



# **Rules for Lawyer Disciplinary Enforcement (Louisiana Supreme Court Rule XIX)**

**With amendments through January 27, 2016**

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## **Section 1. Authority of the Court.**

Under the authority of Article V, Section 5(A) and (B) of the Louisiana Constitution of 1974 and the inherent power of this court, it is ordered that Article XV of the Articles of Incorporation of the Louisiana State Bar Association be vacated and repealed, and the following Rules for Lawyer Disciplinary Enforcement be and are hereby adopted.

## **Section 2. The Attorney Disciplinary Board.**

**A. Agency.** There is hereby established one permanent statewide agency to administer the lawyer discipline and disability system. The agency consists of a statewide board as provided in this Section 2, hearing committees as provided for in Section 3, disciplinary counsel as provided for in Section 4, and staff appointed by the board and counsel. The agency is a unitary entity. While it performs both prosecutorial and adjudicative functions, these functions shall be separated within the agency insofar as practicable in order to avoid unfairness. The prosecutorial functions shall be directed by a lawyer employed full-time by the agency and performed, insofar as practicable, by employees of the agency. The adjudicative functions shall be performed by practicing lawyers and public members.

**B. Appointment.** The disciplinary board shall be appointed by the Court and shall consist of fourteen members. Except as herein provided, terms of office of all board members shall be for three years. No board member shall serve more than two consecutive terms. Members of the board shall not be subject to removal by the court during their terms of office except for cause.

Board appointments shall be made as follows:

- (1) One lawyer member shall be appointed from Supreme Court District One.
- (2) One lawyer member shall be appointed from Supreme Court District Two.
- (3) One lawyer member shall be appointed from Supreme Court District Three.
- (4) One lawyer member shall be appointed from Supreme Court District Four.
- (5) One lawyer member shall be appointed from Supreme Court District Five.
- (6) One lawyer member shall be appointed from Supreme Court District Six.
- (7) One lawyer member shall be appointed from Supreme Court District Seven.
- (8) Four public members shall be appointed from the state at-large.
- (9) Two lawyer members shall be appointed from the state at-large.
- (10) The fourteenth member shall be a lawyer who shall have prior lawyer discipline experience. This member shall be nominated annually by the Louisiana State Bar Association. All nominations made by the Louisiana State Bar Association shall be subject to approval by the court. The Louisiana State Bar Association may renominate any appointee for two additional one-year terms. The member who is nominated by the LSBA and approved by the court shall serve on the administrative committee.

**C. Election of Officers.** The members of the board shall annually elect lawyer members as chair and vice-chair. The duties of the chair and vice-chair shall be as described in the board's internal operating rules.

**D. Number Required for Action.** The board shall act with the concurrence of a majority of those board members who participate and vote, provided at least eight board members participate and vote.

The adjudicative committee shall act with the concurrence of a majority of adjudicative committee members, provided at least seven committee members participate and vote.

The administrative committee shall act with the concurrence of a majority of administrative committee members, provided at least three committee members participate and vote.

**E. Compensation and Expenses.** Members shall receive no compensation for their services, but may be reimbursed for travel and other expenses incidental to the performance of their duties.

**F. Abstention of Board Members.** Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

**G. Powers and Duties.** The board shall divide itself into two committees: a nine-member adjudicative committee and a five-member administrative committee. The adjudicative committee shall include three public members, and the administrative committee shall include one public member.

*(1) Joint Duties.* The adjudicative and administrative committees shall jointly have the following powers and duties:

(a) To propose rules of procedure for lawyer discipline and disability proceedings for adoption by the court, to adopt internal operating rules which do not conflict with the Rules for Lawyer Disciplinary Enforcement, and to comment on the enforceability of existing and proposed Rules of Professional Conduct;

(b) To appoint, with the approval of this court, a chief disciplinary counsel, hereinafter referred to as “counsel” or “disciplinary counsel”, to perform prosecutorial functions;

(c) To appoint and supervise its staff, separate from the prosecutorial staff, to assist the board in its functions;

(d) To review periodically the operation of the system and report to the court;

(e) To inform the public about the existence and operation of the system and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, or a lawyer has been reinstated or readmitted;

(f) To delegate, in its discretion, to any board member, the power to act for the board on administrative and procedural matters; and

(g) Such other functions and duties as are provided by court rule or order.

*(2) Powers and Duties of Adjudicative Committee.* The adjudicative committee shall have the following powers and duties:

(a) To perform 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;

(b) To administer reprimands;

(c) To issue admonitions in accordance with Section 11(D);

(d) To impose probation for a specified period with the consent of the respondent;

(e) To rule on procedural matters; and

(f) Other adjudicative duties as are provided by court or board rules.

(3) *Duties of Administrative Committee.* The administrative committee shall have the following powers and duties:

(a) To appoint three or more hearing committees and

(i) establish the rotation by which they will be assigned formal hearings;

(ii) designate the chair for each;

(iii) assign the chair, or the other regular lawyer member of the chair's committee, to review in rotation recommendations of counsel for disposition of disciplinary matters and petitions for transfer to and from disability inactive status pursuant to Section 3(E)(1); and

(iv) assign hearing committees to review in rotation dismissals by disciplinary counsel upon a request for review by complainant.

(b) Financial management, including the review of budget requests submitted by the office of disciplinary counsel and the board administrator;

(c) Human resource management;

(d) Systems management;

(e) Facilities management; and

(f) To establish an Advisory Committee, to be comprised of a maximum of fourteen (14) members. Advisory Committee members must be former members of the Louisiana Attorney Disciplinary Board. The Advisory Committee shall have no authority to act for or bind the agency, but shall serve as a source of information and feedback between the agency and members of the public and the bar; and

(g) Other administrative duties as are provided by court or board rules.

Members of the administrative committee shall not participate in or vote on matters involving appellate review functions of the adjudicative committee.

### **Section 3. Hearing Committees.**

**A. Appointment.** The board shall appoint three or more hearing committees. Each hearing committee shall consist of two members of the bar of this state and one public member. A lawyer member of each hearing committee shall be appointed chair by the board.

**B. Terms of Office.** The chair and other members of the hearing committee shall serve for fixed, staggered terms. One member shall be appointed for an initial term of one year, another member for an initial term of two years and the third member for an initial term of three years. Thereafter all regular terms shall be three years and no member shall serve for more than two consecutive three-year terms. A member whose term has expired may continue to serve on any case that was commenced before the expiration of the member's term. A member who has served two consecutive three-year terms may not be reappointed before the expiration of at least one year. The members shall not be subject to removal by the board during their terms of office except for cause.

**C. Quorum.** Three members shall constitute a quorum. The committee shall act only with the concurrence of two. The chair of the board may appoint alternate members to a hearing committee as necessary to meet the requirements of this subsection.

**D. Powers and Duties.** Hearing committees shall have the following powers and duties:

- (1) To conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status upon assignment;
  - (2) To submit to the board written findings of fact, conclusions of law, and recommendations, together with the record of the hearing; and
  - (3) To review dismissals by disciplinary counsel upon a request for review by complainant. The hearing committee may approve, modify, or disapprove the dismissal, or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing the complaint.
- Regular lawyer members shall have such additional duties as provided for in Section 2(G)(3)(a)(iii) and 11(B)(3).

**E. Powers and Duties of Hearing Committee Chair.** Each hearing committee chair shall have the following powers and duties:

- (1) To review recommendations of disciplinary counsel following investigation for disposition of disciplinary matters other than petitions for transfer to and from disability inactive status. The hearing committee chair may approve, modify, or disapprove the recommendations of disciplinary counsel, or direct that the matter be investigated further. If the hearing committee chair modifies or disapproves the recommendation, or directs that the matter be investigated further, disciplinary counsel may appeal that action to the chair of another hearing committee designated by the board who shall approve either disciplinary counsel's recommendation or the action of the first hearing committee chair. The decision of the second hearing committee chair shall be final within the agency.

In reviewing a recommendation of disciplinary counsel to file formal charges, the hearing committee chair shall determine if there is probable cause to believe that a violation or attempted violation of the Rules of Professional Conduct has occurred or that there are grounds for lawyer discipline pursuant to Section 9.

- (2) To conduct prehearing conferences regarding formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status;
- (3) To consider and decide prehearing motions; and
- (4) To review admonitions proposed by disciplinary counsel and accepted by a respondent.

**F. Abstention of Hearing Committee Members.** Hearing committee members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

## **Section 4. Disciplinary Counsel.**

**A. Appointment.** The board shall appoint, with the approval of this court, a lawyer admitted to practice in the state to serve as disciplinary counsel. Neither the chief disciplinary counsel nor full-time staff disciplinary counsel shall engage in private practice.

**B. Powers and Duties.** Disciplinary counsel shall perform all prosecutorial functions and have the following powers and duties:

- (1) To screen all information coming to the attention of the agency to determine whether it concerns a lawyer subject to the jurisdiction of the agency because it relates to misconduct by the lawyer or to the incapacity of the lawyer.

- (2) To investigate all information coming to the attention of the agency which, if true, would be grounds for discipline or transfer to disability inactive status and investigate all facts pertaining to petitions for reinstatement or readmission, reserving unto disciplinary counsel the authority and discretion to refer matters before or after investigation to the Practice Assistance and Improvement Program administered by the Louisiana State Bar Association and approved by the Supreme Court.
- (3) To dismiss or recommend probation, informal admonition, a stay, the filing of formal charges, or the petitioning for transfer to disability inactive status with respect to each matter brought to the attention of the agency.
- (4) To prosecute before hearing committees, the board, and the court discipline, reinstatement and readmission proceedings, and proceedings for transfer to or from disability inactive status.
- (5) To employ and supervise staff needed for the performance of prosecutorial functions.
- (6) To notify promptly the complainant and the respondent of the disposition of each matter.
- (7) To notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability inactive status, reinstatement, readmission, or any public discipline imposed in this state.
- (8) To seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction.
- (9) To forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a serious crime (as hereinafter defined) in this state.
- (10) To maintain permanent records of discipline, disability and diversion matters, subject to the expunction requirements of Section 4(B)(11), and compile statistics to aid in the administration of the system, including but not limited to a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings (or the reporter's notes if not transcribed), and other records as the board or court requires to be maintained.
- (11) To expunge (i.e. destroy) after three years all records or other evidence of the existence of complaints terminated by dismissals, except that upon disciplinary counsel's application, notice to respondent, and a showing of good cause, the board may permit disciplinary counsel to retain such records for one additional period of time not to exceed three years.
  - (i) Notice to Respondent. If the respondent was contacted by the agency concerning the complaint, or the agency otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the expunction.
  - (ii) Effect of Expunction. After a file has been expunged, any agency response to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that there is no record of any such charges.
- (12) To undertake, pursuant to directions from the board, whatever investigations are assigned to disciplinary counsel.
- (13) To issue investigatory subpoenas.
- (14) If disciplinary counsel issues an investigatory subpoena to take a statement from the respondent prior to the filing of formal charges, respondent shall be entitled to have his or her attorney present. Respondent may consult with his or her attorney, but such attorney may not ask questions or otherwise participate in the taking of the statement.

## Section 5. Expenses

The operational expenses of the Attorney Disciplinary Board, including the salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and expenses of the members of the board and of hearing committees, shall be paid from the following sources of revenue:

**A. Fee Assessment.** Lawyers admitted to practice law in Louisiana shall pay an annual disciplinary fee assessment to the Attorney Disciplinary Board in accordance with Section 8 of these rules.

**B. LSBA Annual Payment.** On or before July 1, 1997, the Louisiana State Bar Association shall pay \$175,000 to the Attorney Disciplinary Board. On or before July 1, 1998, the Louisiana State Bar Association shall pay \$100,000 to the Attorney Disciplinary Board. The Louisiana State Bar Association shall make no further annual payments after the fiscal year 1998-1999 payment. The Attorney Disciplinary Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of the audit with the court.

## Section 6. Jurisdiction.

**A. Lawyers Admitted to Practice.** Any lawyer admitted to practice law in this state, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these Rules or of the Rules of Professional Conduct or any other Rules or Code subsequently adopted by the court in lieu thereof, and any lawyer specially admitted by a court of this state for a particular proceeding, as well as any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state, is subject to the disciplinary jurisdiction of this court and the board.

**B. Former Judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline. This jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection. Misconduct by a judge that is not finally adjudicated before the judge leaves office falls within the jurisdiction of the lawyer disciplinary agency.

