

(Filed - April 3, 2008 - Effective August 1, 2008)

Rule XI. Disciplinary Proceedings.

Section 1. Jurisdiction.

[UNCHANGED]

Section 2. Grounds for discipline.

[SUBSECTIONS (a) AND (b) ARE UNCHANGED]

(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 section 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 or probation 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 a petition of the Board under this section, or by any response of the attorney thereto, 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 or placed on probation for failure to file a response to a Board order pursuant to subsection (c) of this section shall be reinstated and the temporary suspension or probation dissolved when (1) Bar Counsel notifies the Court that the attorney has responded to the Board's order or (2) the Court determines that an adequate response has been filed by the attorney.

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 4. The Board on Professional Responsibility.

[SUBSECTIONS (a) THROUGH (d) ARE UNCHANGED]

(e) *Powers and duties of the Board.* The Board shall have the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effect the purposes of this rule.

(2) To appoint Bar Counsel, Special Bar Counsel, and such assistant bar counsel and staff as may be required to perform the duties and functions of that office (see section 6), and to fix their compensation. Bar Counsel shall serve at the pleasure of the Board, subject to the Court's oversight authority over all disciplinary matters. Any Special Bar Counsel and all assistant bar counsel shall serve at the pleasure of the Board. As used hereafter in this rule, the term "Bar Counsel" shall refer collectively to Bar Counsel, any Special Bar Counsel, and all assistant bar counsel unless the context requires otherwise.

(3) To appoint an Executive Attorney, who shall serve at the pleasure of the Board, and such staff as may be required to perform the duties and functions of that office (see section 7), and to fix their compensation.

(4) To appoint two or more Hearing Committees, each consisting of two members

of the Bar and one person who is not a lawyer, and such alternate Hearing Committee members as may be required, who shall conduct hearings under this rule and such other hearings as the Court or the Board may direct, and shall submit their findings and recommendations, together with the record, to the Board or, if required under this rule, to the Court.

(5) To assign, through the Executive Attorney, periodically and on a rotating basis, an attorney member of a Hearing Committee as a Contact Member to review and approve or suggest modifications of recommendations by Bar Counsel for dismissals, informal admonitions, and the institution of formal charges.

(6) To assign, through the Executive Attorney, formal charges and a petition for negotiated disposition to a Hearing Committee, and to refer a petition for reinstatement to Bar Counsel to determine whether Bar Counsel opposes reinstatement and, if so, to assign, through the Executive Attorney, the petition for reinstatement to a Hearing Committee.

(7) To review the findings and recommendations of Hearing Committees submitted to the Board, and to prepare and forward its own findings and recommendations, together with the record of proceedings before the Hearing Committee and the Board, to the Court.

(8) To reprimand attorneys subject to the disciplinary jurisdiction of the Court and the Board.

(9) To prepare the Board's proposed budget for submission to the Board of Governors.

(10) To adopt rules, procedures, and policies not inconsistent with this rule or any other rules of this Court.

[SUBSECTIONS (f) THROUGH (h) ARE UNCHANGED]

Section 5. Hearing Committees.

[SUBSECTIONS (a) AND (b) ARE UNCHANGED]

(c) *Powers and duties of Hearing Committees.* Hearing Committees shall have the power and duty:

(1) Upon assignment by the Executive Attorney, to conduct hearings on formal charges of misconduct, a proposed negotiated disposition, or a contested petition for reinstatement and on such other matters as the Court or Board may direct.

(2) To submit their findings and recommendations on formal charges of misconduct to the Board, together with the record of the hearing.

(3) To submit their findings and recommendations to approve a negotiated disposition and their findings and recommendations in a contested reinstatement to the Court, together with the record of the hearing.

[SUBSECTIONS (d) AND (e) ARE UNCHANGED]

Section 6. Bar Counsel.

(a) *Powers and duties.* Bar Counsel shall have the power and duty:

(1) To employ and supervise such staff as may be necessary for the performance of Bar Counsel's duties, subject to budget limitations established by the Board.

