

## **Section 2. Grounds for Discipline**

(a) *Duty of attorneys.* The license to practice law in the District of Columbia is a continuing proclamation by this Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court. It is the duty of every recipient of that privilege at all times and in all conduct, both professional and personal, to conform to the standards imposed upon members of the Bar as conditions for the privilege to practice law.

(b) *Misconduct.* Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the attorney's oath of office or the rules or code of professional conduct currently in effect in the District of Columbia shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. Any of the following shall also be grounds for discipline:

(1) Conviction of a crime (see section 10);

(2) Discipline imposed in another jurisdiction (see section 11);

(3) Failure to comply with any order of the Court or the Board issued pursuant to this rule; or

(4) Failure to respond to a written inquiry from the Court or the Board in the course of a disciplinary proceeding without asserting, in writing, the grounds for refusing to do so.

(c) *Review of board orders and inquiries.* If an attorney objects in writing to an order or

written inquiry of the Board, the objection shall be noted, but review of the order or inquiry by the Court shall not be available (except as provided in § 18 (c) with respect to subpoenas) until all proceedings before the Board have been concluded. If the Board imposes or recommends the imposition of a disciplinary sanction, the attorney may then seek review of the previously challenged order or inquiry by filing an appropriate motion or pleading with the Court. If the order or inquiry is reversed, vacated, or set aside by the Court, a previous failure to comply with the order or to respond to the inquiry shall not be a ground for discipline. If the order or inquiry is modified by the Court, failure to comply with the order or to respond to the inquiry may be a ground for discipline only to the extent that the order or inquiry is not modified.

### **Section 3. Disciplinary Sanctions**

(a) *Types of discipline.* Any of the following sanctions may be imposed on an attorney for a disciplinary violation:

(1) Disbarment;

(2) Suspension for an appropriate fixed period of time not to exceed three years.

Any order of suspension may include a requirement that the attorney furnish proof of rehabilitation as a condition of reinstatement. In the absence of such a requirement, the attorney may resume practice at the end of the period of suspension.

(3) Censure;

(4) Reprimand;

(5) Informal admonition;

(6) Revocation or suspension of a license to practice as a Special Legal Consultant;

or

(7) Probation for not more than three years. Probation may be imposed in lieu of or in addition to any other disciplinary sanction. Any conditions of probation shall be stated in writing in the order imposing probation. The order shall also state whether, and to what extent, the attorney shall be required to notify clients of the probation. The Board by rule shall establish procedures for the supervision of probation. Violation of any condition of probation shall make the attorney subject to revocation of probation and the imposition of any other disciplinary sanction listed in this subsection, but only to the extent stated in the order imposing probation.

(b) *Conditions imposed with discipline.* When imposing discipline, the Court or the Board may require an attorney to make restitution either to persons financially injured by the attorney's conduct or to the Clients' Security Trust Fund (see Rule XII), or both, as a condition of probation or of reinstatement. The Court or the Board may also impose any other reasonable condition, including a requirement that the attorney take and pass a professional responsibility examination as a condition of probation or of reinstatement.

(c) *Temporary suspension or probation.*

(1) On petition of the Board authorized by its Chairperson or Vice Chairperson,

supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public or has failed to respond to an order of the Board in a matter where Bar Counsel's investigation involves allegations of serious misconduct, the Court may issue an order, with such notice as the Court may prescribe, temporarily suspending the attorney or imposing temporary conditions of probation on the attorney, or both. "Serious misconduct" for this purpose means fraud, dishonesty, misappropriation, commingling, overdraft of trust accounts, criminal conduct other than criminal contempt, or instances of neglect that establish a pattern of misconduct in the pending investigation. Any order of temporary suspension or probation which restricts the attorney's maintenance or use of a trust account shall, when served on any bank maintaining an account against which the attorney may make withdrawals, serve as an injunction barring the bank from making further payment from the account on any obligation except in accordance with restrictions imposed by the Court. An order of temporary suspension issued under this subsection shall preclude the attorney from accepting any new cases or other legal matters, but shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the order; however, any fees tendered to the attorney during that thirty-day period or at any time thereafter while the temporary suspension is in effect shall be deposited in a trust account, from which withdrawals may be made only as directed by the Court. The order of temporary suspension for failure to respond to a Board order shall not disclose information about the substance of the complaint against the attorney.

(2) Where issues of fact appear to be presented by the Board's petition or by any response of the attorney, the Court may appoint a special master to preside at a hearing at which

evidence will be presented concerning the petition. The master shall prepare a report summarizing the evidence presented and make recommended findings of fact which, together with the record, shall be filed with the Court within fifteen days of the Court's order of appointment.

