Delaware Lawyers' Rules of Disciplinary Procedure

Effective March 9, 2000, as amended through October 8, 2025

I. Structure and Scope

Rule 1. Delaware Supreme Court.

(a) *Inherent power and authority.* Pursuant to the Court's inherent power and authority over the regulation of the legal profession, the Court shall maintain appropriate standards of professional conduct for all lawyers subject to its jurisdiction, dispose of individual cases of lawyer discipline and disability, and administer the lawyer disciplinary system.

(b) *Appointment of members of disciplinary agencies.* Pursuant to Supreme Court Rules 62 and 64, the Court shall appoint the members of the Board (which includes all members of the Unauthorized Practice of Law Subcommittee of the Board), the PRC, and the ODC, who shall function with such powers and duties as set forth by the Court.

(c) *Administration of disciplinary system.* There shall be an Administrative Assistant to the disciplinary agencies who shall be appointed by the Delaware Supreme Court. To maintain the efficient operation and regulation of the disciplinary system, the Administrative Assistant shall oversee implementation and coordination of procedures for the processing and disposition of disciplinary matters, including, without limitation, the assignment of individual panels of the Board and the PRC, the scheduling of Board hearings and PRC meetings, and the filing, docketing, and maintenance of original pleadings and other original papers constituting the official record in individual disciplinary cases. The Administrative Assistant shall also have such powers and duties with respect to the administration of the disciplinary system as are authorized by the Court.

History.

Amended, Sept. 12, 2017.

Rule 2. Board on Professional Responsibility.

(a) *Composition, powers, and duties.* The composition of the Board shall be as set forth in Supreme Court Rule 62. Subject to the approval of the Court, the Board shall:

(1) Adopt guidelines for the conduct of hearings and other business, not inconsistent with these Rules;

(2) Periodically review the operation of the disciplinary system with the Court, the PRC, and the ODC;

(3) Consider matters and conduct hearings in cases filed within the Board's jurisdiction;

(4) Through its Hearing Panels, make findings of fact, conclusions of law, and recommended dispositions, and file its findings, conclusions, and recommendations with the Court; and

(5) Delegate, in its discretion, to the Chair and Vice Chair the power to act for the Board on administrative and procedural matters.

(b) *Quorum.* Except as the Board may have delegated powers to the Chair, Vice Chair or Hearing Panels, action by the Board requires the concurrence of a majority of the entire Board. A majority of the whole Board shall constitute a quorum for any meeting of the Board.

(c) *Hearing panels.* The Board's power to act as to disciplinary or disability matters, including, without limitation, conducting hearings, and making findings, recommendations, reports, and orders, shall be exercised by hearing panels, each of which shall consist of three members of the Board, of whom two shall be lawyers and one shall be a non-lawyer, except as otherwise provided in these Rules. The Hearing Panel Chair shall be a lawyer. The Administrative Assistant shall designate the members of the Hearing Panel and its chair. Decisions of the Hearing Panel as to whether a lawyer is subject to discipline under Rule 7 or is disabled, require a unanimous vote. The recommendation of the Hearing Panel on the appropriate sanction for discipline or consequence for disability does not require a unanimous vote. If a panel is unable to reach a unanimous decision as to whether a lawyer is subject to discipline or disabled in a case under submission, two additional members of the Board shall be designated, and the case shall be heard de novo. The Hearing Panel Chair shall decide scheduling, administrative, procedural, and evidentiary matters. If the Hearing Panel Chair is not available to rule on an administrative, procedural, or evidentiary matter, the parties may address the matter to the remaining lawyer on the Hearing Panel or the Chair or Vice Chair of the Board.

(d) *Disqualification of members.* Members shall not take part in any proceeding in which a judge, similarly situated, would be required to abstain pursuant to Canon 3(C) of the Delaware Judges' Code of Judicial Conduct, or any subsequently adopted similar code. The decision to disqualify oneself from a proceeding is a matter within the sound discretion of the individual member. If necessary, the Court may appoint an Acting Chair in any matter in which the Chair or Vice Chair of the Board has entered a disqualification or is otherwise unavailable.

(e) *Appointment of counsel.* Upon receipt of satisfactory proof of a respondent's indigency, the Chair or Vice Chair of the Board, or if a panel of the Board has already been assigned, the Hearing Panel Chair, may appoint a lawyer to serve as counsel for the respondent upon such terms and subject to such provisions as justice and equity may require. The respondent shall file with the Board an affidavit demonstrating a financial inability to retain counsel. The respondent must, upon request from the Board, also produce financial records (including tax returns) to support an application for the appointment of counsel on the grounds of indigency. The determination of indigency shall be based upon a review of the financial circumstances of the respondent. A request for counsel shall not be considered if respondent fails or refuses to furnish proof of indigency.

