of such information and if warranted by its investigation, ODC shall file an appropriate pleading with the Board requesting a hearing on the issue of disability. Any disciplinary proceeding that is pending will be stayed pending the outcome of the disability proceeding.

D. Transfer to Disability Inactive Status When Information Concerning the Incapacity of a Lawyer is Received from a Third Party. When disciplinary counsel receives information from a third party which relates to a lawyer's physical or mental condition and which adversely affects the lawyer's ability to practice law, disciplinary counsel shall investigate. If warranted by the investigation, disciplinary counsel shall file an appropriate pleading with the disciplinary board, requesting a hearing before a hearing committee to determine whether the lawyer shall be transferred to disability inactive status.

(1) The hearing shall be conducted before a hearing committee on an *expedited* basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, *under seal*, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the lawyer is incapacitated, the lawyer shall be transferred to disability inactive status

until the court subsequently considers a petition for transfer to active status. Any disciplinary proceeding or investigation which is pending against the lawyer shall be held in abeyance. In the event the lawyer is transferred back to active status, any disciplinary proceeding or investigation which had commenced prior to the transfer to disability inactive status may be resumed.

(3) If the court determines that the lawyer should not be transferred to disability inactive status, any pending disciplinary proceeding or investigation shall resume immediately. [Emphasis added.]

B. The Hearing

The procedures regarding the hearing discussed under §22(C) also apply here. The only exception is that ODC will have the burden of proving the disability by clear and convincing evidence. Thus, ODC will present its case first at the hearing. As discussed above, the hearing committee can order an examination by qualified medical experts.

The hearing committee's report will be filed with the Court. If the Court transfers the lawyer to disability inactive status, any disciplinary proceeding that is pending shall be stayed. If the Court does not transfer the lawyer to disability inactive status, any disciplinary proceeding that is pending shall resume.

VI. Transfer to Active Status From Disability Inactive Status: §22(G)

A lawyer who has been transferred to disability inactive status may petition the Court to be transferred back to active status. The petitioning lawyer must comply with the requirements of §22(G):

Transfer to Active Status from Disability Inactive Status.

(1) *Generally.* No respondent transferred to disability inactive status may resume active status except by order of this court.

(2) *Petition.* Any respondent transferred to disability inactive status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the court may direct in the order transferring the respondent to disability inactive status or any modifications thereof.

(3) *Examination.* Upon the filing of a petition for transfer to active status, the court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the respondent by qualified medical experts designated by the court. In its discretion, the court may direct that the expense of the examination be paid by the respondent.

(4) *Required Information; Waiver of Doctor-Patient Privilege.* The respondent shall include with the petition for transfer to active status pertinent

documentation, information and evidence which shows, by clear and convincing evidence, that the disability has been removed. The respondent shall disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status. The respondent shall also furnish to this court written consent to the release of information and records relating to the disability if requested by the court or court-appointed medical experts.

(5) *Certification from Client Assistance Fund.* The respondent shall also include with the petition for transfer to active status a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the respondent's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the respondent shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund.

(6) *Learning in Law; Bar Examination.* The court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the bar examiners of successful completion of an examination for admission to practice.

(7) *Granting Petition for Transfer to Active Status.* The court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed and the receipt of the certification from the Client Assistance Fund.

(8) *Judicial Declaration of Competence.* If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the court may dispense with further evidence that his disability has been removed and may immediately direct his transfer to active status upon terms as are deemed proper and advisable.

The Court may, in its discretion, order the lawyer to present his/her case at a hearing before a hearing committee. If a hearing is ordered, the procedures regarding disability hearings discussed above will apply, subject to any special directives contained in the Court's order.

Chapter 4 – Interim Suspension

I. Introduction

This chapter will cover the procedures relating to interim suspension, which are found in Rule XIX, §19.2 and §19.3. Upon receiving information that a lawyer has violated the Rules of Professional Conduct or is suffering from a disability and poses a substantial threat of serious harm to the public, ODC must file a petition for interim suspension with the Court. Upon receiving a petition, the Court may enter an immediate order of interim suspension, order a hearing of the issue before a hearing committee, or take any other action it deems appropriate. If the Court grants ODC's petition, the respondent lawyer will be placed in interim suspension pending the outcome of the underlying disciplinary proceeding.

This chapter will cover interim suspension proceedings, but will focus on proceedings that result in a formal hearing before a hearing committee.