If a judge is removed from office or retired involuntarily by the court, the lawyer disciplinary agency should only exercise jurisdiction in the event the court reserves to the agency the right to pursue lawyer discipline in the final decree of the court in which the judge is removed from office, or retired involuntarily. In such circumstances, the record made up by the judiciary commission, including its recommendation of discipline, the transcript, and the commission's findings and conclusions, as well as this court's decree of judicial discipline, shall be admissible in any hearing convened pursuant to § 11E of these rules. Both the office of disciplinary counsel and the respondent may introduce additional evidence at any such hearing.



**C. Incumbent Judges.** Full-time incumbent judges shall not be subject to the jurisdiction of the lawyer disciplinary agency.

**D. Powers Not Assumed.** These rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

## **Section 7. Roster of Lawyers.**

The Disciplinary Board shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the board including:

- (a) full name under which the lawyer has been admitted or practiced;
- (b) date of birth;
- (c) current law office address (including street address and post office box, if applicable) and telephone number;
- (d) current residence (including street address and post office box, if applicable);
- (e) date of admission in the state;
- (f) date of any transfer to or from inactive status;
- (g) all specialties in which certified;
- (h) other states in which the lawyer is admitted and date of admission;
- (i) location and account numbers and IOLTA status of bank accounts in which clients' funds or funds of a third person are held by the lawyer, copies of which are to be furnished to the Louisiana Bar Foundation and the Louisiana Attorney Disciplinary Board;
- (j) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction;
- (k) date of death; and
- (l) social security number, if provided by the lawyer.

## **Section 8. Periodic Assessment of Lawyers**

**A. Requirement.** Every lawyer admitted to practice before the court, unless excused on grounds of financial hardship pursuant to procedures established by the Attorney Disciplinary Board, shall pay to the board an annual fee to be set periodically by the court. The fee shall be used to defray the costs of disciplinary administration and enforcement under these rules, and for those other purposes the board shall periodically designate with the approval of the court. The fee shall be paid on or before July 1st of the fiscal year for which the fee is being paid. The annual fee shall be paid by attorneys according to the following schedule:

*(1) Fiscal Years 2007-2008 and 2008-2009.*

\$200 for attorneys admitted to practice for three years or more, and \$135 for attorneys admitted to practice less than three years.

*(2) Fiscal Year 2009-2010 and thereafter.*

\$235 for attorneys admitted to practice for three years or more, and \$170 for attorneys admitted to practice less than three years.

No annual fee shall be collected for the fiscal year in which an attorney is first admitted to practice.

**B. Exemption of Judges.** All justices and judges of the State and Federal Courts who have been licensed to practice law in Louisiana, but who are prohibited because of their judicial office from engaging in such practice, shall be exempt from payment of the fee during the time that they serve in office.

**C. Registration Statement.** Each lawyer required by this rule to pay an annual fee shall, on or before July 1<sup>st</sup> of each year, file with the Louisiana State Bar Association a registration statement on a form approved by the Court. The lawyer shall include an office and residence address on the registration statement, and shall designate either his/her office or residence address as a primary registration statement address. The other address shall be designated as the lawyer's secondary address. The lawyer's primary registration statement address, and the secondary registration statement address, shall each be a physical address and not a post office box. A lawyer may choose either the primary or secondary registration statement address as his/her preferred mailing address, or may designate a third address for this purpose. Service of disciplinary process pursuant to these rules may be made at the lawyer's primary registration statement address. Service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules.

Each lawyer shall also include an office email address on the registration statement, unless he or she does not have one.

Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical or office email address within thirty days of the change. Attorneys admitted to practice in the spring shall receive notice for filing the registration statement before July 1<sup>st</sup> of the year of admission. Attorneys admitted to practice in the fall shall receive notice for filing the registration statement before July 1<sup>st</sup> of their first full calendar year of admission.

The registration process mandated by these rules shall include provisions for the identification of all trust or escrow account information as required by Section 7(i), or certification that the lawyer does not maintain a trust or escrow account because of the nature of the lawyer's practice. If there has been no change in the trust account information previously identified, the lawyer shall certify that such information remains correct. Where a change has occurred in the trust or escrow account information previously submitted, the lawyer shall disclose that fact and submit the required trust or escrow account information on the approved form located in Appendix F of these rules. Each lawyer shall file with the Louisiana Bar Foundation and Louisiana Attorney Disciplinary Board any change or addition to trust or escrow account information within thirty (30) days of the change or addition.

**D. Sanctions for Noncompliance.** Any lawyer who fails to pay timely by July 1<sup>st</sup> the disciplinary enforcement and administration fee as required by subsection A of these rules and/or fails to file or supplement a registration statement or trust account information as required by subsection C of these rules shall be mailed, by first class mail, to the attorney's last-known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice by August 31st shall be assessed a \$25.00

delinquency penalty. Any attorney who fails to comply with this notice by August 31st will be summarily certified ineligible to practice law.

**E. Effect of Certifications of Ineligibility.** Certifications of ineligibility under this section will become effective in September of the year for which the fee is being paid and/or the registration statement is being filed. Certifications of ineligibility shall be effected through notice to the chief judges and clerks of court of all state courts indicating the lawyer's ineligibility to practice law in Louisiana. A lawyer certified ineligible to practice may thereafter apply for reinstatement only as indicated in this section.

**F. Reinstatement.** Any lawyer certified ineligible to practice law under subsection D shall be reinstated if, within five years of the effective date of nonpayment of the disciplinary enforcement and administration fee and/or failure to file or timely supplement a registration statement, the attorney makes payment of all arrears and/or files the delinquent registration statement, pays the \$25.00 delinquency penalty and pays an additional \$25 reinstatement fee to the Disciplinary Board. Any lawyer who fails to make complete payments and/or fails to file delinquent registration statements within five years of the effective date of the certification of ineligibility for noncompliance with subsections A and C may, in the discretion of the court, be required to petition for reinstatement under Section 24 of this rule.

## **Section 9. Grounds for Discipline.**

It shall be a ground for discipline for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, or any other rules of this jurisdiction regarding professional conduct of lawyers;
- (b) engage in conduct violating applicable rules of professional conduct of another jurisdiction;
- (c) willfully violate a valid order of the court or the board imposing discipline, willfully fail to appear before the board for admonition pursuant to Section 10(A)(5), or knowingly fail to respond to a lawful demand from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality nor disclosure of information where the respondent urges a bona fide claim of privilege against testifying under the Constitution of the United States or of the State of Louisiana.

## **Section 10. Sanctions.**

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

- (1) Disbarment by the court. In any order or judgment of the court in which a lawyer is disbarred, the court retains the discretion to permanently disbar the lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law.
- (2) Suspension by the court for an appropriate fixed period of time not in excess of three years.
- (3) Probation imposed by the court not in excess of two years, or imposed by the board or counsel with the consent of the respondent not in excess of two years; provided, however, that probation may be renewed for an additional two year period by consent or after a hearing to determine if there is a continued need for supervision. If the respondent objects to the board or counsel's imposition of probation, the misconduct must either be made the subject of formal charges or a recommendation that probation be imposed must be filed with the court. The conditions of probation should be stated in writing. Probation shall be used only in cases where

there is little likelihood that the respondent will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised.

(4) Reprimand by the court or the board. A reprimand shall be in writing and either imposed in person or served upon the respondent by certified mail. A reprimand imposed by the court or board shall be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

(5) Admonition by the board imposed with the consent of the respondent and the approval of the chair of a hearing committee. An admonition cannot be imposed after formal charges have been issued. Admonitions shall be in writing and served upon the respondent. They constitute private discipline since they are imposed before the filing of formal charges. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed. A summary of the conduct for which an admonition was imposed may be published in a bar publication for the education of the profession, but the lawyer shall not be identified. An admonition may be used in subsequent proceedings in which the respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

(6) Upon order of the court or the board, or upon stipulation, restitution to persons financially injured.

(7) Limitation by the court on the nature or extent of the respondent's future practice.

(8) Repealed effective May 28, 1998.

(9) Diversion imposed in accordance with Section 11(H). Diversions may be offered before or after investigation by disciplinary counsel for minor breaches of the Rules of Professional Conduct and are not public record. Diversion is offered only in cases of minor misconduct, when there is little or no injury to the public, the legal system or the profession. A diversion may be used as evidence in subsequent proceedings in which the respondent has been found guilty of misconduct bearing upon the issue of sanction to be imposed in the subsequent proceeding.

**B. Conditions.** Written conditions may be attached to an admonition or a reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent.

**C. Factors to be Considered in Imposing Sanctions.** In imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) the existence of any aggravating or mitigating factors.

**D. Public Nature of Sanctions.** Disposition of lawyer discipline shall be public in cases of disbarment, suspension, probation, and reprimand. In all cases of public discipline by the court, the court shall issue written reasons.

**COMMENTARY OF THE COURT TO ACCOMPANY ORDER DATED JULY 19, 2001  
AMENDING RULE XIX**

In the public interest, the Court has amended Louisiana Supreme Court Rule XIX to codify Permanent Disbarment as an available sanction for attorney misconduct. While the Court has always had the discretion to deny an application for readmission after the requisite five (5)-year waiting period after disbarment, an attorney who is permanently disbarred under these circumstances will be prohibited from applying for readmission to the bar. The amendments reflect the judgement of the Court that in some instances lawyer misconduct may be so egregious as to warrant a sanction of permanent disbarment based on the facts of an individual case and in consideration of the guidelines set forth in Appendix E to the Rules of Lawyer Disciplinary Enforcement. The amendments are substantially similar to the recommendations of the Office of Disciplinary Counsel and the House of Delegates of the Louisiana State Bar Association.

In adopting these amendments to Rule XIX, the Court has carefully considered the differences between the sanctions of disbarment and suspension, which differences are both substantive and significant. A suspended lawyer remains a lawyer during the period of suspension, retains a license to practice, but cannot practice law during the term of the suspension. However, one who has been disbarred loses his license to practice law. A suspension is imposed for a limited time, currently a maximum of three (3) years. An attorney who has been disbarred but not declared to be “permanently” disbarred under these amendments may apply for readmission after a period of five (5) years. The granting of readmission is within the sole discretion of the Court and is based upon the strict criteria enumerated in Rule XIX, Section 24(E). Unless such readmission is petitioned for and is granted, a disbarment is effectively permanent.

The amendments we now adopt recognize that there are some types of misconduct that are so serious that where the sanction of disbarment is imposed, an application for readmission will not be considered.

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KIMBALL, Justice, concurring in part and dissenting in part

I concur in part and dissent in part from this court's Order, dated July 19, 2001, which amends the Rules for Lawyer Disciplinary Enforcement to provide for permanent disbarment. Prior to this amendment, there was no provision in the Rules allowing this court to permanently disbar an attorney. Rather, a “disbarred” lawyer could petition the court for readmission to the practice of law after five years. The amendment retains this procedure, but allows the court, in its discretion, to effectively override this provision and impose “permanent disbarment,” whereby the attorney is permanently prohibited from being readmitted to the practice of law. While I commend the majority for initiating a type of disbarment that is permanent in nature, in my view, the Rules should not provide for different categories of disbarment.

Although the sanction of disbarment under the Rules has always provided that an attorney can be readmitted after five years, the term “disbarment” imparts a notion of permanency to the public and leads the public to believe that such sanction is permanently imposed. I believe that “disbarment” with the option for readmittance in five years is essentially a suspension and, therefore, misleads the public as to the ramifications of the sanction. The current rule still obfuscates the reality that attorneys who are “disbarred” will none-the-less be able to apply for readmission in five years. In my opinion, the public would be better served if this court were to increase the time an attorney guilty of misconduct may be suspended<sup>1</sup> and provide that all disbarments are permanent. I believe that suspension should be used in those cases where it is believed an attorney may be successfully rehabilitated and able to resume the practice of law,

and I would reserve the sanction of disbarment, which by its very terms conveys an idea of permanency, for situations involving the most egregious misconduct.

<sup>1</sup> Currently, the court may fix a period of suspension not in excess of three years as a sanction for misconduct. Supreme Court Rule XIX, § 10(A)(2).

### **Section 10.1. Reimbursement of Costs and Expenses.**

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

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

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

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

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

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

**E. Failure to Comply with Assessment of Costs and Expenses.** Any lawyer who fails to pay costs and expenses when ordered to do so or who fails to comply with the terms of an agreed upon periodic payment plan shall be mailed, by first class mail at the attorney's last known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice within thirty days of mailing will be summarily certified ineligible to practice law by the court upon notice of such failure received

from the disciplinary board. The certification of ineligibility may be cancelled by the court subsequent to receipt of notice from the board that all outstanding costs and expenses have been paid.