(2) To investigate all matters involving alleged misconduct by an attorney subject to the disciplinary jurisdiction of this Court which may come to the attention of Bar Counsel or the Board from any source whatsoever, where the apparent facts, if true, may warrant discipline. Except in matters requiring dismissal because the complaint is clearly unfounded on its face or falls outside the disciplinary jurisdiction of the Court, no disposition shall be recommended or undertaken by Bar Counsel until the accused attorney shall have been afforded an opportunity to respond to the allegations.

(3) Upon prior approval of a Contact Member, to dispose of all matters involving

alleged misconduct by an attorney subject to the disciplinary jurisdiction of the Court, by dismissal or informal admonition or by referral of charges; or upon prior approval of a member of the Board on Professional Responsibility, by diversion; or by negotiated disposition.

[SUBSECTIONS (a)(4) THROUGH (b) ARE UNCHANGED]

Section 7. The Executive Attorney.

(a) *Powers and duties.* The Executive Attorney shall have the power and duty:

(1) To employ and supervise such staff as may be necessary for the performance of the Executive Attorney's duties, subject to budget limitations established by the Board.

(2) To assign, periodically and on a rotating basis, an attorney member of a Hearing Committee as a Contact Member to review and approve or suggest modifications of recommendations by Bar Counsel for dismissals, informal admonitions, and the institution of formal charges.

(3) To assign formal charges, a petition for negotiated disposition, and a contested petition for reinstatement to a Hearing Committee.

(4) To maintain records of proceedings before Hearing Committees, the Board,

and the Court.

(5) To forward to the Court the findings and recommendations of the Board on formal charges of misconduct together with the record of proceedings before the Hearing Committee and the Board.

(6) To forward to the Court the Hearing Committee's recommendation to approve a negotiated disposition and its recommendation in a contested reinstatement, together with the record of proceedings before the Hearing Committee.

(7) To assist the Board in the performance of its duties as the Board from time to time may direct.

(8) To act as Special Bar Counsel when appointed by the Board.

(9) To act as legal advisor to the Board.

(10) To represent the Board in any court proceeding when designated by the Board to do so.

(11) To argue before this Court the position of the Board, when designated by the Board to do so, in any case in which Bar Counsel disagrees with a report and recommendation of

the Board.

(b) *Review by the Board.* Because the Executive Attorney is exercising the delegated authority of the Board, any decision or action by the Executive Attorney shall be subject to review by the Board in its discretion.

(c) *Prohibition of private practice.* The Executive Attorney shall not engage in the private practice of law, except that the Board may authorize a reasonable period of transition after appointment.

Section 8. Investigations and hearings.

[SUBSECTIONS (a) THROUGH (d) ARE UNCHANGED]

(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 section 3 (c), if the attorney fails to answer a petition as provided by section 8 (e) of this rule, Bar Counsel may file a motion for default with the Hearing Committee to which the 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. Bar Counsel shall notify the attorney of the entry of a default order.

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, and the report shall set forth proposed findings of fact and conclusions of law.

An order of default shall be vacated if, within thirty days of issuance of the Hearing Committee's report, the attorney files a motion with the Hearing Committee showing good cause why the order should be set aside. Thereafter, the Board may vacate the order only upon a showing that failure to do so 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).

[SUBSECTIONS (c) THROUGH (e) ARE UNCHANGED]

Section 9. Post-hearing proceedings.

(a) *Hearing Committee report.* Within 120 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.

[SUBSECTIONS (b) THROUGH (f) ARE UNCHANGED]

(g) Suspension pending final action by the Court.

(1) Upon receipt of a report from the Board recommending discipline in the form of disbarment, suspension requiring proof of fitness as a condition of reinstatement, or suspension of one year or more without a fitness requirement, 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. The attorney shall be required to show cause even if the Board recommends as discipline a partial (but not an entire) stay of the suspension in favor of probation. 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) of this section, or if the attorney has not responded to the show cause order in the time required, the Court shall impose interim 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 10. Disciplinary proceedings based upon conviction of crime.