(d) *Dissolution or amendment of orders of temporary suspension or probation.* An attorney temporarily suspended for failure to file a response to a Board order pursuant to subsection (c) shall be reinstated and the temporary suspension dissolved when Bar Counsel notifies the Court that the attorney has responded to the Board's order.

An attorney temporarily suspended or placed on probation on the ground that the attorney appears to pose a substantial threat of serious harm to the public may, for good cause, request dissolution or amendment of the temporary order by petition filed with the Court, which shall also be served on the Board and on Bar Counsel. A petition for dissolution shall be set for immediate hearing before the Board or a panel of at least three of its members designated by its Chairperson or, in the Chairperson's absence, by the Vice Chairperson. The Board or its designated panel shall hear the petition forthwith and submit its report and recommendation to the Court with the utmost speed consistent with fairness. Upon receipt of the report, the Court shall consider the petition promptly, with or without a hearing as the Court may elect, and shall enter an appropriate order.

## **Section 8. Investigations and Hearings**

(a) *Investigations.* All investigations, whether upon complaint or otherwise, shall be conducted by Bar Counsel. An attorney under investigation has an obligation to respond to Bar

Counsel's written inquiries in the conduct of an investigation, subject to constitutional limitations. In the event of an attorney's failure to respond to such an inquiry, Bar Counsel may request the Board to enter an appropriate order.

(b) *Disposition of investigations.* Upon the conclusion of an investigation, Bar Counsel may, with the prior approval of a Contact Member, dismiss the complaint, informally admonish the attorney under investigation, or institute formal charges; or may, with the prior approval of a member of the Board on Professional Responsibility, enter into a diversion agreement. An attorney who receives an informal admonition may request a formal hearing before a Hearing Committee, in which event the admonition shall be vacated and Bar Counsel shall institute formal charges.

(c) *Petitions.* Formal disciplinary proceedings before a Hearing Committee shall be instituted by Bar Counsel by the filing of a petition under oath with the Executive Attorney. A copy of the petition shall be served upon the attorney, and another copy shall be sent to the Clerk of the Court. The petition shall be sufficiently clear and specific to inform the attorney of the alleged misconduct. Upon receipt of the petition, without waiting for the attorney to file an answer, the Executive Attorney shall schedule a hearing and assign the matter to a Hearing Committee.

(d) *Notice of hearing.* After a hearing has been scheduled, the Executive Attorney shall serve notice of the hearing upon Bar Counsel and the attorney, or the attorney's counsel, stating the date and place of the hearing. The date of the hearing shall be at least fifteen days after the date of service of the notice. Service shall be made in accordance with section 19 (e) of this rule. The

notice shall also advise the attorney that, at the hearing, the attorney shall have the right to be represented by counsel, to cross-examine witnesses, and to present evidence in defense or mitigation of the charges.

(e) *Attorney's answer.* The attorney shall file an answer to the petition within twenty days after service of the petition unless the time is extended by the Hearing Committee Chairperson. The attorney shall serve a copy of the answer upon Bar Counsel and file the original with the Executive Attorney. If the attorney fails to file an answer within the time provided, the Hearing Committee Chairperson may authorize the filing of an answer at any time before the hearing upon a showing of mistake, inadvertence, surprise, or excusable neglect.

(f) *Failure to answer and default.* Notwithstanding any action taken pursuant to Rule XI, § 3 (c), if the attorney fails to answer a petition as provided by § 8 (e) of this rule, Bar Counsel may file a motion for default with the Hearing Committee to which this matter has been assigned; the motion must be supported by sworn proof of the charges in the specification and by proof of actual notice of the petition or proper publication as approved by the Court. The Hearing Committee Chairperson may enter an order of default and the petition shall be deemed admitted subject to ex parte proof by Bar Counsel sufficient to prove the allegations, by clear and convincing evidence, based upon documentary evidence, sworn affidavits, and/or testimony.

An order of default is limited to the allegations set forth in Bar Counsel's petition and shall be included in the Hearing Committee's report and recommendation filed with the Board. The

Hearing Committee shall issue its report and recommendation based upon the documentary evidence, sworn affidavits, or testimony presented by Bar Counsel. An order of default shall not take effect until fourteen (14) days after the date on which the order is issued and shall be vacated upon the granting of a motion filed by the attorney within such 14-day period showing good cause why the default should not be entered. The Hearing Committee Chairperson shall set aside the default order for failure to answer pursuant to motion filed by the attorney that sets forth good cause within 90 days of the filing of the report and recommendation by the Hearing Committee. A default order may be set aside after the 90 day period upon a showing that a failure to set aside would result in a manifest injustice.