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

## **Section 11. Procedure for Disciplinary Proceedings.**

**A. Screening.** The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity. If the lawyer is not subject to the jurisdiction of the court, the matter shall be referred to the appropriate entity in any jurisdiction in which the lawyer is admitted. If the information, if true, would not constitute misconduct or incapacity, the matter shall be dismissed. The disciplinary counsel may conduct a pre-screening investigative inquiry to determine if a complaint merits investigation, dismissal or referral to the Practice Assistance and Improvement Program administered by the Louisiana State Bar Association and approved by the Supreme Court. Objections to screening decisions shall be reviewable by the Chief Disciplinary Counsel, but are within counsel's discretion and not otherwise subject to appellate review.

### **B. Investigation.**

(1) All investigations shall be conducted by disciplinary counsel. Upon the conclusion of an investigation, disciplinary counsel may dismiss or may recommend probation, admonition, the filing of formal charges, the petitioning for transfer to disability inactive status, a stay, or diversion to the Practice Assistance and Improvement Program.

(2) *Notice to Respondent.* Disciplinary counsel shall not recommend a disposition other than dismissal or stay without first notifying the respondent in writing of the substance of the matter and affording him or her an opportunity to be heard. Service or attempted service of notice to the respondent at his or her primary registration address constitutes adequate notice for purposes of these disciplinary rules.

(3) The complainant shall be notified of the disposition of a matter following investigation and of his or her right to file a written request for review of disciplinary counsel's dismissal within thirty days of receipt of notice of disposition pursuant to Section 4(B)(6), provided however, dismissals conditioned upon respondent's acceptance of diversion shall not be subject to appeal. Disciplinary counsel's dismissal shall be reviewed by a hearing committee selected in order from the roster established by the board to consider the matter, upon the complainant's request for review. The hearing committee may approve, modify or disapprove the appealed dismissal or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing the complaint.

Disciplinary counsel's recommended disposition other than a dismissal or diversion shall be reviewed by the chair of a hearing committee, or the other regular lawyer member of the chair's committee, selected in order from the roster established by the board. The chair, or other regular lawyer member of the chair's committee, may approve, disapprove or modify the recommendation.

Disciplinary counsel may appeal a decision to disapprove or modify his or her recommendation to a reviewing chair, or to the other regular lawyer member of the chair's committee, of a second hearing committee also selected in order from the roster established by the board who shall approve either disciplinary counsel's recommendation or the action of the first reviewer.

Any hearing committee whose chair, or regular lawyer member, reviews a recommendation of disciplinary counsel is disqualified from participating in further consideration of the matter.

In reviewing a recommendation of disciplinary counsel to file formal charges, the hearing committee chair shall determine if there is probable cause to believe that a violation or attempted violation of the Rules of Professional Conduct has occurred or that there are grounds for lawyer discipline pursuant to Section 9.

### **C. Probation--Imposition.**

(1) If a matter is recommended to be concluded by probation, disciplinary counsel shall notify the respondent in writing of the proposed disposition and of the right to demand in writing within fourteen days that the matter be disposed of by a formal proceeding. Failure of the respondent to so demand within fourteen days after mailing of written notice of the proposed probation constitutes consent to the probation.

(2) If the respondent within fourteen days demands a formal hearing, formal charges may be instituted.

### **D. Admonition--Imposition.**

(1) If a matter is recommended to be concluded by admonition, disciplinary counsel shall notify the respondent in writing of the proposed disposition and of the right to demand in writing within fourteen days that the matter be disposed of by a formal proceeding. Failure of the respondent to so demand within fourteen days after written notice of the proposed admonition constitutes consent to the admonition.

(2) If the respondent within fourteen days demands a formal hearing, formal charges may be instituted.

(3) If the respondent consents to the admonition, the matter shall be reviewed by a hearing committee chair. If the proposed admonition is approved by a hearing committee chair, the board shall issue the admonition. If the hearing committee chair disapproves the admonition, the chair shall specify in writing the reasons for disapproving the admonition. Any hearing committee whose chair disapproves issuance of an admonition is disqualified from participating in further consideration of the matter.

### **E. Formal Charges.**

If a matter is to be resolved by a formal proceeding, disciplinary counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

(1) Disciplinary counsel shall file the charges with the board.

(2) Disciplinary Counsel shall cause a copy of the formal charges to be served upon the respondent as provided in Section 13A, with proof of service or attempted service to be filed with the board.

(3) The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended



by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. 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 13C. 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.

(4) If there are any material issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in mitigation, or in any case that the board deems a hearing advisable, the board shall serve a notice of hearing before a hearing committee upon disciplinary counsel and the respondent, stating the date and place of hearing at least twenty-five days in advance thereof. The notice of hearing shall advise the respondent of the right to be represented by a lawyer, to cross-examine witnesses and to present evidence. The hearing shall be recorded.

#### **F. Review by Board.**

Review by the board shall be limited to a review of the report from the hearing committee and the record below. The respondent and disciplinary counsel should be afforded an opportunity to file briefs and present oral argument during the review by the board. The board shall adopt rules establishing a timetable and procedure for the filing of briefs and presentation of argument.

(1) Decision by Board. Following its review, the board may approve, modify, or disapprove the recommendation of the hearing committee. In reviewing the facts found by the hearing committee, the board shall adopt these findings unless the hearing committee has committed manifest error or is clearly wrong.

(2) During its review, the board 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. The hearing committee shall act as the initial trier of fact; the board serves an appellate review function. If new evidence warranting a reopening of the proceeding is discovered, the case should be remanded to the hearing committee.

#### **G. 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.

**H. Diversion-Imposition.** If after investigation disciplinary counsel is of the opinion that the respondent should be referred to an approved program of the Practice Assistance and Improvement Committee of the Louisiana State Bar Association, disciplinary counsel shall notify the respondent in writing of the opportunity to be diverted. If the respondent agrees to diversion, the form of diversion will be worked out between Practice Assistance Counsel, disciplinary counsel and the respondent. Respondent will be required to sign a written contract outlining the nature and extent of diversion. In the event of an unsuccessful diversion, the matter will be referred back to disciplinary counsel for further action. If in the course of fulfilling a diversionary contract, violations of the Rules of Professional Conduct other than those for which the diversion was initiated are discovered, disciplinary counsel shall be notified, the contract may be nullified, and if so the matter will be referred back to disciplinary counsel. A diversion contract may be reinstated or new terms added for good cause shown and with the consent of the respondent.

## **Section 12. Immunity.**

**A. From Civil Suits.** Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of the hearing committees, disciplinary counsel, staff, probation monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on

June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

**B. From Criminal Prosecution.** Upon application by disciplinary counsel and notice to the appropriate prosecuting authority, the court may grant immunity from criminal prosecution to a witness in a discipline or disability proceeding.

### **Section 13. Service.**

**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.

**B. Service of Subpoenas.** Service of investigatory subpoenas, subpoenas for attendance at hearings, or subpoenas for depositions as requested by either disciplinary counsel or the respondent shall be made by personal service by the sheriff or by any person authorized by the chair of the board.

**C. Service of Other Papers.** Service of any other papers, documents, letters, or notices required by these rules may be made upon the 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 respondent's counsel, or by facsimile transmission to the respondent or respondent's counsel at the number designated for facsimile transmission.

**D. Proof of Service.** When service is made by mail, delivery, or facsimile transmission, a certificate shall be filed in the record of the manner in which service was made. When service is made by registered or certified mail, return receipt requested, a copy of the mailed documents and the signed return receipt shall be filed in the record as proof of service. In cases of personal service, proof of personal service shall be filed in the record.

### **Section 14. Subpoena Power.**

**A. Oaths.** Any member of the board or of a hearing committee in matters before it, disciplinary counsel in matters under investigation by him or her, and any person authorized by law may administer oaths and affirmations.

**B. Investigatory Subpoenas.** Before formal charges have been filed, disciplinary counsel may compel by subpoena the attendance of witnesses, and the production of pertinent books, papers, and documents. Such subpoenas may be served in accordance with Section 13 of these rules.

**C. Subpoenas for Deposition or Hearing.** After formal charges are filed, disciplinary counsel or respondent may, in accordance with appropriate rules of Louisiana Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents at a deposition or hearing under these rules.

**D. Enforcement of Subpoenas.** The appropriate court of general jurisdiction of the parish in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

**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.

**F. Witnesses and Fees.** Subpoena and witness fees and mileage shall be the same as those provided for in civil proceedings.

**G. Subpoena Pursuant to Law of Another Jurisdiction.** Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, the chair of the board, upon petition for good cause, may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.

**H. Copy of Statement.** Except for good cause shown, a respondent who has given a sworn statement to disciplinary counsel shall be entitled to a copy of the statement upon request and at the respondent's cost.

## **Section 15. Discovery.**

**A. Scope.** Within twenty (20) days following the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons having knowledge of relevant facts. Within sixty (60) days following the filing of an answer, except that the time period may be enlarged by order of the hearing committee chair, disciplinary counsel and the respondent may take depositions in accordance with the Louisiana Code of Civil Procedure. Disciplinary Counsel and respondent 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.

**B. Resolution of Disputes.** Disputes concerning discovery shall be determined by the chair of the hearing committee before which the matter is pending. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.

**C. Civil Rules Not Applicable.** Proceedings under these rules are not subject to the Louisiana Code of Civil Procedure regarding discovery except those relating to depositions and subpoenas, and except as otherwise provided in these rules.

## **Section 16. Access to Disciplinary Information.**

**A. Confidentiality.** Prior to the filing and service of formal charges in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by disciplinary counsel if:

- (1) the respondent has waived confidentiality;
- (2) the proceeding is based upon allegations that include either the conviction of a crime or reciprocal discipline;
- (3) the proceeding is based upon allegations that have become generally known to the public; or
- (4) there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession.

Following the dismissal of a proceeding by disciplinary counsel, disciplinary counsel's file regarding the proceeding may be reviewed, pursuant to an audit policy adopted by the board, by members of the board, the disciplinary board administrator, or former board members appointed by the board chair for that purpose, provided however that the information contained therein shall not be disclosed by those reviewing it except as allowed by this section.

Disciplinary Counsel and the Practice Assistance Counsel of the Louisiana State Bar Association may communicate as necessary concerning matters referred to the Practice Assistance and Improvement Program in accordance with Section 32.

**B. Public Proceedings.** Upon filing and service of formal charges in a discipline matter, or filing of a petition for reinstatement, the proceeding is public, except for:

- (1) deliberations of the hearing committee, board, or court; or
- (2) information with respect to which the hearing committee has issued a protective order.

**C. Proceedings Alleging Disability.** Proceedings for transfer to or from disability inactive status are confidential. All orders transferring a lawyer to or from disability inactive status are public.

**D. Protective Orders.** In order to protect the interests of a complainant, witness, third party, or respondent, the hearing committee to which a matter is assigned may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

**E. Request for Nonpublic Information.** A request for nonpublic information other than that authorized for disclosure under paragraph A above shall be denied unless the request is from one of the following agencies:

- (1) the Louisiana State Bar Association; or
- (2) lawyer disciplinary enforcement agencies.

**F. Notice to Lawyer.** Except as provided in paragraph G, if the board or counsel decides to provide nonpublic information requested, and if the lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the lawyer shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the lawyer that the information shall be released at the end of twenty-one days following mailing of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.

**G. Release Without Notice.** If an otherwise authorized requesting agency has not obtained a waiver from the lawyer to obtain nonpublic information, and requests that the information be released without giving notice to the lawyer, the requesting agency shall certify that:

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

**H. Notice to National Discipline Data Bank.** The disciplinary agency shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

**I. Duty of Participants.** All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by this rule.

**J. Confidentiality of Communications to the Louisiana State Bar Association Committee on Alcohol and Drug Abuse.** No member of the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association shall be required or permitted to disclose any communication made to that member or any information received by that member while acting in the course of committee business concerning the conduct, behavior, or condition of a lawyer without the express consent of that lawyer.

## **Section 17. Dissemination of Disciplinary Information.**

**A. Notice to Disciplinary Agencies.** The disciplinary agency shall transmit notice of public discipline, transfers to or from disability inactive status, reinstatements, readmissions, permanent resignations, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is admitted.

**B. Public Notice.** The disciplinary agency shall cause notices of reprimand, suspension, disbarment, reinstatement, readmission, transfers to or from disability inactive status, and permanent resignation to be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

**C. Notice to the Courts.** The clerk of this court shall promptly cause to be transmitted a copy of the order of suspension, disbarment, reinstatement, readmission, permanent resignation, and transfer to or from disability inactive status to all courts in this state.