II. Interim Suspension by Consent: §19.3

At any time during a disciplinary proceeding, ODC and the respondent may jointly petition the Court for an order of interim suspension.

Interim suspension by consent

At any time after a complaint has been received by the office of disciplinary counsel concerning a lawyer's conduct, disciplinary counsel and the lawyer may jointly petition the court to enter an order of immediate interim suspension pending the resolution of the disciplinary proceeding. No request for a prospective effective date of interim suspension will be granted. The joint petition shall specify the reasons for requesting such court action. The court may then take any action it deems appropriate, including, but not limited to, issuing the requested order of interim suspension. The joint petition and any subsequent order of the court shall be public. [§19.3]

III. Interim Suspension for Threat of Harm: §19.2

Upon receiving sufficient information, ODC may petition the Court for interim suspension pursuant to §19.2.

A. Transmittal of Evidence. Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of this court has committed a violation of the Rules of Professional Conduct or is under a disability as herein defined and poses a substantial threat of serious harm to the public, disciplinary counsel shall:

(i) transmit the evidence to the court together with a proposed order for interim suspension; and

(ii) contemporaneously make a reasonable attempt to provide the lawyer with notice, which may include notice by telephone, that a proposed order for immediate interim suspension has been transmitted to the court.

§19.2(A). After examining the evidence, the Court may enter an immediate order of interim suspension, order a hearing before a hearing committee, or take any action it may deem necessary. §19.2(B).

If the petition is filed *prior* to the filing of formal charges, the petition and any hearing ordered by the Court will be *confidential*. §19.2(B). However, an order placing the respondent on interim suspension shall be public. *Id.*

A. Interim Suspension Without a Hearing

As stated above, the Court may enter an order of interim suspension without the benefit of a hearing if it deems ODC's petition and supporting evidence to be sufficient. However, if the Court wants additional evidence and a record created, it will order a hearing before a hearing committee.

B. Interim Suspension Hearings

Upon receipt of ODC's petition, the Court may order the respondent to "show cause, before a hearing committee ... appointed by the board, why the court should not issue an immediate interim suspension." §19.2(B). The Court typically directs the hearing to be conducted on an expedited basis. Upon receiving the order of the Court directing an interim suspension hearing be held, the Board Administrator will schedule a hearing before a hearing committee as soon as possible (typically within thirty (30) days of receiving the order). Given the expedited timeframe, the regular pre-hearing procedures will not be strictly applied. Rather, the parties and hearing committee chairperson should discuss what will be required of the parties prior to the hearing at a telephone conference (e.g. pre-hearing memorandum, witnesses, etc.). The hearing will be conducted in the normal manner.

Despite the language of §19.2(B), the Court has held that ODC has the burden of proof at the hearing. *In re [Confidential Party]*, 2009-1605 (La. 7/14/09), 11 So.3d 501. With regard to the standard of evidence, Rule XIX states that clear and convincing evidence is required for disciplinary, disability, reinstatement/readmission, and revocation of conditional admission proceedings. However, with regard to interim suspension, §19.2 only refers to "sufficient evidence." Thus, the high evidentiary burden of "clear and convincing evidence" does not apply. ODC must *sufficiently* demonstrate that the respondent has violated the Rules of Professional Conduct or suffers from a disability *and*, more importantly, must *sufficiently* demonstrate that the respondent poses a *substantial threat of serious harm to the public*. §19.2(A).

At the conclusion of the hearing, the hearing committee will file its findings and recommendation with the Court, usually within ten (10) days of the hearing, or as otherwise ordered by the Court. After reviewing the hearing committee's report and the record, the Court will enter a ruling on ODC's petition for interim suspension. If the petition is granted, the

respondent will be immediately transferred to interim suspension. Rule XIX, §26(E).¹³ At this point, the respondent must comply with the notice requirements in Rule XIX, §26.

The interim suspension order will remain in effect until the Court issues an order relating to the underlying disciplinary matter or until the Court grants a motion for dissolution of interim suspension (see below). If the respondent is subsequently disbarred for the same misconduct for which he/she was placed on interim suspension, the effective date of the disbarment will be automatically applied retroactively to the date of the interim suspension. §24(A). On the other hand, if the respondent is subsequently suspended for the same misconduct for which he/she was placed on interim suspension, the Court *may* apply the suspension retroactively to the date of the interim suspension. *Id.*

IV. Dissolution of Interim Suspension: §19.2(D)

After a respondent is placed on interim suspension, the respondent may move to have the interim suspension dissolved or modified.