(g) *Discovery*. The attorney shall have the right to reasonable discovery in accordance with rules promulgated by the Board. Rulings with respect to such discovery proceedings shall be made by the Chairperson of the Hearing Committee to which the matter has been assigned for hearing or by the Chairperson of the Board. Objections to such rulings shall be preserved and may be raised upon appeal to the Board from the final action of the Hearing Committee. No interlocutory appeals shall be permitted.

(h) *Prehearing conference*. In the discretion of the Hearing Committee Chairperson, a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference may be held before the Hearing Committee Chairperson or any member of the Committee designated by its Chairperson.

(i) *Conduct of hearings.* A Hearing Committee shall conduct its hearings in accordance with rules promulgated by the Board.

### **Section 8.1. Diversion**

(a) *Availability of diversion.*

Subject to the limitations herein, diversion may be offered by Bar Counsel to an attorney under investigation for a disciplinary violation.

(b) *Limitations on diversion.*

Diversion shall be available in cases of alleged minor misconduct, but shall not be available where:

(1) the alleged misconduct resulted in prejudice to a client or another person;

(2) discipline previously has been imposed or diversion previously has been offered and accepted, unless Bar Counsel finds the presence of exceptional circumstances justifying a waiver of this limitation;

(3) the alleged misconduct involves fraud, dishonesty, deceit, misappropriation or conversion of client funds or other things of value, or misrepresentation; or

(4) the alleged misconduct constitutes a criminal offense under applicable law, except for the offenses of driving under the influence and operating a motor vehicle while impaired (or a similar conviction in another jurisdiction).

(c) *Procedures for diversion.*

At the conclusion of an investigation, Bar Counsel may, in Bar Counsel's sole discretion, offer to an attorney being investigated for misconduct the option of entering a diversion program in lieu of other procedures available to Bar Counsel. The attorney shall be free to accept or reject the offer of diversion. If the attorney accepts diversion, a written diversion agreement shall be entered into by both parties including, *inter alia*, the time of commencement and completion of the diversion program, the content of the program, and the criteria by which successful completion of the program will be measured. The diversion agreement shall state that it is subject to review by a member of the Board, to whom it shall be submitted for review and approval after execution by Bar Counsel and the attorney.

(d) *Content of diversion program.*

The diversion program shall be designed to remedy the alleged misconduct of the attorney. It may include participation in formal courses of education sponsored by the Bar, a law school, or another organization; completion of an individualized program of instruction specified in the agreement or supervised by another Bar entity; or any other arrangement agreed to by the parties which is designed to improve the ability of the attorney to practice in accordance with the Rules of Professional Conduct.

(e) *Proceedings after completion or termination of diversion program.*

Except as provided in subsection (b)(2) of this section, if the attorney successfully completes a diversion program, Bar Counsel's investigation shall be closed, and the attorney shall have no record of misconduct resulting therefrom. If the attorney does not successfully complete the diversion program, Bar Counsel shall take such other action as is authorized and prescribed under section 8 (b).

### **Section 9. Post-hearing Proceedings**

(a) *Hearing Committee report.* Within sixty days after the conclusion of its hearing, the Hearing Committee shall in every case submit to the Board a report containing its findings and recommendation, together with a record of its proceedings and the briefs of the parties, if any were submitted. The record shall include a transcript of the hearing.

(b) *Proceedings before the Board.* Exceptions to the report of a Hearing Committee may be filed in accordance with rules promulgated by the Board. If no exceptions are filed, the Board shall decide the matter on the basis of the Hearing Committee record. If exceptions are filed, the Executive Attorney shall schedule the matter for submission of briefs and oral argument to the Board.

(c) *Disposition by the Board.* Promptly after the conclusion of oral argument or, if there is

no argument, promptly after reviewing the Hearing Committee record, the Board shall either adopt or modify the recommendation of the Hearing Committee, remand the case to the Hearing Committee for further proceedings, direct Bar Counsel to issue an informal admonition, or dismiss the petition.

(d) *Report of the Board.* Unless the Board dismisses the petition or remands the case, or unless the matter is concluded by a reprimand or a direction for an informal admonition, the Board shall promptly prepare a report containing its findings and recommendation. The Executive Attorney shall submit the report of the Board, together with the entire record, to the Court and shall serve a copy thereof on the attorney.

(e) *Exceptions to the report.* The attorney or Bar Counsel, or both, may file with the Court exceptions to the report of the Board within twenty days from the date of service of a copy thereof. The Court, for good cause shown, may grant an additional period for filing exceptions, not to exceed twenty days.

(f) *Exceptions when no report is filed.* If the Board issues a reprimand, directs Bar Counsel to issue an informal admonition, or dismisses the petition, the attorney or Bar Counsel, or both, may file with the Court exceptions to the Board's decision within twenty days from the date of service of a copy thereof. The Court, for good cause shown, may grant an additional period for filing exceptions, not to exceed twenty days.