[SUBSECTIONS (a) THROUGH (c) ARE UNCHANGED]

(d) *Action by the Board—Serious crimes.* Upon receipt of a certified copy of a court record demonstrating that an attorney has been found guilty of a serious crime or has pleaded guilty or *nolo contendere* to a charge of serious crime, or any crime that appears to be a serious crime as defined in subsection (b) of this section, Bar Counsel shall initiate a formal proceeding in which the sole issue to be determined shall be the nature of the final discipline to be imposed. However, if the Court determines under subsection (c) of this section that the crime is not a serious crime, the proceeding shall go forward on any charges under the Rules of Professional Conduct that Bar Counsel may institute. A disciplinary proceeding under this subsection may proceed through the Hearing Committee to the Board, and the Board may hold such hearings and receive such briefs and other documents as it deems appropriate, but the proceeding shall not be concluded until all direct appeals from conviction of the crime have been completed.

[SUBSECTIONS (e) THROUGH (g) ARE UNCHANGED]

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 in writing.

(c) *Standards for reciprocal discipline.*

Reciprocal discipline may be imposed whenever an attorney has been disbarred, suspended, or placed on probation by another disciplining court. It shall not be imposed for sanctions by a disciplining court such as public censure or reprimand that do not include suspension or probation. For sanctions by another disciplining court that do not include suspension or probation, the Court shall order publication of the fact of that discipline by appropriate means in this jurisdiction.

Reciprocal discipline shall be imposed unless the attorney demonstrates to the Court, 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) of this subsection, 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 subsection (c) of this section. In either case, Bar Counsel shall provide the Court with the relevant portions of the record of the proceeding in the other disciplining court, the statute and the rules that governed it, and a short statement identifying all of the issues that the matter presents.

If Bar Counsel opposes the imposition of identical discipline, Bar Counsel shall (1) recommend appropriate non-identical discipline or (2) request that the matter be referred to the Board for its recommendation as to discipline.

The attorney may reply within ten days after service of Bar Counsel's submission.

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

Section 12. Disbarment by consent.

[UNCHANGED]

Section 12.1. Negotiated discipline other than disbarment by consent.

(a) Availability of negotiated discipline.

An attorney who is the subject of an investigation by Bar Counsel, or of a pending petition under section 8 (c) of this rule charging misconduct, may negotiate with Bar Counsel a disposition of the charges and sanction at any time before a Hearing Committee has submitted to the Board a report containing its findings and recommendation with respect to discipline.

(b) Documentation of a negotiated disposition.

(1) A petition for negotiated disposition, signed by Bar Counsel and the attorney, shall contain:

(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;

(iii) A statement of any promises that have been made by Bar Counsel to the attorney; and

(iv) 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) In further support of a petition for negotiated disposition, the attorney shall submit an affidavit which includes averments that:

(i) The disposition is freely and voluntarily entered into, the attorney is not being subjected to coercion or duress and is fully aware of the implications of the disposition, and Bar Counsel has made no promises to the attorney other than what is contained in the petition for negotiated disposition;

(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 misconduct described in the accompanying petition for negotiated disposition is predicated; and

(iv) The attorney agrees to the disposition because the attorney believes that he or she could not successfully defend against disciplinary proceedings based on that misconduct.

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

(c) Hearing Committee review.

A petition for negotiated disposition and accompanying affidavit shall be submitted to the Executive Attorney, who in turn shall assign it to a Hearing Committee for review. The Board may adopt procedures for assignment of petitions for negotiated disposition to Hearing Committees, taking into account such matters as the pendency (and at what stage) of a related section 8 (c) proceeding.

A Hearing Committee receiving a proposed negotiated disposition shall hold a limited hearing. The hearing shall be public and the proceeding a matter of public record. Prior to the hearing, Bar Counsel shall furnish to any complainant the petition for negotiated disposition and affidavit, together with notice of the hearing and of the complainant's opportunity to be present. Also before the hearing, the Hearing Committee or the Chairperson may review Bar Counsel's

investigative file *in camera* or meet with Bar Counsel *ex parte* to discuss the basis for Bar Counsel's recommendation of a negotiated disposition.