**D. Notice to Chief Judges.** Disciplinary counsel shall request the presiding judge of the court of the judicial district in which a respondent transferred to disability inactive status or otherwise unable to comply with the requirement of Section 26 maintained an office for the practice of law, to take such action under the provision of Section 27 as may be indicated in order to protect the interests of the respondent and the respondent's clients.

## **Section 18. Additional Sections of Procedure.**

**A. Nature of Proceedings.** Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

**B. Proceedings Governed by the Code of Civil Procedure and the Code of Evidence.** Except as otherwise provided in these rules, the Louisiana Code of Civil Procedure and the Louisiana Code of Evidence apply in discipline and disability cases. 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. No 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 introduced.

**C. Standard of Proof.** Formal charges of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

**D. Burden of Proof.** The burden of proof in proceedings seeking discipline is on disciplinary counsel. The burden of proof in proceedings seeking reinstatement or readmission is on the respondent. The party seeking transfer to or return from disability inactive status bears the burden of proof.

**E. Prehearing Conference.** At the discretion of the hearing committee or upon a request of either party, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference shall be held before the chair of the hearing committee or another member of the committee designated by the chair and may be conducted by phone. Both Respondents and disciplinary counsel shall file pre-hearing memorandums in all instances where hearings are to be held.

The pre-hearing memorandum shall set forth the following information:

- (a) The names of witnesses and whether the testimony will be in person or by deposition;
- (b) A list of exhibits that will likely be introduced at the hearing;
- (c) Any anticipated evidentiary or legal issues which may be presented at the hearing; and
- (d) Recommendations for sanctions with citations of relevant authority in the event that a clear and convincing case is presented against the respondent.

The pre-hearing memorandums shall be filed with the Board Administrator with copies forwarded to the hearing committee chair and to the opposing party not less than ten (10) days prior to the hearing.

**F. Hearings Recorded.** The hearing shall be recorded. Upon respondent's request, disciplinary counsel shall make the record of a hearing available to the respondent at the respondent's expense.

**G. Related Pending Litigation.** Upon a showing of good cause to the board or to the hearing committee chair assigned to the matter after formal charges have been filed and prior to the hearing on the formal charges, the processing of a disciplinary matter may be stayed because of

substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.

**H. Delay Caused by Complainant.** Neither unwillingness nor neglect of the complainant to sign a complaint or prosecute a charge or settlement or compromise between the complainant and the lawyer or restitution by the lawyer, shall, in itself, justify abatement of the processing of any complaint.

**I. Effect of Time Limitations.** Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

**J. Complaints Against Disciplinary Agency Members.** If a complaint is filed against disciplinary counsel or disciplinary counsel's staff, a member of a hearing committee, or a member of the board, the matter shall proceed in accordance with these rules except that:

(1) If the respondent is disciplinary counsel or a member of the staff, the board shall appoint a special counsel to present the case;

(2) If the respondent is a member of a hearing committee, the chair of the board shall appoint a special hearing committee for the case; or

(3) If the respondent is a member of the board, the chief justice shall appoint a special board for the case.

## **Section 19. Lawyers Convicted of a Crime.**

**A. Determination of Conviction.** Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, disciplinary counsel shall secure a certificate of such conviction from the applicable clerk of court. Clerks of court and district court judges should assist in the prompt identification of such attorneys by notifying the Office of Disciplinary Counsel immediately following an attorney's criminal conviction.

**B. Definition of "Serious Crime."** The term "serious crime" means a felony or any other crime, the necessary element of which as determined by the statute defining such crime, reflects upon the attorney's moral fitness to practice law.

**C. Procedure When Conviction Not Final.** Disciplinary counsel shall initially make a determination whether or not the crime of which the attorney has been convicted constitutes a serious crime. In determining whether or not the crime constitutes a serious crime, disciplinary counsel shall study the statute defining the crime, particularly if the crime involves violation of a statute of the Federal Government or any other state or jurisdiction.

If disciplinary counsel concludes that the crime of which the attorney has been convicted is not a serious crime, he/she shall process the case in accordance with Section 11 of these rules. If disciplinary counsel determines that the crime is a "serious crime," he/she shall prepare an order for interim suspension and forward it to the court and to the respondent with a certificate of the conviction. Within fifteen (15) days of the mailing of the motion for the order of interim



suspension, the lawyer may, by filing an appropriate pleading with the clerk of this court, assert any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a “serious crime” or that the lawyer is not the individual convicted. If this court determines that the crime is not serious, the matter will be referred back to the agency for processing in the same manner as any other information coming to the attention of the agency.

If this court deems it advisable, it may order that a hearing be held before a hearing committee to determine any such jurisdictional issues. If a hearing is so ordered, evidence relevant to the issue(s) to be decided may be introduced in the same fashion as other hearings conducted under these rules. Subsequent to this hearing, the hearing committee shall promptly submit its findings on the issue(s) to be decided to this court.

If, without having ordered a hearing, or after the matter has been processed as noted in the preceding paragraph, this court concurs with disciplinary counsel or with the opinion of the hearing committee that the crime of which the attorney has been convicted constitutes a serious crime, this court may suspend the respondent from the practice of law and order that necessary disciplinary proceedings be instituted in accordance with Section 11 of these rules, provided, however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded. If the hearing committee convened to hear the jurisdictional issue(s), or this court concludes, subsequent to the hearing, that the crime of which the attorney has been convicted is not a serious crime, the matter will be referred back to the agency for processing in accordance with Section 11 of these rules.

**D. Automatic Reinstatement from Interim Suspension upon Reversal of Conviction.** An attorney will be reinstated immediately on the reversal of his conviction for a serious crime that has resulted in his suspension, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

**E. Procedure After Final Conviction.** After the conviction has become final, that is, all appeals have been concluded or exhausted, disciplinary counsel may, in the event the respondent has for any reason not already been suspended, institute or reinstitute proceedings for interim suspension as provided for in subpart (C) of this Section.

Additionally, the matter may otherwise be processed in the same manner as any other information coming to the attention of the agency.

At the hearing before a hearing committee, the certificate of the conviction of the respondent shall be conclusive evidence of his/her guilt of the crime for which he/she has been convicted. The sole issue to be determined at the hearing shall be whether the crime warrants discipline and, if so, the extent thereof. At the hearing the 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.

**F. Procedure to be Used.** Except as provided hereinabove in this Section, the procedure with respect to proceedings based on a conviction of a crime, shall be conducted in the same manner as in ordinary disciplinary proceedings.

### **Section 19.1. Declarations of Ineligibility for Failing to Pay Child Support.**

The issuance of any judgment or order indicating noncompliance with an order of support which is forwarded to this Court pursuant to Act 1078 of 1995<sup>2</sup> shall be preceded by a contradictory hearing and shall afford the attorney-obligor notice and an opportunity to be heard. The required notice shall inform the attorney-obligor that he/she may be declared ineligible to practice law and may also be subject to further lawyer discipline if his/her failure to comply with an order of support has been without just cause. In any judgment or order indicating noncompliance with an order of support which is forwarded to this court, the trial judge shall make an express determination that the attorney-obligor's noncompliance has been without just cause. The trial judge shall also indicate the basis for his/her finding that the failure to comply with an order of support has been without just cause.

Upon receipt of such a judgment or order of noncompliance, this court may summarily declare the attorney-obligor ineligible to practice law and may also order that disciplinary proceedings be instituted in accordance with § 11 of these rules; provided, however, that the disciplinary proceedings so instituted will not, unless requested by the attorney-obligor, be brought to a hearing until all appeals relating to the support order, including appeals from an order making the child support arrearages executory, and appeals from any judgment of contempt which relates to the attorney's noncompliance, are concluded.

The attorney-obligor may seek reinstatement by filing with the board a certified copy of an order of compliance from the court which issued the judgment or order of noncompliance, and by paying a \$25 processing fee to the board. Upon notification from the board that the order of compliance has been received, and the processing fee paid, the court shall then reinstate the attorney. The reinstatement of any attorney who has been declared ineligible to practice law for failing to pay child support shall not preclude the agency from pursuing lawyer discipline in accordance with § 11 of these rules.

### **Section 19.2. Interim Suspension for Threat of Harm.**

**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.

**B. Immediate Interim Suspension.** Upon examination of the evidence transmitted to the court by disciplinary counsel and of rebuttal evidence, if any, which the lawyer has transmitted to the court prior to the court's ruling, the court may enter an order immediately suspending the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing the

harm; may order the lawyer to show cause, before a hearing committee panel appointed by the board, why the court should not issue an immediate interim suspension; or may order such other action as it deems appropriate. If the hearing is ordered prior to the filing of formal charges by disciplinary counsel, the hearing shall be confidential, but should the court determine the lawyer should be immediately suspended, the order suspending the attorney shall be public. In the event the order is entered, the court may appoint a trustee pursuant to Section 27 to protect clients' interests.

**C. Notice to Clients.** A lawyer suspended pursuant to paragraph B shall comply with the notice requirements in Section 26.

**D. 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.

### **Section 19.3. 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.

### **Section 20. Discipline by Consent.**

#### **A. Joint Motion.**

At any time in the disciplinary process, a respondent lawyer and the Office of Disciplinary Counsel may file a Joint Motion for Consent Discipline. The joint motion shall be filed under seal with the Court. In the event formal charges have been filed, notice of the filing shall be given to the hearing committee to which the matter has been assigned, and all proceedings shall be stayed, pending disposition of the motion. The joint motion shall include stipulations of fact, conditional admissions of rules violated, the mental elements involved, the harm occasioned by the respondent's conduct, and the existence of any aggravating and mitigating factors. The lawyer shall acknowledge in the joint motion that he or she consents to the agreed upon discipline. In the joint motion, the parties shall stipulate to the following:

- (1) The lawyer's consent is freely and voluntarily rendered; the lawyer is not being subjected to coercion or duress; the lawyer is fully aware of the implication of submitting the consent; and
- (2) The lawyer consents because the lawyer knows that if charges predicated upon the matters under investigation were filed, or if the pending proceeding were prosecuted, the lawyer could not successfully defend against them.

The parties may enter into any other agreements appropriate under the facts of the case.

**B. Memorandum in Support of Consent Discipline.**

The respondent and the Office of Disciplinary Counsel shall append to the joint motion a memorandum which references applicable standards under the *ABA Standards for Imposing Lawyer Sanctions* and prior jurisprudence which establishes a similar range of sanctions for similar misconduct.

**C. Discretionary, Sealed Memorandum from Office of Disciplinary Counsel.**

Within ten days of the filing of the joint motion for consent discipline, or upon request of the Court, the Office of Disciplinary Counsel may file a supplemental memorandum, under seal, further explaining why it would be appropriate for the Court to accept the consent discipline. Notwithstanding any other provision of law or court rule, this sealed memorandum shall be available only to the Court, shall remain confidential, and shall not be provided to the respondent lawyer regardless of whether the discipline by consent is accepted or rejected by the Court.

**D. Discontinuance of Jurisdiction.**

Approval of the consent discipline by the Court shall divest the hearing committee of further jurisdiction and no report need be prepared in such cases.

**E. Order of Discipline.**

If the Court is of the view that the consent discipline is appropriate, the Court shall enter a summary order disciplining the lawyer by consent. In the event the Court enters an Order of Consent Discipline, the entire record shall become public, unless otherwise ordered by the Court. However, any sealed memorandum provided to the Court by the Office of Disciplinary Counsel in accordance with subpart C shall remain confidential, shall be available only to the Court, and shall not be provided to the respondent lawyer.

**F. Rejection of Consent Discipline.**

If the requested discipline is rejected by the Court, the joint motion and any conditional admissions shall be considered withdrawn. In this event, any conditional admissions made in the joint motion cannot be used against the respondent in any subsequent proceedings. The joint motion shall remain sealed and shall not be disclosed or made available for use in any other proceeding except upon order of the Court. The Court Order in this instance shall be a matter of public record, but the respondent lawyer shall not be identified.

**Section 20.1. Permanent Resignation from the Practice of Law in Lieu of Discipline.**

A lawyer against whom formal charges of misconduct have or may be filed may file a written request with the Louisiana Supreme Court seeking permanent resignation from the practice of law in lieu of discipline.

**A. Affidavit of Consent.** A request seeking permanent resignation from the practice of law shall be accompanied by an affidavit of consent wherein the lawyer states:

(1) the request is freely and voluntarily submitted; the lawyer is not being subjected to coercion or duress; and the lawyer is fully aware of the implications of submitting the request for permanent resignation;

(2) the lawyer is aware that there is presently pending an investigation into, or proceedings involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth;

(3) the lawyer agrees that he/she:

(i) will never practice law in Louisiana or in any other jurisdiction;

(ii) will permanently resign from the practice of law in all other jurisdictions in which the lawyer is admitted to practice;

(iii) will never seek readmission to the practice of law in Louisiana or in any other jurisdiction; and

(iv) will never seek admission to the practice of law in any other jurisdiction.