(g) *Suspension pending final action by the Court.*

(1) Upon receipt of a report from the Board recommending disbarment or suspension of one year or more as discipline, the Court shall order the attorney to show cause within thirty days why the Court should not enter an order of suspension pending final action on the Board's recommendation. Unless the Court requests, Bar Counsel need not reply to the attorney's response. To prevent suspension under this subsection, the attorney shall have the burden of demonstrating a substantial likelihood of success with respect to the exceptions the attorney has taken to the Board's report.

(2) If the attorney does not make the showing required by subsection (g)(1), or if the attorney has not responded to the show cause order in the time required, the Court shall impose discipline as follows pending final action on the Board's recommendation:

(a) If the Board has recommended disbarment or suspension requiring proof of fitness to practice law as a condition of reinstatement, the Court shall enter an order suspending the attorney from the practice of law in the District of Columbia.

(b) If the Board has recommended suspension of one year or more without requiring proof of fitness as a condition of reinstatement, the Court shall enter an order imposing the discipline recommended by the Board.

(3) Any suspension imposed under this subsection will not limit the authority of the Court to impose greater or lesser discipline than that recommended by the Board.

(4) Suspension under this subsection shall take effect as provided in subsection 14 (f), and an attorney suspended under this subsection shall comply with the requirements of section 14, of this rule.

*(h) Proceedings before the Court.*

(1) Upon the filing of exceptions under subsection (e) or subsection (f) of this section, and in all cases arising under section 8 in which the Board's recommended sanction includes a requirement that the attorney make a showing of fitness before reinstatement, the Court shall schedule the matter for consideration in accordance with applicable court procedures. If the matter has come before the Court under subsection (f) of this section, the Court may order the Board to file a report setting forth its findings of fact and the reasons for its decision. Upon conclusion of the proceedings, or upon consideration of the report if no exceptions are filed, the Court shall enter an appropriate order as soon as the business of the Court permits. In determining the appropriate order, the Court shall accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. Unpublished opinions in disciplinary cases decided on or after April 1, 1991, shall not be deemed binding precedent by the Court except as to

appropriateness of sanctions.

(2) Other than as provided in subsection (g) of this section, if no exceptions are filed to the Board's report, the Court will enter an order imposing the discipline recommended by the Board upon the expiration of the time permitted for filing exceptions.

(i) *Counsel in disciplinary matters before the Court.* Proceedings before the Board and the Court shall be conducted by Bar Counsel. If Bar Counsel disagrees with the findings or recommendation of the Board, the position of the Board may be presented before the Court, upon request of the Board, by the Executive Attorney or other counsel. The Court in its discretion may appoint an attorney to present the views of a minority of the Board.

(j) *Court review of final actions by the Board.* In any disciplinary proceeding in which a dismissal, an informal admonition, or a reprimand is contemplated or effected, the Court shall have the right to review the matter on its own motion and to enter an appropriate order, including an order directing further proceedings.

## **Section 11. Reciprocal Discipline**

(a) *Definition.* As used in this section,

(1) “state” shall mean any state, territory, or possession of the United States.

(2) “disciplining court” shall mean (a) any court of the United States as defined in Title 28, Section 451 of the United States Code; (b) the highest court of any state; and (c) any other agency, commission, or tribunal, however denominated, that is authorized to impose discipline effective throughout a state.

*(b) Notification.*

It shall be the duty of Bar Counsel to obtain copies of all orders of discipline from other disciplining courts. Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court, Bar Counsel shall obtain a certified copy of the disciplinary order and file it with this Court. In addition, any attorney subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by another disciplining court, shall promptly inform Bar Counsel of such action.

*(c) Standards for reciprocal discipline.*

Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

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

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently 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

(4) The misconduct established warrants substantially different discipline in the District of Columbia; or

(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

Unless there is a finding by the Court under (1), (2), or (5) above, a final determination by another disciplining court that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the purpose of a reciprocal disciplinary proceeding in this Court.

*(d) Temporary suspension and show cause order.*

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by another disciplining court, the Court shall forthwith enter an order (1) suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and (2) directing the attorney to show cause within thirty days why identical reciprocal discipline should not be imposed. Bar Counsel shall reply to the attorney's response to the show cause order no later than fifteen days after service of the response. Alternatively, no later than fifteen days after the attorney's response was due, Bar Counsel may object to the imposition of reciprocal

discipline based upon the factors set forth in Rule XI, § 11 (c).

Where identical discipline is not available in the District of Columbia, Bar Counsel shall either (1) submit a pleading with the initial filing of the certified copy recommending appropriate non-identical discipline or (2), no later than fifteen days after the attorney's response was due, request that the matter be referred to the Board for its recommendation as to discipline.