The Hearing Committee conducting the review shall recommend to the Court approval of a petition for negotiated disposition if it finds that:

(1) The attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the petition and agreed to the sanction set forth therein;

(2) The facts set forth in the petition or as shown at the hearing support the admission of misconduct and the agreed upon sanction; and

(3) The sanction agreed upon is justified.

If the Hearing Committee rejects a petition for negotiated disposition, it may not modify the proposed disposition on its own initiative, but instead shall afford Bar Counsel and the attorney an opportunity to revise the petition, and shall review any revised petition they submit.

(d) Review by the Court of a recommendation.

Upon receipt from a Hearing Committee of a recommendation to approve a negotiated disposition, the Court shall review the recommendation in accordance with its procedures for the

imposition of uncontested discipline. The Court in exceptional cases may request the views of the Board concerning the appropriateness of a negotiated disposition. If the Court accepts the recommendation, it shall impose the recommended discipline in a *per curiam* opinion briefly describing the misconduct, the specific Rule(s) of Professional Conduct violated, and the sanction imposed. Unless the opinion provides otherwise, an opinion imposing negotiated discipline may not be cited as precedent in contested disciplinary proceedings except as provided in the second sentence of D.C. App. R. 28 (g).

No review by the Board or the Court may be had from a refusal of Bar Counsel to agree to a disposition or from the rejection of a petition for negotiated disposition by a Hearing Committee.

(e) Limitations on reference to a negotiated disposition or admissions by an attorney.

Neither a Hearing Committee nor the Board may inquire of Bar Counsel or an attorney who is the subject of a contested disciplinary proceeding whether the parties considered entering into a negotiated disposition, nor may a Hearing Committee or the Board, in imposing discipline following a section 8 (c) proceeding, consider whether the attorney offered or declined to enter into a negotiated disposition.

If a section 8 (c) proceeding commences or resumes after a petition for negotiated disposition has been rejected, admissions made by the attorney in the petition or accompanying affidavit, or in the associated hearing, may not be used as evidence against the attorney except for

purposes of impeachment.

Section 13. Incompetent and incapacitated attorneys.

[UNCHANGED]

Section 14. Disbarred and suspended attorneys.

[UNCHANGED]

Section 15. Protection of clients' interests when attorney becomes unavailable.

[SUBSECTIONS (a) THROUGH (c) ARE UNCHANGED]

(d) *Selection of attorneys for appointment.* The Court may appoint any member of the Bar to perform any function under subsection (a) of this section. The Executive Attorney may submit to the Court the names of three attorneys who are willing and able to accept such appointment.

[SUBSECTIONS (e) THROUGH (h) ARE UNCHANGED]

(i) *Disposition of cases.* After consulting each client, the appointed attorney may refer that

client's open cases to attorneys willing to handle such matters, may advise the client to consult the Bar for assistance in finding new counsel, or may elect, with the consent of the client, to assume responsibility for one or more of the client's cases. In all other matters the attorney shall return the client's files to the client.

[SUBSECTIONS (j) THROUGH (l) ARE UNCHANGED]

Section 16. Reinstatement.

[SUBSECTIONS (a) THROUGH (c) ARE UNCHANGED]

(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 sixty days after the conclusion of its hearing on reinstatement and receipt of the final briefs by the parties, 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 request a recommendation by the Board concerning reinstatement.

(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. Failure to comply with conditions of reinstatement may result in revocation of the reinstatement order. See also section 2 (b)(3).

(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, any pleadings filed by the parties, and any transcript of the proceeding, shall be available for public inspection. If an informal admonition is issued, the letter of admonition 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.

[SUBSECTIONS (b) THROUGH (d) ARE UNCHANGED]

(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 or appropriate processes in any civil, criminal, or administrative 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 18. Subpoenas.

[UNCHANGED]

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.

[SUBSECTIONS (b) THROUGH (g) ARE UNCHANGED]