The affidavit of consent shall include a listing of all jurisdictions in which the lawyer is admitted to the practice of law and a recitation of any disciplinary action taken against the lawyer in any other jurisdiction. The affidavit of consent shall also include a listing of any pending complaints, claims, or formal inquiries filed or made against the lawyer in any other jurisdiction in which the lawyer is admitted.

**B. Disciplinary Costs.** The lawyer shall include with the request a certificate from the board administrator attesting to the fact that all costs incurred by the Louisiana Attorney Disciplinary Board in the investigation and/or proceedings associated therewith have been paid in full.

**C. Service Upon Disciplinary Counsel.** A request for permanent resignation in lieu of discipline filed under this section shall be served upon the office of disciplinary counsel for review and response. Within thirty (30) days of service, disciplinary counsel may concur, oppose, or recommend modification of the request prior to action by the court.

(1) A concurrence filed by the office of disciplinary counsel shall be accompanied by a summary of the allegations of misconduct giving rise to the disciplinary investigation or proceeding. The summary shall be sufficient to fairly inform the court and the public of the nature of the facts and misconduct giving rise to the disciplinary investigation or proceeding.

(2) An opposition filed by disciplinary counsel shall be public. The factual allegations in support of disciplinary counsel's opposition may remain confidential for good cause shown and in the discretion of the court.

**D. Denial of Request.** A request for permanent resignation in lieu of discipline which is denied by the court shall be withdrawn, and may not be used against the lawyer in any subsequent proceeding.

**E. Public Nature of Proceeding.** All proceedings in which a lawyer seeks permanent resignation in lieu of discipline shall be public, unless otherwise ordered by the court.

**F. Order of Resignation.** The court may accept or reject the request for permanent resignation, or take any other action it feels is appropriate. If the court accepts a permanent resignation, the Order of Permanent Resignation shall be a matter of public record.

A request for permanent resignation in lieu of discipline which is granted by the court shall, as a condition thereto, permanently prohibit the lawyer from practicing law in Louisiana or in any other jurisdiction in which the lawyer is admitted to the practice of law; permanently prohibit the lawyer from seeking readmission to the practice of law in this state or in any other jurisdiction in which the lawyer is admitted; and permanently prohibit the lawyer from seeking admission to the practice of law in any jurisdiction. Jurisdictions seeking to impose reciprocal discipline shall be entitled to receive the entire record of the lawyer's request seeking permanent resignation.

## **Section 21. Reciprocal Discipline and Reciprocal Disability Inactive Status.**

**A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction.** Upon being disciplined or transferred to disability inactive status by another state disciplinary authority, a lawyer admitted to practice in Louisiana shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

**B. Notice Served Upon Respondent.** Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Louisiana has been disciplined or transferred to disability inactive status by another state disciplinary authority, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction:

and

(2) An order directing that the lawyer or disciplinary counsel inform the court, within thirty days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this state would be unwarranted and the reasons for that claim.

**C. Effect of Stay in Other Jurisdiction.** In the event the discipline or transfer imposed in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this state shall be deferred until the stay expires.

**D. Discipline to be Imposed.** Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(4) The misconduct established warrants substantially different discipline in this state; or

(5) The reason for the original transfer to disability inactive status no longer exists.

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

**E. Conclusiveness of Adjudication in Other Jurisdictions.** In all other aspects, a final adjudication by another state disciplinary authority that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

## **Section 22. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated.**

**A. 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.

**B. 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.

**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.

**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.

**E. General Provisions.** The board administrator shall provide adequate notice to the respondent of proceedings conducted pursuant to subparts C and D of this section. The hearing committee may take or direct whatever action it deems necessary or proper to determine whether the respondent is incapacitated, including the examination of the respondent by qualified medical experts.

**F. Public Notice of Transfer to Disability Inactive Status.** The board shall cause a notice of transfer to disability inactive status to be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

**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.

### **Section 23. Reinstatement Following a Suspension of One Year or Less**

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 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.

## **Section 24. Reinstatement and Readmission**

**A. Generally.** A disbarred lawyer or a suspended lawyer who has served a suspension period of more than one year, exclusive of any waivers or periods of deferral, shall be reinstated or readmitted only upon order of the court. No lawyer may petition for reinstatement until six months before the period of suspension has expired. No lawyer may petition for readmission until five years after the effective date of disbarment. A lawyer who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the time of the effective date of the interim suspension. In matters where a lawyer who has been placed on interim suspension and is then suspended for the same misconduct that was the ground for the interim suspension, at the court's discretion, the lawyer's term of suspension may be applied retroactively to the effective date of the interim suspension. The court retains the discretion, in accordance with Section 10A of this rule, to permanently disbar a lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law.

**B. Petition and Application.** A petition for reinstatement or readmission must be under oath or affirmation under penalty of perjury and shall specify with particularity the manner in which the lawyer meets each of the criteria specified in paragraph E or, if not, why there is good and sufficient reason for reinstatement or readmission. The petition for reinstatement or admission is public record. An application for reinstatement or readmission, also drafted under oath or affirmation under penalty of perjury, shall also be submitted by the lawyer. Part I of the application, containing general personal, employment and legal information about the lawyer, is public record, while Part II of the application, containing Social Security number, financial, federal and state tax and medical information about the lawyer, shall remain confidential and placed under seal by the board administrator.

Unless abated under Section 25 the petition and application must be accompanied by an advance cost deposit in the amount set from time to time by the board to cover anticipated costs of the proceeding.

**C. Service of Petition and Application.** The lawyer shall file the petition and application with the disciplinary board and shall serve a copy of the petition and application (Parts I and II) on disciplinary counsel. Disciplinary counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment.

**D. Publication of Notice of Petition and Application.** At the same time that a lawyer files a petition and application for reinstatement or readmission, the lawyer shall also publish a notice of the petition and application in the journal of the state bar 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. The notice shall inform members of the bar and the public about the petition and application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the board within thirty days. In addition, the lawyer shall notify the complainant(s) in the disciplinary proceeding that led to the lawyer's suspension or disbarment that the lawyer is applying for reinstatement or readmission, and shall inform each complainant that he or she has thirty days to raise objections to or to support the lawyer's petition and application.

**E. Criteria for Reinstatement and Readmission.** A lawyer may be reinstated or readmitted only if the lawyer meets each of the following criteria, and executes and files with the petition for reinstatement or readmission an application for reinstatement or readmission, a copy of which can be obtained from the board administrator, or, if not, presents good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted:

- (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.

**F. Response of Disciplinary Counsel.** Within sixty days after receiving a lawyer's petition and application for reinstatement or readmission, disciplinary counsel shall either: (1) advise the lawyer and the board that disciplinary counsel will concur in the lawyer's reinstatement or readmission, or (2) advise the lawyer and the board that disciplinary counsel opposes reinstatement or readmission and request the board to set a hearing, or (3) advise the lawyer and the board that disciplinary counsel takes no position in the lawyer's reinstatement or readmission in which case the board shall set a hearing. A concurrence in reinstatement or readmission must be signed by the lawyer and disciplinary counsel and submitted to the chair of the adjudicative

committee of the board within thirty days of disciplinary counsel's advising that he or she will concur.

**G. Hearing; Report.** Upon receipt of the disciplinary counsel's request for a hearing, or if the chair of the adjudicative committee, acting pursuant to paragraph H below, determines that a hearing is necessary, the board shall promptly refer the matter to a hearing committee. Within sixty days of the request, the hearing committee shall conduct a hearing at which the lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met each of the criteria in paragraph E or, if not, that there is good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted. The hearing committee shall file its report with the board containing its findings of fact and recommendations. The respondent and disciplinary counsel may file objections to the report within twenty days from the date of notification by the board that the report has been filed. If no objection to the hearing committee report is filed by the disciplinary counsel or the respondent, the record in the matter shall be submitted directly to the court for review and determination.

**H. Board Review; Report.**

(1) A concurrence in reinstatement or readmission shall be promptly reviewed by the chair of the adjudicative committee of the board. If approved and a recommendation that the petition be granted is made, the matter shall be submitted to the court for review and determination. If disapproved, the matter shall be set for a hearing before a hearing committee in accordance with paragraph G above.

(2) In matters where an objection to the hearing committee's report is filed by the disciplinary counsel or by the respondent, the board shall promptly review the record and report of the hearing committee and shall, within ninety days after receiving the record and the hearing committee report, file the record and its own report with the court.

**I. Decision as to Reinstatement or Readmission.** The court shall review the record, the report filed by the hearing committee or the board, if any, and any concurrence by the lawyer and disciplinary counsel. 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.

**J. Conditions of Reinstatement or Readmission.** The court may impose conditions on a lawyer's reinstatement or 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.

**K. Reciprocal Reinstatement or Readmission.** 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.

## **Section 25. Abatement or Modification of Conditions of Discipline, Reinstatement, or Readmission.**

Where the court has imposed conditions in an order of discipline or in an order of reinstatement or readmission, the lawyer may request of the court an order of abatement discharging the lawyer from the obligation to comply with the conditions, or an order modifying the conditions. The lawyer may so request either prior to or as part of lawyer's petition for reinstatement or readmission. The court may grant the request if the lawyer shows by clear and convincing evidence that the lawyer has made a timely, good faith effort to meet the condition(s) but it is impossible to fulfill the condition(s).

### **Section 25.1. Revocation of Conditional Admission to the Practice of Law.**

If a conditionally-admitted attorney violates any condition of admission, the Office of Disciplinary Counsel shall institute proceedings for revocation of the conditional admission by filing a Petition for Revocation with the Court, which petition shall be served on the conditionally-admitted lawyer in accordance with Section 13 of this Rule.

**(1) Interim Suspension.** In the event the Office of Disciplinary Counsel obtains evidence that demonstrates that a conditionally-admitted lawyer has violated the terms of the consent agreement and poses a substantial threat of serious harm to the public, the Office of Disciplinary Counsel shall file a Petition for Interim Suspension and the matter shall be handled in conformity with the procedure set forth in Section 19.2 of this Rule.

**(2) Hearing.** Upon receipt of the Petition for Revocation, the Court shall order a hearing. The matter shall be assigned to a hearing committee of the Louisiana Attorney Disciplinary Board on an expedited basis. At the hearing, the conditionally-admitted lawyer shall be required to show

by clear and convincing evidence why his conditional admission should not be permanently revoked. The hearing committee shall recommend revocation if it determines that conditions of the consent agreement have been violated. The hearing committee shall file its report and recommendation with the Court no later than thirty (30) days from the conclusion of the hearing.

## **Section 26. Notice to Clients, Adverse Parties, and Other Counsel.**

**A. Recipients of Notice; Contents.** Within thirty days after the date of the court order imposing discipline, transfer to disability inactive status, or permanent resignation, a respondent who permanently resigns in lieu of discipline, or a respondent who is disbarred, transferred to disability inactive status, placed on interim suspension, or suspended for more than six months shall notify or cause to be notified by registered or certified mail, return receipt requested,

(1) all clients being represented in pending matters;

(2) any co-counsel in pending matters; and

(3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order.

The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

**B. Special Notice.** The court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

**C. Duty to Maintain Records.** The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs A and B, and shall make those records available to the disciplinary counsel upon request. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement or readmission.

**D. Return of Client Property.** The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

**E. 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.

**F. Withdrawal from Representation.** In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

**G. New Representation Prohibited.** Prior to the effective date of the order, if not immediate, the respondent shall not agree to undertake any new legal matters between service of the order and the effective date of the discipline.

**H. Affidavit Filed with Court.** Within thirty days after the effective date of the disbarment or suspension order, order of transfer to disability inactive status, or order of permanent resignation, the respondent shall file with this court an affidavit showing:

- (1) Compliance with the provisions of the order and with these rules;
- (2) All other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;
- (3) Residence or other addresses where communications may thereafter be directed; and
- (4) Service of a copy of the affidavit upon disciplinary counsel.

### **Section 27. Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, or Dies.**

**A. Inventory of Lawyer Files.** If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

**B. Protection for Records Subject to Inventory.** Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

### **Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.**

**A. Clearly Identified Trust Accounts in Financial Institutions Required.**

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent

records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

**B. Access to Lawyers' Financial Account Records.** Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and the overdraft reporting requirements mandated by this rule.