*(e) Action by the Court.*

Upon receipt of the attorney's response to the show cause order, if any, and of any submission by Bar Counsel, the Court may refer the matter to the Board for its consideration and recommendation. If the Court decides that a referral to the Board is unnecessary, it shall impose identical discipline unless the attorney demonstrates by clear and convincing evidence, or the Court finds on the face of the record, that one or more of the grounds set forth in subsection (c) of this section exists.

If the Court determines that identical discipline should not be imposed, it may impose such discipline as it deems appropriate. In deciding what non-identical discipline to impose, the Court shall accept the facts found by the disciplining court unless it has made a finding under (1), (2), or (5) of subsection (c) of this section. If the Court has made a finding under one of these subsections, it shall direct Bar Counsel to institute such proceedings as may be appropriate, including an original disciplinary proceeding. In the absence of such a finding, the Court shall impose final discipline.

*(f) Effect of stay of discipline by disciplining Court.*

If at any time the discipline imposed by another disciplining court is stayed, any reciprocal discipline imposed by this Court shall be deferred until the stay expires.

**Rule XI, Section 12.1. Consent to Discipline other than Disbarment.**

*(a) Availability of consent to discipline.*

An attorney who is the subject of an investigation or a pending proceeding based on allegations of misconduct may consent to discipline other than disbarment at any time before a Hearing Committee has submitted to the Board a report containing its findings and recommendation with respect to the allegations of misconduct. Consent to discipline may resolve original investigations that do not present matters of first impression on legal issues, provided that any proposed discipline is within the range of discipline ordinarily imposed for similar misconduct and does not involve any promise by the Office of Bar Counsel to dismiss charges that have been brought or to forgo bringing charges that have not been brought already.

Neither a Hearing Committee nor the Board may inquire of Bar Counsel or an attorney who is the subject of a disciplinary proceeding whether the parties considered entering into a consent to discipline, nor may a Hearing Committee or the Board consider in imposing a sanction whether the attorney offered or declined to enter into a consent to discipline.

*(b) Documentation of consent to discipline.*

A consent to discipline must be documented by a joint consent to discipline petition, and by an affidavit of the attorney who is the subject of the investigation or pending proceeding. The documentation of a consent to discipline shall be submitted to the Executive Attorney.

(1) A consent to discipline petition shall include:

(i) A statement of the nature of the matter that was brought to Bar Counsel's attention;

(ii) A stipulation of facts and charges, including citation to the Rules of Professional Conduct that the attorney has violated; and

(iii) An agreed upon sanction, with a statement of relevant precedent and any circumstances in aggravation or mitigation of sanction that the parties agree should be considered.

(2) The consent to discipline petition shall be signed by both Bar Counsel and the attorney being disciplined.

(3) The attorney shall submit in support of a consent to discipline petition an affidavit that includes averments that:

(i) The consent is freely and voluntarily rendered, and the attorney is not being subjected to coercion or duress, and is fully aware of the implications of consenting to discipline and Bar Counsel has made no promises to the attorney other than what is contained in the consent to discipline petition;

(ii) The attorney is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct;

(iii) The attorney acknowledges the truth of the material facts upon which the allegations of misconduct set forth in the accompanying consent to discipline petition are predicated; and

(iv) The attorney consents to discipline because the attorney believes that the attorney cannot successfully defend against disciplinary proceedings based on the alleged misconduct.

(4) The affidavit may recite any other facts that the attorney chooses to present in mitigation that support the agreed upon sanction.

(c) *Contact Member review.*

Where Bar Counsel and the attorney enter into the consent to discipline either before a Rule XI, section 8 (c) petition has been issued in the matter or after a section 8 (c) petition has been

referred to a Hearing Committee but before the Hearing Committee has held a hearing, the Executive Attorney shall assign the consent to discipline petition to a Contact Member for review and approval. Bar Counsel shall make the complete investigatory file available to the Contact Member. The Contact Member shall review the file and approve the consent to discipline if, in the Contact Member's judgment, the petition is sufficient on its face to satisfy the factors set forth in subsection (d)(3) of this section.

*(d) Hearing Committee review.*

(1) Review of consent to discipline before hearing record is closed.

Upon approval of a consent to discipline by a Contact Member under subsection (c) of this section, the Executive Attorney shall assign the consent to discipline petition and attorney affidavit to a Hearing Committee for review. Where a section 8 (c) petition in the matter already has been approved by a Contact Member and assigned to a Hearing Committee but the hearing has not been completed, the consent to discipline petition and affidavit shall be assigned to a new Hearing Committee. The section 8 (c) proceeding shall be held in abeyance until the Board has decided the consent to discipline petition.

(2) Review of consent to discipline after hearing record has been closed.