(f) *Compensation and expenses.* Members shall receive no compensation for their services, but may be reimbursed by application to the Administrative Assistant for travel and other expenses incidental to the performance of their duties.

(g) *Meetings.* From time to time the Board may meet upon call of its Chair or upon call of the Supreme Court, at such place and time as may be specified in the call. Except in respect of a hearing in any formal proceeding, the Board, or any of the members thereof, may participate in any meeting of the Board, by telephone or electronic means, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

History.

Amended, effective May 14, 2008; Feb. 26, 2015; Sept. 12, 2017.

Rule 3. Preliminary Review Committee.

(a) *Composition, powers, and duties.* The composition of the PRC shall be as set forth in Supreme Court Rule 62(c). The PRC shall review the recommendations of the ODC following its initial investigation. The PRC may request such additional information and investigation, as it deems appropriate.

(b) *Quorum.* The PRC shall act through panels, each of which shall consist of two lawyer members and one non-lawyer member. Two members shall constitute a panel quorum, provided that one member is a non-lawyer. A panel may act only with the concurrence of at least two of its members.

(c) *Record.* Each panel of the PRC shall prepare for filing with the Administrative Assistant a disposition sheet recording the actions taken by the panel.

(d) *Appointment and scheduling.* Panels of the PRC shall be appointed by the Administrative Assistant, and shall meet in accordance with schedules established by the Administrative Assistant.

(e) *Disqualification of PRC members.* Members of the PRC shall not take part in any proceeding in which a judge, similarly situated, would be required to abstain pursuant to Canon 3(C) of the Delaware Judges' Code of Judicial Conduct, or any subsequently adopted similar code. The decision to disqualify oneself from a proceeding is a matter within the sound discretion of the individual member.

(f) *Compensation and expenses.* Members of the PRC shall receive no compensation for their services, but may be reimbursed by application to the Administrative Assistant for travel and other expenses incidental to the performance of their duties.

Rule 4. Office of Disciplinary counsel.

All disciplinary counsel shall be appointed and shall have such powers and duties as designated by the Court pursuant to Supreme Court Rule 64.

Rule 5. Jurisdiction.

(a) *Lawyers admitted to practice.* Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to suspension, disbarment, transfer to inactive status or retirement, or with respect to later acts which amount to the practice of law or constitute a violation of these Rules or of the Delaware Lawyers' Rules of Professional Conduct, or any rules or code the Court adopts later; any lawyer specially admitted by a court of this jurisdiction for a particular proceeding; and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to this Court and the Board's disciplinary jurisdiction.

(b) *Former judges.* A former judge who has resumed the status of a lawyer is subject to the disciplinary jurisdiction of the Court under these Rules not only for conduct as a lawyer but also for misconduct that occurred while a judge and that would have been grounds for lawyer discipline.

(c) *Incumbent judges.* Any lawyer who is an incumbent judge is subject to the disciplinary jurisdiction of the Court under these Rules with respect to acts committed prior to taking office as a judge.

(d) *Powers not assumed.* These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

History.

Amended, effective July 15, 2008.

Rule 6. Roster of lawyers and disciplinary records.

(a) *Roster of lawyers.* The Supreme Court shall maintain a roster of lawyers who are subject to the disciplinary jurisdiction of the Court pursuant to Supreme Court Rule 69. The Board, the PRC, and the ODC shall have access to information contained in the roster.

(b) *Disciplinary record of lawyer.* The disciplinary record of a lawyer subject to the disciplinary jurisdiction of the Court shall be maintained by the ODC and shall consist of the history of disciplinary sanctions which have been imposed upon the lawyer since the time that the lawyer became subject to such jurisdiction, except for disciplinary sanctions which have been removed pursuant to Rule 9(b)(4) or

expunged pursuant to Rule 9(i) herein. The fact that a disciplinary evaluation or investigation has been undertaken pursuant to Rules 9(a) or 9(b) herein shall not be considered as part of the disciplinary record of a lawyer unless a disciplinary sanction has been imposed in that matter.

History.

Amended, effective July 18, 2007.

Rule 7. Grounds for discipline.

It shall be grounds for disciplinary action for a lawyer to:

(a) Violate any of the Delaware Lawyers' Rules of Professional Conduct or any subsequent rules or code adopted by the Court in lieu thereof, whether or not the violation occurred in the course of a lawyer-client relationship;

(b) Engage in conduct that results in lawyer or judicial discipline in another jurisdiction;

(c) Violate the terms of any conditional diversion or private or public disciplinary or disability disposition;

(d) Fail to furnish information to or respond to a request for information from the ODC, the PRC, the Board, or the Court, unless a protective order has been obtained from the Board or the Court; or

(e) Fail to appear before the Court or the Board when required to do so.