**C. Request for Production of Records.** A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

**D. Overdraft Notification Agreement Required.** A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

## **Section 29. Verification of Financial Accounts.**

**A. Generally.** Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

**B. Confidentiality.** Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer-client privilege.

## **Section 30. Appeal by Complainant.**

**A. To Board Panel.** If the complainant is not satisfied with the disposition of the matter following investigation and review by a hearing committee, the complainant may appeal, within thirty days of receipt of notice pursuant to Section 4(B)(6) of the disposition of the hearing



committee, to a panel of the disciplinary board, which may approve, modify or disapprove the disposition, or direct that the matter be investigated further.

**B.** Any matter in which a panel of the disciplinary board has disapproved of the disposition or ordered that the matter be investigated further shall be reviewed by the panel issuing said order upon Disciplinary Counsel's reconsideration of the matter.

**C. To the Court.** Within thirty days of the mailing of the disciplinary board disposition of the complainant's appeal, the complainant may file a petition for leave to appeal to the court. Leave shall not be granted unless the complainant shows that the board acted arbitrarily, capriciously, or unreasonably.

The board shall include in the record the date the disposition of the complainant's appeal was mailed.

### **Section 31. Liberative Prescription.**

A disciplinary complaint, or the initiation of a disciplinary investigation with regard to allegations of attorney misconduct, where the mental element is merely negligence, shall be subject to a prescriptive period of ten years from the date of the alleged offense.

### **Section 32. Alternatives to Discipline Programs.**

Disciplinary counsel may refer matters involving lesser misconduct to alternatives to discipline programs administered by the Louisiana State Bar Association and approved by the Supreme Court. Such programs may include, in addition to the lawyer/client fee arbitration program and the lawyer assistance program, arbitration, mediation, law office management assistance, psychological counseling, continuing legal education, ethics school and other programs.

### **Section 33. Effective Date; Applicability.**

The effective date of these rules shall be April 1, 1990.

These rules shall be applicable to all disciplinary proceedings arising after the effective date and to all disciplinary proceedings pending on the effective date in which a commissioner's hearing has not been held.

## **APPENDIX A. PROCEDURAL RULES FOR DISCIPLINARY BOARD**

### **Rule 1. Assignment of Disciplinary Board Panel and Briefing Schedules**

Upon the filing of the hearing committee report with the disciplinary board, the administrator shall schedule the matter for hearing before a board panel on the schedule set by the board, and shall notify all parties of such setting. Any request for a continuance of the hearing date based upon reasons other than those of an emergency nature must be presented to the panel before whom the hearing is scheduled within ten (10) days of service of the notice of hearing.

### **Rule 2. Briefing Deadlines**

Any party having an objection to any aspect of the hearing committee report in a particular matter shall file with the administrator a brief setting forth such objections and the grounds

thereof, not less than thirty (30) days before the date on which oral argument is first assigned to a board panel. The opposing party may file an answering brief within fifteen (15) days following the filing of the brief which first sets forth the objections.

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

### **Rule 4. Excuse From Payment of Periodic Assessment**

A. A lawyer requesting to be excused from payment of the periodic fee assessed by Supreme Court Rule XIX, Section 8, on grounds of financial hardship shall file such request with the board by June 1 of the year preceding the fiscal year (July 1 to June 30) for which the fee is assessed. The request shall be signed by the lawyer seeking to be excused and shall set forth in detail the reasons for the request. Each request shall include a statement of the lawyer's assets at the time submitted and his or her gross and net income from all sources for the year during which the request is made and the calendar year preceding the year during which the request is made.

B. A board panel shall promptly approve or deny the request and shall provide written reasons if the request is denied. The board administrator shall notify the requesting lawyer in writing of the action of the panel.

C. A decision of a panel to deny a request may be appealed by filing such appeal with the board within 15 days of service of the notice of the panel action. Any such appeal shall be reviewed by a second panel, whose decision shall be final.

D. Neither a request for excuse from payment of the assessment nor an appeal from a panel denial shall suspend the obligation to pay the assessment in accordance with Supreme Court Rule XIX, Section 8(A). A lawyer may submit a copy of a notice of panel approval of a requested excuse in lieu of the assessment with the registration statement required by Supreme Court Rule XIX, Section 8(C). No action by any lawyer or board panel pursuant to this Disciplinary Board rule shall in any way modify the obligation of the lawyer to file the registration statement required by Supreme Court Rule XIX, Section 8(C).

E. An excuse granted pursuant to this rule shall be effective only for the fee assessed for the year following the filing of the request.

F. A request for excuse, written arguments in support of that request, and documents submitted with the request shall be confidential.

### **Rule 5. Signing Orders, Reports, and Communications**

Any member of a board panel may sign any order, recommendation, report, or communication on behalf of that panel. Any member of the board may sign any order, report, or communication on behalf of the board. The individual signing on behalf of a panel or the board must ensure that all members of the respective entity authorize his or her signing on behalf of the entity.

## **Rule 6. Repealed eff. Dec. 17, 1998.**

### **Rule 7. Recovery of Costs**

In order to implement Supreme Court Rule XIX, Section 10.1, the administrator and disciplinary counsel shall identify and record for each matter filed on the board docket all costs incurred during the investigation of and proceedings in the matter. Recoverable costs shall include the following:

- a) Investigative costs including costs incurred in serving investigatory subpoenas, direct charges for copies, photocopies and certification of documents and records, direct costs of travel for investigation (at board standard rates), and fees for transcripts of statements;
- b) A fee of \$10 for each service of notice issued for the imposition of probation pursuant to Section 11(C), the imposition of an admonition pursuant to Section 11(D) (including any notice to the complainant or other interested party), and the issuance of formal charges pursuant to Section 11(E) plus the direct costs incurred if served by the sheriff or other process server;
- c) Deposition costs;
- d) Witness fees, travel, and lodging necessary for the witnesses' appearance at the hearing;
- e) Fees for the hearing transcript;
- f) Fees for expert witnesses, if determined by the hearing committee chair to be appropriate and necessary for the matter after affording the respondent an opportunity to be heard.
- g) Fees assessed by the Clerk of the Supreme Court;
- h) Direct costs incurred (at board standard rates) in transmitting and publishing notices pursuant to Section 17;
- i) Computerized legal research costs associated with legal research performed by the administrator's and disciplinary counsel's staff.

Within ten (10) days of the submission of the report of the hearing committee, and if the committee has found that the respondent has violated any Rule of Professional Conduct as charged, the board administrator shall file in the board record and shall serve on the respondent a first itemized statement of all costs then incurred in the matter. Respondent shall have fifteen (15) days following service of the cost statement to file in the record and to serve on disciplinary counsel any objection to the cost statement. If any objection is filed, the administrator shall refer the cost statement and the objection to the chair of the committee which conducted the hearing, for a ruling on the objection.

In its deliberations the board shall consider the cost statement and the objections of the respondent and the ruling of the committee chair, if any. If the board determines to impose discipline, it shall include in its order the declaration of the costs taxed against the respondent. If the board determines to report the matter to the Court with a recommendation for discipline, it shall include a recommendation of an amount to be taxed by the Court in any decision or order by the Court which imposes discipline on the respondent.

In any matter concluded by a final order of the board or by any decision or order of the Court which imposes discipline on the respondent, the board administrator shall file in the board record and shall serve on the respondent a supplemental itemized statement of costs incurred in the

matter subsequent to the filing and serving of the first itemized statement and any prior supplemental itemized statements. Respondent shall have fifteen (15) days following service of the supplemental cost statement to file in the record and to serve on disciplinary counsel any objection to that cost statement. If any objection is filed, the administrator shall refer the cost statement and the objection to the board for a ruling on the objection. The board may authorize and direct disciplinary counsel to apply to the Court for a judgment against the respondent for costs imposed.

### **Rule 8. Complainants' Appeals**

Upon receipt of an appeal from a complainant pursuant to Supreme Court Rule XIX, Section 30(A), the administrator shall open a record on the board's confidential docket and shall serve a copy of the appeal on disciplinary counsel. Within seven days following service of the appeal by the administrator, disciplinary counsel shall file in the record the following materials from the investigative file:

- a) Notices issued in accordance with Section 4(B)(6);
- b) All written requests for review of a dismissal pursuant to Section 11(B)(3);
- c) All documents submitting any such appeal to a hearing committee;
- d) All documents constituting a response or a ruling by the hearing committee on the appeal; and
- e) All notices to the complainant of the disposition by the hearing committee.

Upon receipt of the materials filed by disciplinary counsel, the administrator shall refer the appeal to the board panel then acting. The panel may require the parties to submit additional information necessary to consider the appeal. The panel may approve, modify or disapprove the disposition, or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing a complaint.

The determination of the board is subject to the provisions of Supreme Court Rule XIX, Section 30(C), regarding the right to petition for leave to appeal to the Louisiana Supreme Court.

### **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.

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.

### **Rule 10. Completing deliberations**

If for any reason a board panel member is unable to complete deliberations in a matter assigned to his/her panel after the oral arguments have taken place due to death, disability or suspension from the practice of law, the remaining members shall continue its deliberations in order to bring the matter to a conclusion.

### **Rule 11. Recusal of Hearing Committee and Board Members**

Pursuant to Sections 2(F) and 3(F) of Rule XIX, a hearing committee member or an adjudicative committee member shall recuse him or herself in any matter in which a judge, similarly situated, would be required to recuse. A party seeking to recuse a hearing committee member or any adjudicative committee member shall file a written motion with the disciplinary board stating the grounds for recusation.

1) *Recusal of Hearing Committee Members.* Motions to recuse hearing committee members shall be filed within ten (10) days of service of the first notice of the hearing committee members assigned to the matter. The chairperson of the adjudicative committee shall decide the motion. The chairperson of the adjudicative committee may rule on the motion or, in his discretion, refer the motion to a hearing committee chairperson for a hearing and recommendation. If a hearing is ordered, the chairperson of the adjudicative committee shall review the recommendation of the hearing committee chairperson and issue a ruling.

2) *Recusal of Adjudicative Committee Members.* Motions to recuse adjudicative committee members shall be filed within ten (10) days of service of notice of oral argument. The chairperson of the adjudicative committee shall decide the motion. The chairperson of the adjudicative committee may hold a hearing in his discretion. If the chairperson of the adjudicative committee is the subject of the motion, the Board administrator shall assign the motion to another lawyer member of the adjudicative committee.

3) *Untimely Motions.* If a motion to recuse is not timely filed, untimeliness shall be a factor in deciding whether the motion should be granted.

## **APPENDIX B. PROCEDURAL RULES FOR HEARING COMMITTEES**

The following definitions apply for the purposes of these rules:

“Circuits” are defined as the geographic areas designated for the various Courts of Appeal for the State of Louisiana; provided, however, that the geographic areas designated for the Courts of Appeal for the 4th and 5th Circuits shall be considered one circuit.

“Registration statement address” shall be the address supplied by a lawyer on the registration statement required by Supreme Court Rule XIX, Section 8C.

#### **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.

#### **Rule 2. Scheduling of Hearing Date; Selection of Alternates**

Hearing dates will be set by the administrator in consultation with hearing committee members. Any hearing committee member who is unable to attend a hearing on the scheduled date shall be replaced by an alternate taken in sequential order from a circuit roster maintained by the administrator.

#### **Rule 3. Assignment of Hearing Committee Chairs for Additional Duties**

The administrator shall designate the hearing committee chair who is to perform the duties required in Supreme Court Rule XIX, Sections 3(E), 14(E), 18(G) and 29(A). These duties shall not be performed by a chair whose registration statement address is in the same circuit as the respondent's registration statement address. A hearing committee whose chair has performed functions in any matter pursuant to Sections 3(E), 14(E), 18(G) or 29(A) is disqualified from participating in any hearing in that matter following the filing of formal charges.

#### **Rule 4. Subpoenas**

A request for the issuance of a subpoena or subpoena duces tecum either for discovery or for a hearing shall be made in writing to the administrator of the disciplinary board. The administrator shall issue the subpoena and return it to the requesting party for service in accordance with the appropriate Rules of Louisiana Civil Procedure. The subpoena return shall be filed with the administrator.

#### **Rule 5. Subpoenas Under L.R.S. 13:3661**

For the purpose of complying with the provisions of L.R.S. 13:3661, respondent shall accomplish the required deposit by placing the necessary funds in a trust or escrow account. The party requesting issuance of a subpoena to which the provisions of L.R.S. 13:3661 apply is responsible for tendering the necessary fees to the witness at the time of the hearing for which the witness is subpoenaed in accordance with said provisions.