If Bar Counsel and the attorney file a consent to discipline petition with the Executive Attorney after the original Hearing Committee has completed a hearing on the merits of a section 8 (c) petition but before the Hearing Committee issues its Report and Recommendation, the Executive Attorney shall immediately submit the consent to discipline to the original Hearing Committee for review.

(3) Hearing Committee process.

A Hearing Committee receiving a proposed consent to discipline shall hold a limited hearing, which shall be public. In advance of the hearing, Bar Counsel shall provide to any complainant the consent to discipline petition and affidavit, with notice of the hearing and of the complainant's opportunity to be present. The Hearing Committee may question Bar Counsel, the attorney, the complainant or any other witness as to the facts, violations, and agreed upon sanction. The Hearing Committee reviewing the consent to discipline shall place on the record its recommendation of approval of the consent to discipline if it finds that:

(i) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the consent to discipline petition and agreed to the sanction that is set forth in the consent to discipline petition;

(ii) The facts as set forth in the petition or as shown at the hearing support the admission of misconduct;

(iii) The sanction is consistent with the range of discipline imposed for similar misconduct, including any findings of fact in aggravation or mitigation of sanction that the Hearing Committee considers in reaching the conclusion regarding consistency of sanction (but without considering the fact of consent to discipline as a mitigating factor); and

(iv) The underlying matter does not present a legal issue of first impression that should be resolved pursuant to a section 8 (c) petition.

If a Hearing Committee rejects a consent to discipline petition, it shall provide Bar Counsel and the attorney an opportunity to revise the petition and shall review any revised consent petition which they submit.

If a Hearing Committee has already held a hearing on the merits of a section 8 (c) petition before a consent to discipline petition is filed, and it accepts the consent petition, it shall file with the Board its findings and recommendation only on the consent to discipline petition. If, in the same circumstances, a Hearing Committee rejects a consent to discipline petition and any revision thereto, it shall file with the Board its findings and recommendation only on the merits of the section 8 (c) petition.

(f) *Board review.*

The Board shall conduct a limited review of a Hearing Committee's recommendation for approval of a consent to discipline petition. The Board shall approve the petition unless it

determines that (i) the agreed upon sanction is inconsistent with the range of discipline imposed for similar misconduct in this jurisdiction, or (ii) the underlying matter presents a legal issue of first impression that should be resolved pursuant to a section 8 (c) petition.

If the Board accepts a recommended consent to discipline petition involving a sanction that does not include a requirement that the attorney show fitness before reinstatement, the Board shall issue an order imposing the recommended sanction. If the Board accepts a recommended consent to discipline petition involving a sanction that includes a requirement that the attorney demonstrate fitness before reinstatement, the Board shall issue a Report and Recommendation submitting the consent to discipline to the Court for imposition of a final sanction.

*(g) Restrictions on approval of consent to discipline.*

Neither the Hearing Committee nor the Board may, *sua sponte*, modify a proposed consent to discipline. If a section 8 (c) petition was previously approved by a Contact Member, neither the Hearing Committee nor the Board may approve a consent to discipline petition which does not include all of the substantiated and charged misconduct included in the section 8 (c) petition.

*(h) Resumption of proceedings after rejection of a consent to discipline.*

If the Hearing Committee or the Board rejects a proposed consent to discipline, the Executive Attorney shall assign the proceeding so that it will resume as if no petition for consent to

discipline had been submitted, unless a hearing on the merits has already been completed. If the section 8 (c) petition had not yet been assigned to a Hearing Committee, it will be assigned to a different Hearing Committee from the one that considered the consent to discipline petition.

No Board review is available from the rejection of a consent to discipline petition by a Hearing Committee, nor is review by the Court available from the rejection of a consent to discipline petition by the Board. If the proceeding is resumed after a consent to discipline petition has been rejected, Bar Counsel may use as evidence an admission by the attorney in the affidavit supporting the petition, but only for purposes of impeachment.

*(i) Public record of proceedings.*

The proceeding involving a consent to discipline petition and the order disciplining an attorney on consent to discipline shall be a matter of public record. The order shall include a description of the misconduct, the specific Rule of Professional Conduct that was violated, and the sanction that was imposed. The consent to discipline petition and the attorney's affidavit supporting discipline by consent shall be available to the public. Any order imposing discipline based on a consent to discipline may be cited as precedent for purposes of determining comparable sanctions in other disciplinary cases involving any attorney.

*(j) Report to the Court.*

The Board shall submit to the Court, at least twice a year, a list of cases disposed of by consent to discipline. The list shall include a description of the charges, a brief summary of agreed to facts, and the sanction imposed.

### **Section 16. Reinstatement**

*(a) Restrictions on reinstatement.*

A disbarred attorney, or a suspended attorney required to furnish proof of rehabilitation under section 3 (a)(2) of this rule, shall not resume the practice of law until reinstated by order of the Court. A disbarred attorney not otherwise ineligible for reinstatement may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. See also section 14 (h).