History.

Amended, effective July 18, 2007.

Rule 8. Sanctions.

(a) *Types of sanctions.* Misconduct shall be grounds for one or more of the following sanctions:

(1) Disbarment by the Court;

(2) Suspension by the Court for an appropriate fixed period of time not in excess of three years;

(3) Immediate interim suspension by the Court, pending final determination of disciplinary sanctions, or suspension by the Court as a result of "show cause" proceedings under Rule 17 or on a *sua sponte* basis;

(4) Public probation by the Court;

(5) Public reprimand by the Court;

(6) Private admonition by the Court or, with the consent of the respondent, by the PRC;

(7) Private probation by the Court or, with the consent of the respondent, by PRC;

(8) Conditional diversion by the Court or, with the consent of the respondent, by PRC;

(9) Court-ordered restitution to persons financially injured and Court-ordered reimbursement to the Lawyers' Fund for Client Protection; and

(10) Limitation by the Court on the nature and/or extent of the respondent's future practice.

(b) *Conditions.* Written conditions may be attached to any disciplinary sanction.

(c) *Mitigating or aggravating circumstances.* Mitigating or aggravating circumstances that affect the nature or degree of discipline to be imposed in a matter shall be fully set forth in the Board report recommending to the Court an appropriate sanction.

(d) *Dismissals.* A disciplinary matter which results in a dismissal, with or without conditions or cautionary language, shall not be considered as the imposition of a disciplinary sanction.

(e) *Conditional diversion.* With the consent of the respondent, the recommendation of the ODC, and the approval of the PRC, conditional diversion may be granted, except if the misconduct is serious including but not limited to the misappropriation of funds or property or other misconduct that is serious enough to warrant suspension or disbarment.

History.

Amended, effective May 7, 2002; effective July 18, 2007.

II. Procedure

Rule 9. General procedures.

(a) *Screening and evaluation.* The ODC shall screen and evaluate all information coming to its attention by complaint or otherwise concerning possible misconduct by or incapacity of a lawyer.

(i) *Screening.* If the lawyer is not subject to the disciplinary jurisdiction of the Court, the matter shall be dismissed and referred to the appropriate entity in the jurisdiction in which the lawyer is admitted.

(ii) *Evaluation.* If the lawyer is subject to the disciplinary jurisdiction of the Court, the ODC shall conduct an evaluation of the information regarding the lawyer, utilizing the following general procedure:

(A) If the information regarding the lawyer, on its face, is not sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall dismiss the matter;

(B) If the information regarding the lawyer, on its face, is sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall gather supplemental information;

(C) If the aggregate of information gathered by the ODC is not sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall dismiss the matter;

(D) If the aggregate of information gathered by the ODC is sufficient to raise a reasonable inference of misconduct or incapacity, the ODC shall conduct a formal investigation of the matter.

(b) *Formal investigation and consideration by the PRC.* The ODC shall conduct all formal investigations subsequent to the screening and evaluation procedures described in Rule 9(a). Following the receipt of sufficient information, the ODC shall dismiss the matter or present the matter to the PRC.

(1) If the matter is to be presented to the PRC, the ODC shall notify the respondent in a timely manner prior to the scheduled meeting of the PRC, and shall inform the respondent that the respondent may submit to the ODC any further written information for consideration by the PRC at such meeting. Neither the respondent nor the respondent's counsel shall have the right to appear at a meeting of the PRC.

(2) The ODC may recommend to the PRC one or more of the following:

(A) dismissal of the matter with or without conditions;

(B) the offer of a private probation not to exceed two years with or without conditions;

(C) the offer of a private admonition with or without conditions;

(D) a stay;

(E) the filing of a petition for discipline with the Board; or

(F) conditional diversion.

(3) The PRC shall review the ODC's recommendation and any written information submitted by the respondent. Disciplinary matters involving the same respondent may be consolidated by the PRC as it deems appropriate. The PRC shall determine whether there is probable cause to conclude that the respondent has engaged in professional misconduct. The PRC may approve, disapprove, or modify the ODC's recommendation, and may request additional information and investigation as it deems appropriate.