Motion for Dissolution of Interim Suspension. A lawyer suspended pursuant to paragraph B may move to dissolve or modify the order of suspension. *The motion shall be accompanied by a brief setting forth specific reasons why the suspension should be dissolved or modified.* The lawyer shall notify and serve the Office of Disciplinary Counsel with a copy of the motion and brief in the manner provided in Supreme Court Rule X, §2(e). The Office of Disciplinary Counsel shall have five days from service of the motion to file a response in this court. Thereafter, the court may summarily act upon the motion or may, in its discretion, remand it to the hearing committee for hearing. In the event the matter is remanded, the hearing committee shall conduct the hearing promptly and file its recommendation in this court expeditiously. [Emphasis added.]

§19.2(D). If the Court orders a hearing, the hearing will be scheduled and conducted in the same manner discussed above. However, the respondent will have the burden of proof as the respondent will be the moving party.

¹³ Rule XIX, §26(E) states:

Effective Date of Order; Refund of Fees. Court orders imposing discipline or transfer to disability inactive status are effective in accordance with La. C.C.P. Art. 2167, unless otherwise ordered. Orders imposing discipline in accordance with Section 20, orders which impose an interim suspension, and permanent resignation orders are effective immediately, unless otherwise ordered by the court. The respondent shall refund within thirty days after entry of the order any part of any fees paid in advance that has not been earned.

Chapter 5 – Revocation of Conditional Admission

I. Introduction

This chapter will cover the procedures relating to the revocation of conditional admission, which are found in Rule XIX, §25.1. An attorney who is admitted to the practice of law under certain conditions and who subsequently violates those conditions will be subject to a proceeding where the revocation of the conditional admission is considered.

Prior to August 1, 2008, Rule XIX did not contain a procedure for revoking the conditional admission of an attorney. However, upon receiving a petition to revoke conditional admission from ODC, the Court would remand the matter to a hearing committee for a hearing on the issue. On August 1, 2008, the Court codified this procedure in §25.1.

II. Revocation of Conditional Admission: §25.1

Upon receiving information indicating that an attorney has violated any condition of his/her admission, ODC shall file an appropriate petition with the Court. If ODC receives information indicating an attorney has violated the terms of an order of conditional admission *and* the attorney presents a substantial threat of serious harm to the public, ODC shall file a petition for interim suspension with the Court. §25.1(1). The interim suspension proceeding shall be governed by Rule XIX, §19.2. *See* Chapter 4 of this Guide.

Upon receiving a petition for revocation, the Court will order a hearing before a hearing committee to be conducted on an expedited basis. §25.1(2). The conditionally-admitted lawyer will be ordered to “show by clear and convincing evidence why his conditional admission should not be permanently revoked.” *Id.*

Upon receiving an order of the Court directing a revocation hearing to be held, the Board Administrator will schedule a hearing before a hearing committee as soon as possible (typically within thirty (30) days of receiving the order). Given the shortened timeframe, the regular pre-hearing procedures will not be strictly applied. Rather, the parties and hearing committee chairperson should discuss what will be required of the parties prior to the hearing at a telephone conference (e.g. pre-hearing memorandum, witnesses, etc.).

The hearing will be conducted in the normal manner, except that the conditionally-admitted lawyer will have the burden of proof. Thus, the lawyer will present his/her case first, followed by ODC’s presentation. As stated above, the lawyer must demonstrate by *clear and convincing evidence* why his/her conditional admission should not be permanently revoked. Thus, the standard of proof is clear and convincing evidence.

Section 25.1 does not specifically state whether the revocation proceeding is public or confidential. If ODC must seek interim suspension under §25.1(1), the rules governing the public’s access to interim suspension proceedings under §19.2 would apply. With regard to the revocation hearing before the hearing committee, the hearing is *presumed* to be public and treated as such by the hearing committee.

After the hearing, the hearing committee will issue its findings and recommendation, which will be filed directly with the Court. If the hearing committee concludes that the conditions of the admission were violated, it must recommend revocation. The hearing

committee's report will be issued and filed with the Court no later than thirty (30) days after the hearing.