#### **Rule 6. Assignment of Hearing Committees and Hearing Dates**

At the time formal charges are filed by disciplinary counsel, the administrator shall assign the matter to a hearing committee and shall consult with the chair of that committee to schedule a hearing for the next date reasonably available on the schedule set by the board or on such alternate dates as the chair may designate.

The hearing shall be scheduled as early as practicable following the delay for answer and time for discovery allowed by Sections 11 and 15. Notice of the hearing date shall be served by the administrator on respondent(s) and/or counsel for respondent(s), and disciplinary counsel on a form approved by the board not later than 30 days following the filing of the answer to the formal charges.

#### **Rule 7. Continuances and Cancellations of Hearings**

A hearing which has been scheduled by the administrator before a hearing committee shall be continued only by order of the chair of such committee assigned to hear the matter. The hearing shall be cancelled only if a panel of the disciplinary board determines, following the opportunity for all parties to be heard, that a hearing is not necessary for a resolution of the issues involved in the matter.

#### **Rule 8. Signing Orders and Reports**

The chair of a hearing committee may sign any order or report of his or her committee on behalf of the committee; provided, the chair must ensure that all members of the committee authorize his or her signing on its behalf.

### **APPENDIX C. PROCEDURAL RULES FOR PROBATION MONITORS**

#### **Rule 1. Selection**

- a) The Disciplinary Board shall establish a pool of attorneys licensed to practice in the State who would agree to serve as probation monitors. All actions of probation monitors shall be pursuant to Rule XIX. Probation monitors shall be considered as members of the Disciplinary system.
- b) Selection of the probation monitor shall be made by the Disciplinary Board or its designee. Under no circumstance shall the probation monitor be engaged in any representation of the respondent or be related to respondent by blood or marriage to the third degree nor be engaged in legal or professional practice, business or social concerns with the respondent.
- c) The probation monitor shall be a resident of the State of Louisiana.
- d) While respondent's input into the selection of the probation monitor may be considered, the respondent shall have no right to approve or veto of the probation monitor.
- e) All terms of probation shall be written and agreed to by the probation monitor and the respondent prior to the commencement of the probation period. Probation shall be terminated upon the filing of an affidavit by respondent showing compliance with the conditions and an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that statement.

#### **Rule 2. Duties of Probation Monitor**

Probation monitors shall perform all aspects of the probation monitoring as set forth in the specific sanction. A probation monitor's obligation is to ascertain that respondent is in compliance with the probation conditions and promptly report any such compliance or noncompliance to Disciplinary Counsel. The probation monitor shall submit reports to the Disciplinary Counsel not less than quarterly. It shall be the obligation of the Disciplinary Counsel to investigate the noncompliance as reported by the probation monitor. If a probation

monitor is unable to serve or does not perform his/her duties, the Disciplinary Board, or its designee who selected the monitor, shall replace said monitor.

### **Rule 3. Standards of Review**

- a) The probation monitor shall review the files and accounts of the respondent insofar as probation is required, i.e. if the respondent is on probation as a result of commingling, the probation monitor shall review the financial records of the respondent to ascertain that no commingling continues. Similarly, if the respondent is on probation for neglect of legal matters, the probation monitor shall review the substance of the respondent's files.
- b) The probation monitor shall have the right to review any of respondent's files which it deems necessary in order to complete his/her obligations.
- c) Such review shall take place regularly as deemed necessary by the probation monitor. Respondent shall make himself, members of his staff, both full time, part time, and independent contractors reasonably available for a conference with the probation monitor. Any expenses incurred by way of such conferences shall be paid directly by the respondent.
- d) In connection with the reviews, respondent, without written or oral request, shall furnish to probation monitor a written update of the respondent's activities which fall within the ambit of the probation requirements.
- e) The failure to furnish such written reports shall constitute a basis for revocation of probation.
- f) Respondents shall timely provide appropriate waivers of confidentiality to probation monitors insofar as physicians, banking relations, accountants, and any other confidential relationships which may exist between respondent and other parties to the extent such information is necessary for the probation monitor to perform his/her services.
- g) In cases where the respondent is a recovering drug or alcohol addict, the probation monitor shall have the right to demand appropriate laboratory tests, if required. Failure of the respondent to provide the opportunity for such lab tests should be considered as a violation.

### **Rule 4. Compensation**

Probation monitors shall be reimbursed for their reasonable expenses incurred in performing probation services. All such costs shall be paid directly by the respondent. Failure of the respondent to promptly pay costs shall be grounds for revocation of probation.

### **Rule 5. Revocation**

#### *A. Non-Compliance or Other Rules of Professional Conduct Violation.*

When a probation monitor reports that a respondent is not complying with the terms of probation, or when Disciplinary Counsel otherwise becomes aware of respondent's noncompliance or further violations of the Rules of Professional Conduct, Disciplinary Counsel shall investigate and, if appropriate, file a request for revocation of the probation.

#### *B. Emergency.*

Upon receipt of sufficient evidence demonstrating that respondent has violated his/her probation and/or committed a violation of the Rules of Professional Conduct and poses a substantial threat of harm to the public, Disciplinary Counsel shall submit the evidence to the Court with a request for an interim suspension and revocation of probation. Disciplinary Counsel shall follow the procedure outlined in Section 19B, Interim Suspension for Threat of Harm.



### *C. Hearing in Non-Emergency Situations.*

Upon receipt of sufficient evidence demonstrating that respondent has violated his/her probation and/or committed a violation of the Rules of Professional Conduct, Disciplinary Counsel shall submit the evidence to the Adjudicative Committee with a request for a revocation of probation. A hearing with notice as provided in Rule XIX shall be held by the Adjudicative Committee panel within thirty days of Disciplinary Counsel's request for revocation. The panel shall immediately make a recommendation and submit it to the Adjudicative Committee for a vote. The opinion shall be issued to the Court within ten days of the hearing.

## **APPENDIX D. CURATORSHIP PROGRAM**

### **Rule 1. Authorization for Using Curators**

The Rules for Lawyer Disciplinary Enforcement exist for the purpose of outlining efficient means by which lawyer disciplinary enforcement is to be carried out with a principal goal of protecting the public. A twin goal is the removal of attorneys from the practice of law who have demonstrated a lack of ability to uphold those traits considered essential to the practicing attorney in the State of Louisiana. To the extent that an attorney is an absentee, non-resident, or may have intentionally or otherwise avoided service of notice of formal disciplinary proceedings, the legitimate goals of lawyer disciplinary enforcement may be delayed if not obstructed. A well developed procedure for the use of a curatorship to protect the interests of lawyers is authorized by Rule XIX, Section 18B, which provides:

Except as otherwise provided in these rules, the Louisiana Code of Civil Procedure and the Louisiana Code of Evidence apply in discipline and disability cases.

Accordingly, the Louisiana Code of Civil Procedure articles applicable to the appointment of curators to represent absentees and non-residents in civil proceedings can and should be readily adapted for use in lawyer disciplinary proceedings.

### **Rule 2. Criteria for Curatorship Use in Disciplinary Proceedings**

Not all matters of lawyer disciplinary enforcement warrant the expenditure of the resources of the agency where the attorney is an absentee, non-resident, or is otherwise unavailable for securing service of notice of the formal disciplinary proceedings. However, in cases of serious lawyer misconduct which, in the judgment of the Office of Disciplinary Counsel, would likely lead to the imposition of a suspension or disbarment, use of these curatorship guidelines is appropriate.

In cases where serious lawyer misconduct has occurred that would warrant suspension or disbarment and, where the respondent is (1) either an absentee, non-resident, or where the respondent has an invalid registration statement filed with the Louisiana State Bar Association regarding his/her address, and reasonable investigative efforts by the Office of Disciplinary Counsel have failed to locate the respondent; (2) instances where investigative efforts suggest that the respondent is intentionally or unintentionally avoiding service; or (3) in cases of subsequent discipline where the respondent is already suspended and/or disbarred and his/her current whereabouts are unknown, use of these curatorship guidelines is indicated.

### **Rule 3. Steps Preliminary to Curatorship Motion**

1. Disciplinary counsel contemplating use of the Curatorship Motion vehicle must locate the judicial district of the last valid registration statement of the respondent, the last confirmed principal office of the respondent if different from the last valid registration statement filed with the Louisiana State Bar Association, or the last known address of the respondent.
2. Disciplinary counsel shall consult the clerk of court and/or chief judge of that judicial district to secure a list of names of attorneys in good standing for possible appointment as curator within that judicial district. The good standing of each attorney whose name appears on that list shall be independently verified by disciplinary counsel by reference to the registration with the Louisiana State Bar Association and other information available within the Office of Disciplinary Counsel.
3. Disciplinary counsel shall draft a list to be captioned “Eligible for Curatorship Appointment” which shall be attached as an exhibit to any Motion to Appoint a Curator which is filed with the Supreme Court.

### **Rule 4. Motion to Appoint Curator After Filing of Formal Charges**

In cases where the criteria for curatorship appointment has been met and disciplinary counsel has secured a list of attorneys eligible for curatorship appointment, a Motion shall be drafted seeking appointment of a curator for the respondent which sets forth the following information:

- a. The attorney is named as a respondent in formal charges previously filed with the disciplinary board, a copy of which is attached to the Motion.
- b. A statement indicating that the respondent is an absentee, non-resident, that the last registration statement is no longer valid, that the respondent is unavailable for service, or that the respondent has been the subject of previous discipline and his/her whereabouts are unknown.
- c. An affirmative statement stating that reasonable efforts have been used to locate the respondent over and above making reference to the registration statement of the respondent, all to no avail.
- d. That the allegations of misconduct of which the respondent is accused are contrary to the Rules of Professional Conduct, and which, if proven, warrant disciplinary action.
- e. That the interests of the public, profession, and the judicial system require that the matter proceed.
- f. A representation that the court should appoint a curator to represent the absent/non-resident respondent and that the selection be made from the list entitled “Eligible for Curatorship Appointment” who are attorneys in good standing from the judicial district of the respondent's last valid registration statement, last confirmed principal office, if different from the last registration statement, or last known address of the respondent.

Attached to the Motion to Appoint Curator should be:

1. The affidavit of the investigator and/or disciplinary counsel certifying the reasonable efforts to locate the respondent.
2. The list setting forth those attorneys who are eligible for a curatorship appointment.
3. An Order provided to the court which should direct that an attorney selected by the court from the list of eligible attorneys available for appointment as curator has been selected to represent the respondent without fee as an absentee and/or non-resident and shall perform those duties incumbent upon the curator as set forth in the Code of Civil Procedure, authorizing the

reimbursement of all reasonable out of pocket costs incurred by the curator to be paid by the board administrator, with all such expenses to be taxed as costs of the proceedings.

#### **Rule 5. Service of Formal Charges and Order**

The order and formal charges should be served upon the curator as provided for service of formal charges in normal disciplinary proceedings. Accompanying the service of the court's order and formal charges should be a standard form setting forth those minimum duties which should be performed by the curator.

#### **Rule 6. Proceedings Immediately Following Curator Appointment**

Curators are appointed by Order of the Louisiana Supreme Court in certain lawyer disciplinary proceedings. Use of the curatorship process is authorized by virtue of Louisiana Supreme Court Rule XIX, Section 18B and the Louisiana Code of Civil Procedure. The duties and responsibilities of a curator in general are set forth in the Louisiana Code of Civil Procedure, Articles 5091, *et seq.*

Because lawyer disciplinary enforcement proceedings are *sui generis* and are neither criminal nor civil, additional guidance in understanding the nature and extent of a curator's duties are provided.

1. The curator will receive service of an Order of the Louisiana Supreme Court appointing him/her as curator for a respondent in lawyer disciplinary proceedings. Additionally, the curator will receive a copy of the formal charges by certified mail, return receipt requested. The curator then has twenty (20) days within which to file an answer on behalf of the respondent.
2. It is incumbent upon the curator to advertise in the official newspaper for the judicial district from which the curator was appointed seeking the whereabouts of the respondent. The Office of Disciplinary Counsel recommends that such an advertisement be run for a period of three (3) days during the 20 day period preceding the date when the answer to formal charges must be filed. Upon receipt of the Order of appointment from the court, the curator should contact the board administrator with the name and telephone number of the official newspaper for the curator's judicial district. The board administrator will provide the newspaper with a purchase order number for the advertisement so that billing will be directed to the board administrator's office and so that the curator will incur no out of pocket expenses. The telephone number of the board administrator is 1-800-489-8411.