*(b) Reinstatement of attorneys suspended for disability.*

An attorney who has been suspended indefinitely because of disability under section 13 of this rule may move for reinstatement in accordance with that section, but reinstatement shall not be ordered except on a showing by clear and convincing evidence that the disability has ended and that the attorney is fit to resume the practice of law.

*(c) Reinstatement of attorneys suspended on other grounds.*

An attorney suspended for more than one year before September 1, 1989, shall be subject to the reinstatement requirements in effect on the date of suspension. An attorney suspended for a specific period of time on or after September 1, 1989, without being required to furnish proof of rehabilitation under section 3 (a)(2) of this rule shall be reinstated without further proceedings upon the expiration of the period specified in the order of suspension, provided that the attorney has timely filed with the Court the affidavit required by section 14 (g) and such other proof as may be required under section 14 (h). Notwithstanding the foregoing, a suspended attorney shall not be eligible for reinstatement until a period of time equal to the period of suspension shall have elapsed following the attorney's compliance with section 14, and a disbarred attorney shall not be eligible for reinstatement until five years shall have elapsed following the attorney's compliance with section 14. If the attorney has failed in any respect to comply with section 14, the Board shall so notify the Court, and the Court thereafter shall enter an appropriate order.

*(d) Contested petitions for Reinstatement.*

(1) A petition for reinstatement by a disbarred attorney or an attorney suspended for misconduct rather than for disability and required to provide proof of rehabilitation shall be filed with the Board. If the attorney is not eligible for reinstatement, or if the Board determines that the petition is insufficient or defective on its face, the Board may dismiss the petition; otherwise it shall refer the petition to Bar Counsel for a determination of whether Bar Counsel opposes the petition. If Bar Counsel opposes reinstatement, the Executive Attorney shall promptly schedule a hearing before a Hearing Committee at which the attorney seeking reinstatement shall have the burden of proof by clear and convincing evidence. Such proof shall establish:

(a) That the attorney has the moral qualifications, competency, and learning in law required for readmission; and

(b) That the resumption of the practice of law by the attorney will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest.

(2) Within 60 days after the conclusion of its hearing on reinstatement and receipt of the final briefs by the parties, or if no briefs have been filed within the time allotted, the Hearing Committee shall submit to the Court a report containing its findings and recommendation, together with a record of the proceedings and any briefs of the parties. The record shall include a transcript of the hearing. Upon the filing of the Hearing Committee's findings and recommendation, the Court shall schedule the matter for consideration. In its discretion, the Court may request a recommendation by the Board concerning reinstatement.

*(e) Uncontested Petitions for Reinstatement.*

A petition for reinstatement by a disbarred attorney or a suspended attorney who is required to prove fitness to practice as a condition of reinstatement, which is uncontested by Bar Counsel following a suitable investigation, may be considered by the Court on the available record and submissions of the parties. In every uncontested matter, Bar Counsel shall submit to the Court a report stating why Bar Counsel is satisfied that the attorney meets the criteria for reinstatement. The Court may grant the petition, deny it, or refer the reinstatement petition to the Board for assignment to a Hearing Committee for an evidentiary hearing.

(f) *Conditions of reinstatement.*

If the attorney is found unfit to resume the practice of law, the petition shall be denied. If the attorney is found fit to resume the practice of law, the Court shall enter an order of reinstatement, which may be conditioned upon the making of partial or complete restitution to persons harmed by the misconduct which led to the suspension or disbarment, or upon the payment of all or part of the costs of the reinstatement proceedings, or both. The reinstatement may also be conditioned upon the furnishing of evidence, in a form determined by the Court, of the attorney's successful completion of an examination for reinstatement subsequent to the date of suspension or disbarment. The Court may impose such other conditions on reinstatement as it deems appropriate.

(g) *Resubmission of petitions for reinstatement.*

If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

## **Section 17. Confidentiality**

(a) *Disciplinary proceedings.*

Except as otherwise provided in this rule or as the Court may otherwise order, all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed under section 8 (c) or an informal admonition has been issued. All proceedings before the Hearing Committee and the Board shall be open to the public, and the

petition, together with any exhibits introduced into evidence, shall be available for public inspection. If an informal admonition is issued, the correspondence from Bar Counsel informing the attorney of the grounds for the admonition shall be available for public inspection. Bar Counsel's files and records, however, shall not be available for public inspection except to the extent that portions thereof are introduced into evidence in a proceeding before the Hearing Committee.

*(b) Disability proceedings.*

All proceedings involving allegations of disability on the part of an attorney shall be kept confidential unless and until the Court enters an order suspending the attorney under section 13 of this rule.