Upon receiving and reviewing the hearing committee report, the Court will take whatever action it deems appropriate, including permanent revocation of the conditional admission. In the past, the Court has revoked the conditional admission for a particular period of time and required the lawyer to file a petition for readmission pursuant to §24 in order to return to the practice of law.

Chapter 6 – Revocation of Probation

I. Introduction

This chapter will cover the procedures relating to the revocation of probation, which are found in Rule XIX, Appendix C, Rule 5. Unlike the procedures previously discussed, a probation revocation hearing is conducted before a panel of the Disciplinary Board. The Disciplinary Board will file its findings and recommendation with the Court.

Rule XIX, §10, lists probation as a potential sanction for professional misconduct. In very rare instances, probation is imposed as a stand-alone sanction. Typically, probation is imposed in conjunction with a deferred portion of a suspension.

The question of deferral of all or part of a suspension has caused some confusion in the past. Without some mechanism to make the deferral executory, deferral is meaningless. Accordingly, in cases where the disciplinary board recommends that all or part of a suspension be deferred, it should also recommend either a period of probation, or a period within which the deferred suspension may become executory, in the event of misconduct by the respondent during this period.

In re Dobbins, 2001-2022 (La. 1/15/02), 805 So.2d 133, 137 FN6. Probation may also be imposed as a condition of reinstatement or readmission. The probationary period cannot exceed two years. Rule XIX, §10(3). However, the probationary period can be renewed for another two years. *Id.*

If the Court imposes a period of probation, the respondent attorney will execute a probation agreement, regardless of whether the probation is supervised or unsupervised. The probation agreement will include the terms and conditions of the probation. If the Court designates the probation as supervised, a probation monitor will be appointed by the Disciplinary Board. *See* Rule XIX, Appendix C, Rule 1. The probationary period does not commence until the execution of the probation agreement. *See, e.g., In re Martin*, 2007-2059 (La. 5/16/08), 982 So.2d 765, 770 FN4; *In re Fisher*, 2009-1607 (La. 12/18/09), 24 So.3d 191, 196; *In re Booth*, 2010-0415 (La. 4/9/10), 32 So.3d 806.

II. Revocation of Probation: Appendix C, Rule 5

If the respondent attorney violates the terms of the probation agreement or engages in additional violations of the Rules of Professional Conduct during the probationary period, ODC shall investigate and, if appropriate, file a motion for revocation of the probation with the Disciplinary Board.¹⁴ Appendix C, Rule 5(A). A hearing on ODC's motion to revoke probation must be held within thirty (30) days of the filing of the motion. Unlike the procedures discussed in the previous chapters, probation revocation hearings are conducted before a three-member

¹⁴ In addition to violations of the Rules of Professional Conduct, if the respondent presents a substantial threat of harm to the public, ODC shall petition the Court for interim suspension in addition to revocation of probation. In this situation, the procedures governing interim suspension will apply. *See* Chapter 4 and Rule XIX, §19.2.

panel of the Disciplinary Board. Nonetheless, a probation revocation hearing is an evidentiary hearing. Thus, the respondent is allowed to be represented by counsel, cross-examine witnesses, and present evidence.

Upon receiving ODC's motion, the Adjudicative Committee chairperson will sign an order, which will order the respondent to appear for a hearing before a panel of the Disciplinary Board on a specific date. This order will be followed by a notice of hearing, which will contain the date, time, and location of the hearing. The hearing notice will also contain an expedited briefing schedule.

The parties should be aware that the Disciplinary Board is mandated by Rule XIX to conduct the hearing within thirty (30) days of the filing of ODC's motion. Given the shortened time period, pre-hearing conferences are not automatically scheduled. However, if a party desires a pre-hearing conference with the panel chairperson, a request should be made via motion filed with the Disciplinary Board. Pre-hearing motions should be filed as soon as practical in order to allow the motion to be ruled upon prior to the hearing.

The hearing will be conducted in the same manner as a hearing before a hearing committee. ODC has the burden of proof. In order for ODC to carry its burden, ODC must submit "*sufficient evidence* demonstrating that respondent has violated his/her probation and/or committed a violation of the Rules of Professional Conduct." (Emphasis added.) Appendix, C, Rule 5(C).

After the hearing, the panel will prepare a draft recommendation, which is circulated among the remaining Adjudicative Committee members for approval and voting. Within ten (10) days of the hearing, the Disciplinary Board must issue its recommendation and lodge the record with the Court for final determination of the issue.