#### **Rule 7. Locating the Respondent**

- a. If the respondent is located, the curator must provide the respondent with actual notice of the formal charges by personal delivery or by forwarding same to the respondent by certified mail, return receipt requested. If actual notice of the formal charges is accomplished by personal delivery, the curator shall prepare an affidavit to that effect which should be filed with the disciplinary board through the board administrator. Thereafter, the curator will be released from further responsibility relative to his/her curatorship duties. If actual notice is accomplished by a properly executed return receipt, then the return receipt along with the curator's affidavit attesting to the fact of actual delivery by certified mail shall be filed into the record of the proceedings with the board administrator. This too, shall relieve the curator of further obligations relative to his/her curatorship duties. At this point, if the curator has incurred any costs, those costs should be submitted to the board administrator, who will reimburse the curator for all reasonable out of

pocket expenses incurred. No other fees will be awarded for curatorship duties in disciplinary proceedings.

If after locating the respondent, the curator is unable to provide the respondent with actual notice of formal charges by either personally delivering same or by certified mail, then the curator's duties shall continue as hereinafter set forth.

b. If the respondent is not located, or if the curator cannot accomplish actual notice of formal charges as set forth in (a) above, then:

1. The curator must file an answer to the formal charges in the form of a general denial or other appropriate response within twenty (20) days of service of the formal charges.

2. The curator shall represent the respondent at all proceedings. Disciplinary proceedings and hearings shall be conducted contradictorily with the curator as provided by the Louisiana Code of Civil Procedure and the Rules for Lawyer Disciplinary Enforcement.

### **Rule 8. The Role of the Curator at the Disciplinary Hearing**

The curator may cross examine witnesses and shall otherwise have the same duties and responsibilities as are set forth in Louisiana Code of Civil Procedure Article 5095. Specifically, the curator must introduce into the record of the proceedings proof of efforts to locate the respondent.

### **Rule 9. The Role of the Curator Following the Disciplinary Hearing**

The hearing committee will issue findings of fact and recommendations following the hearing. Notice of the hearing committee's recommendations will be forwarded to the curator by the board administrator. If in the judgment of the curator, an objection is warranted to the findings and recommendations of the hearing committee, the curator should file a brief with the disciplinary board outlining the curator's objections or other position.

All matters coming from a hearing committee are assigned to a board panel for review. The board administrator will forward to the curator notice of the hearing to be held before the board panel. If the curator deems it necessary or appropriate, the curator may wish to present argument before the board panel on behalf of the respondent. The disciplinary agency is aware of and is sensitive to the time demands incumbent in a curatorship appointment. Accordingly, the curator may wish to make any disciplinary board panel argument by telephone. It is likely that such requests will be honored by the board panel chair.

### **Rule 10. The Role of the Curator Following the Disciplinary Board Panel Hearing**

Pursuant to Rule XIX, should the respondent wish to be heard by the court, it is incumbent upon the respondent to file an objection to the recommendations of the disciplinary board. In furtherance of the curator's duties, the curator may file an objection to the disciplinary board recommendation with the Louisiana Supreme Court. In such instances, the court will docket the matter for argument and the curator will be notified by the clerk of the Louisiana Supreme Court of the date the matter is scheduled for argument. If the curator determines that oral argument is required, it will be necessary for the curator to appear before the Louisiana Supreme Court. If in the judgment of the curator the matter can be submitted on briefs, the curator may so notify the court.

**Rule 11. Conclusion**

The curator's duties and responsibilities on behalf of a respondent in disciplinary proceedings may give rise to questions. The curator's attention should be directed to the clerk of the Louisiana Supreme Court, the disciplinary board administrator, or the Office of Disciplinary Counsel, all of whom will endeavor to provide the curator with guidance and assistance on any questions that may arise. While the Office of Disciplinary Counsel stands adverse to the interests of a respondent in a lawyer disciplinary proceeding, disciplinary counsel will attempt to answer any questions of procedure which may arise, but cannot and will not provide guidance or assistance regarding the substantive nature of the charges.

**Form 1. Motion to Appoint Curator**

**SUPREME COURT OF LOUISIANA**

**In Re: John Doe**

**MOTION TO APPOINT CURATOR**

NOW INTO COURT, through undersigned counsel, comes the Office of Disciplinary Counsel and upon suggesting to the Court the following, to-wit:

**1.**

JOHN DOE is an attorney licensed to practice law in the State of Louisiana, against whom the Office of Disciplinary Counsel has filed formal charges. A copy of the formal charges are annexed hereto as Exhibit A.

**2.**

JOHN DOE's last registration statement reflects a principal office address of \_\_\_\_\_. However, all efforts to locate the respondent at his last registration statement address have proven unsuccessful. The Affidavit of disciplinary counsel/staff investigator is attached hereto certifying to the reasonable efforts used to locate the respondent, all to no avail.

**2a.**

The Office of Disciplinary Counsel has determined that the last registration statement of JOHN DOE is invalid. The last confirmed principal office of JOHN DOE is different from his registration statement and was located at \_\_\_\_\_. Reasonable efforts have been made to locate the respondent at his last confirmed principal office so as to provide the respondent with notice of these proceedings, all to no avail, as attested to by the Affidavit of disciplinary counsel/the staff investigator attached hereto.

**2b.**

The Office of Disciplinary Counsel has determined that the last registration statement of JOHN DOE is invalid. The last known address of JOHN DOE is different from his registration statement and was located at \_\_\_\_\_. Reasonable efforts have been made to locate the respondent at his last known address to provide him with notice of these proceedings, all to no avail, as attested to by the Affidavit of disciplinary counsel/the staff investigator attached hereto.

**2c.**

JOHN DOE has been the subject of a previous disciplinary action and is currently disbarred/suspended and despite reasonable efforts to achieve service of notice upon the respondent, his whereabouts are unknown/the respondent is unavailable for service as set forth in the Affidavit of disciplinary counsel/the staff investigator attached hereto.

3.

All reasonable efforts to locate the respondent to advise him of the pendency of these proceedings have proven unsuccessful and to no avail.

4.

The allegations of misconduct set forth in the formal charges demonstrate a violation by JOHN DOE of the Rules of Professional Conduct which, if true, warrant disciplinary action by this Court.

5.

Serious interests of the public, the profession and the judicial system require that these matters of discipline proceed in order to achieve the goals of protecting the public.

6.

The Office of Disciplinary Counsel respectfully requests that the Court appoint a curator to represent the absentee/non-resident respondent and that the curator be selected from the list of attorneys in good standing from the judicial district of the respondent's last valid registration statement/last confirmed principal office which is different from the respondent's last registration statement, a copy of which list is attached hereto.

WHEREFORE, the Office of Disciplinary Counsel prays that the Court appoint a curator to represent the respondent, JOHN DOE, in these lawyer disciplinary proceedings and that the curator be ordered to proceed in accordance with Code of Civil Procedure Articles 5091 et seq.

The Office of Disciplinary Counsel further prays for any and all other equitable relief in the premises.

**THE OFFICE OF DISCIPLINARY COUNSEL**

**BY: \_\_\_\_\_**

**Chief Disciplinary Counsel**

**Form 2. Order**

**SUPREME COURT OF LOUISIANA**

**In Re: John Doe**

**ORDER**

Considering the foregoing Motion to Appoint Curator by the Office of Disciplinary Counsel.

IT IS ORDERED, ADJUDGED AND DECREED that \_\_\_\_\_, an attorney in good standing from the \_\_\_\_\_ Judicial District, be and is hereby appointed curator for JOHN DOE in these lawyer disciplinary proceedings; and the curator shall perform without fee those duties incumbent upon the curator as set forth in the Code of Civil Procedure, Articles 5091 et seq. and Appendix D of Rule XIX of the Rules of the Supreme Court of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the curator be reimbursed all reasonable out of pocket expenses only by the board administrator, who shall tax all such expenses as costs of these proceedings.

## **APPENDIX E. GUIDELINES DEPICTING CONDUCT WHICH MIGHT WARRANT PERMANENT DISBARMENT, SUGGESTED BY THE COMMITTEE TO STUDY PERMANENT DISBARMENT**

The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decisionmaking. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment.

**GUIDELINE 1.** Repeated or multiple instances of intentional conversion of client funds with substantial harm.

**GUIDELINE 2.** Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subornation of perjury.

**GUIDELINE 3.** An intentional homicide conviction.

**GUIDELINE 4.** Sexual misconduct which results in a felony criminal conviction, such as rape or child molestation.

**GUIDELINE 5.** Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping.

**GUIDELINE 6.** Insurance fraud, including but not limited to staged accidents or widespread runner-based solicitation.

**GUIDELINE 7.** Malfeasance in office which results in a felony conviction, and which involves fraud.

**GUIDELINE 8.** Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer is suspended from the practice of law or disbarred.

**GUIDELINE 9.** Instances of serious attorney misconduct or conviction of a serious crime, when the misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime. Serious crime is defined in Rule XIX, Section 19. Serious attorney misconduct is defined for purposes of these guidelines as any misconduct which results in a suspension of more than one year.

## **APPENDIX F. SUPREME COURT OF LOUISIANA TRUST ACCOUNT DISCLOSURE & OVERDRAFT NOTIFICATION AUTHORIZATION**

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

Name of Attorney: \_\_\_\_\_ Bar Roll Number: \_\_\_\_\_

**Section 1--Attorneys Who Do Not Handle Client Funds**

*(Attorneys completing this section are not required to complete any additional portion of this form)*

I certify that because of the nature of my practice, I do not maintain a client trust or escrow account. I further certify that I do not handle funds of clients or third persons, and that I do not expect to receive the funds of a client or third person within the next twelve (12) months. Should these facts change, I acknowledge that I am ethically required to provide to the Office of Disciplinary Counsel within 30 days of the change an executed copy of this form providing the required information.

\_\_\_\_\_  
(Attorney Signature)

\_\_\_\_\_  
(Date)

**Section 2--Attorneys Whose Practices Are Domiciled Outside of Louisiana**

*(Attorneys completing this section are not required to complete any additional portion of this form)*

I certify that my law practice is domiciled in a state other than Louisiana and that I do not maintain client trust or escrow account(s) in Louisiana banks or in Louisiana branches of multi-state banks.

\_\_\_\_\_  
(Attorney Signature)

\_\_\_\_\_  
(Date)

**Section 3--Law Firm Reporting**

*(Attorneys completing this section are not required to complete any additional portion of this form)*

I am a member of the law firm of \_\_\_\_\_ and all trust or escrow accounts are maintained under the name of that law firm. The firm has designated (insert name of attorney) \_\_\_\_\_, a Louisiana-licensed attorney, as the reporting counsel for the firm. His/her bar roll number is \_\_\_\_\_. I adopt the reporting as made by our firm's designated reporting attorney.

\_\_\_\_\_  
(Attorney Signature)

\_\_\_\_\_  
(Date)

**Section 4--Trust Account Certification**

*(Attorneys completing this section are also required to have their financial institution complete Section 5 of this form)*

As an officer of the Court, I (insert name) \_\_\_\_\_ certify that I am a duly licensed attorney and am familiar with the provisions of the Supreme Court rules regarding trust accounts. I acknowledge that:

A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);

B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and



C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

I certify that the following information regarding my trust or escrow account(s) is truthful and accurate. I further certify and acknowledge that should this information change, I am ethically obligated to notify the Office of Disciplinary Counsel within 30 days of any change. (Additional accounts should be reported on copies of this form.)

Bank Name: \_\_\_\_\_  
(Name listed on account)

Bank Address: \_\_\_\_\_

Account Number: \_\_\_\_\_

\_\_\_\_\_  
(Attorney Signature) (Date)

Please check here if you are providing this information as Reporting Counsel for your law firm.

**Section 5--Authorization to Financial Institution**

*(Attorneys completing Section 4 of this form must have their financial institutions complete Section 5 of this form)*

The financial institution with which I (or my law firm) maintain(s) a trust or escrow account is hereby authorized to provide to the Office of Disciplinary Counsel written and/or electronic notification of any instance of overdraft occurring on such account(s) in accordance with the rules of the Louisiana Supreme Court and Act 249 of the Louisiana Legislature (Regular Session 2005). Notification shall be sent to: **Office of Disciplinary Counsel, 4000 S. Sherwood Forest Blvd., Suite 607, Baton Rouge, LA 70816; phone (225)293-3900; fax (225)293-3300; email [overdraft@ladb.org](mailto:overdraft@ladb.org)**

\_\_\_\_\_  
(Attorney Signature) (Bar Roll Number)

Authorization Accepted by: \_\_\_\_\_  
(Bank Officer's signature) (Date)

\_\_\_\_\_  
(Bank Officer's name – Please print legibly or Type)

**(Notice to Financial Institution:** Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with

providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)