*(c) Informal admonitions.*

Bar Counsel may disclose information pertaining to proceedings resulting in informal admonitions to any court, to any other judicial tribunal or disciplinary agency, to any duly authorized law enforcement officer or agency conducting an investigation, to any representative of a public agency considering an attorney for judicial or public employment or appointment, or to any representative of another bar considering the application of an attorney for admission to such bar. Bar Counsel may also make such disclosure to a duly authorized representative of the District of Columbia Bar with respect to any person whom the Bar is considering for possible employment, appointment to a Bar position related to attorney discipline or legal ethics, or recommendation to this Court for appointment to any board, committee, or other body.

(d) *Protective orders.*

To protect the interests of the complainant or of any other person, the Board may, upon application and for good cause shown, and upon notice to the attorney and an opportunity to be heard, issue a protective order prohibiting the disclosure of confidential or privileged information or of any documents listed in the order, including subpoenas and depositions, and directing that any proceedings before the Board or a Hearing Committee be so conducted as to implement the order.

(e) *Limited disclosure on motion.*

The Court on motion, filed *ex parte* and under seal by Bar Counsel, may authorize disclosure of otherwise confidential information to a duly constituted grand jury for use in the performance of its official duties. Bar Counsel's motion shall be filed only in response to grand jury subpoena. For good cause shown, the Court on motion may authorize disclosure of otherwise confidential information through discovery in any civil action, subject to such protective order as the Court may deem appropriate, or may authorize disclosure of otherwise confidential information to local, state or federal governmental agencies not associated with law enforcement or attorney discipline subject to appropriate protections of confidentiality.

(f) *Cooperation with Law Enforcement and other Disciplinary Authorities.*

Notwithstanding any other provision of this Rule, Bar Counsel may file a written request with the Board for permission to communicate information about any disciplinary matter to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Clients' Security Trust Fund, or a state or federal attorney disciplinary agency, board, or

committee that has a legitimate interest in such matter. Permission to communicate such information may be granted, in writing, by the Chairperson of the Board or the Chairperson's designated Board member upon good cause shown and subject to any limitations or conditions the Board may impose, including appropriate protections of confidentiality. Communication under this provision may be made either during the course of Bar Counsel's investigation or following such investigation.

### **Section 19. Miscellaneous Matters**

(a) *Immunity.*

Complaints submitted to the Board or Bar Counsel shall be absolutely privileged, and no claim or action predicated thereon may be instituted or maintained. Members of the Board, its employees, members of Hearing Committees, Bar Counsel, and all assistants and employees of Bar Counsel, all persons engaged in counseling, evaluating or monitoring other attorneys pursuant to a Board or Court order or a diversion agreement, and all assistants or employees of persons engaged in such counseling, evaluating or monitoring shall be immune from disciplinary complaint under this rule and from civil suit for any conduct in the course of their official duties.

(b) *Complaints against members of the disciplinary system.*

Disciplinary complaints against members of the Board involving activities other than those performed within the scope of their duties as Board members shall be submitted directly to the Court. Disciplinary complaints against Hearing Committee members, the Executive Attorney, or

Bar Counsel involving activities other than those performed within the scope of their duties as such shall be submitted directly to the Board.

*(c) Effect of settlement, compromise, restitution, or refusal to proceed.*

Neither unwillingness nor neglect by the complainant to sign a disciplinary complaint or to prosecute a charge, nor settlement, compromise, or restitution, shall in itself justify abatement of an investigation into the conduct of an attorney.

*(d) Related pending litigation.*

The processing of a disciplinary complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal, civil, or administrative proceedings, unless authorized by the Board or a Contact Member for good cause shown.

*(e) Service.*

Service upon the attorney of a petition instituting formal disciplinary proceedings shall be made by personal service by any person authorized by the Chairperson of the Board, or by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Rule II, or other last known address. Service by registered or certified mail shall not be effective unless Bar Counsel files in the record of the proceeding proof of receipt of the petition by the attorney. Service of any other paper or notice required by this rule shall, unless otherwise provided in this rule, be made in accordance with Superior Court Civil Rule 5.

(f) *Required records.*

Every attorney subject to the disciplinary jurisdiction of this Court shall maintain complete records of the handling, maintenance, and disposition of all funds, securities, and other properties belonging to another person, or to a corporation, association, partnership, or other entity, at any time in the attorney's possession, from the time of receipt to the time of final distribution, and shall preserve such records for a period of five years after final distribution of such funds, securities, or other properties or any portion thereof.

(g) *Expenses.*

The salaries of Bar Counsel and the Executive Attorney, their expenses, the expenses of the members of the Board and Hearing Committees, and other expenses incurred in the implementation or administration of this rule shall be paid out of the funds of the Bar.