(4) Where the PRC determines that an offer of conditional diversion, a private probation or a private admonition is appropriate, the ODC shall send a letter to the respondent or the respondent's counsel, which shall contain the following:

(A) a description of the facts and legal issues considered by the PRC;

(B) the PRC's conclusion that there is probable cause that the respondent committed at least one specified disciplinary violation;

(C) a description of any conditions attached to the offer of conditional diversion, a private probation or a private admonition; and

(D) a certification of acceptance and imposition of conditional diversion, a private probation or a private admonition.

If the respondent desires to accept the offer of conditional diversion, a private probation or a private admonition, the respondent shall execute the certification attached to the letter and return the certification in a timely manner to the ODC. In the case of a conditional diversion the respondent shall submit a signed conditional diversion agreement and an executed release of information through an approved monitor including but not limited to the Delaware Lawyers Assistance Program to enable the ODC to verify the satisfaction of the conditions of the conditional diversion. The respondent's acceptance of the imposition of a private admonition under this Rule means that the respondent does not contest the findings of the PRC that there was probable cause that the respondent engaged in professional misconduct, and that such sanction may be treated for all other purposes as if the sanction had otherwise been imposed after the filing of a petition for discipline with the Board. The respondent's acceptance of the imposition of conditional diversion or a private probation under this Rule means that the respondent does not contest the findings of the PRC that there was probable cause that the respondent engaged in professional misconduct; however, if the respondent is not subsequently found by a panel of the PRC to have engaged in professional misconduct within the probationary period, the conditional diversion or probation will be removed from the respondent's formal disciplinary record and cannot be used in any subsequent disciplinary proceeding. Whenever the PRC concludes that an offer of conditional diversion or a private probation or a private admonition is appropriate, the PRC shall also concurrently approve the filing of a petition for discipline, which may contain additional or different disciplinary violations than those specified in the letter, and which shall be filed with the Board if the respondent does not accept the offer of conditional diversion, a private probation, or a private admonition. If the conditions of the conditional diversion agreement are satisfied, including that the respondent is not subsequently found by a panel of the PRC to have engaged in professional misconduct within the period of conditional diversion, the disciplinary matter shall be removed from the respondent's record. If the conditions of the conditional diversion agreement are not satisfied, the ODC shall file the petition for discipline with the Board.

(c) *Disposition prior to formal charges.* The respondent may accept or reject any offer of conditional diversion or a private probation or a private admonition prior to the filing of a petition for discipline. Upon receipt by the ODC of the signed certificate of acceptance and imposition, and the payment of costs, the matter shall be closed. If the respondent rejects the offer of conditional diversion or a private

probation or a private admonition or does not timely respond thereto, the offer shall be deemed rejected, and the ODC shall proceed to file a petition for discipline with the Board containing charges that have been approved by the PRC.

(d) *Formal proceedings.*(1) Formal disciplinary proceedings before the Board shall be instituted by the ODC by filing with the Administrative Assistant, and serving upon the respondent, after approval by a panel of the PRC, a petition which is sufficiently clear and specific to inform the respondent of the alleged misconduct. The filing of a petition with the Administrative Assistant commences the official Board record in the matter.

(2) The respondent shall serve an answer upon the ODC and file the original with the Administrative Assistant within 20 days after service of the petition, unless the time is extended by the Chair or Vice Chair of the Board. In the event the respondent fails to serve an answer within the prescribed time, all of the allegations and charges in the petition shall be deemed admitted, such that the sole remaining issue to be determined by the Board shall be the appropriate disciplinary sanction.

(3) The Administrative Assistant shall serve a notice of hearing upon the ODC and the respondent, identifying the members of the Board assigned to the matter, and the date and place of the hearing. The notice shall be given at least 20 days in advance of the date of the hearing. The notice of hearing shall state that the respondent is entitled to be represented by a lawyer at the respondent's expense, to cross-examine witnesses, and to present evidence.

(4) All hearings before the Board shall be recorded. Following a hearing, briefs, memoranda, and oral argument may be permitted in the discretion of the Board. If the Board initially finds that the respondent has engaged in professional misconduct, the Board shall then make a separate finding as to the appropriate disciplinary sanction. The Board may conduct a separate hearing on sanctions in order to evaluate evidence of possible aggravating and mitigating factors.

(5) The Board shall submit to the Court a final report containing its findings, reasons, and recommendations within 60 days after the conclusion of its proceedings. A copy of the report shall be served on the ODC and the respondent. If a matter is held under advisement by the Hearing Panel for more than 60 days, then the chair of the Hearing Panel, either before or immediately upon the expiration of the 60 day period, shall submit to the Court a written request for an extension of time to complete the final report. The written request shall contain the following information:

(A) The Board case number(s);

(B) The date the matter was taken under advisement;

(C) The specific reason for the delay; and

(D) A target date on which the chair of the Hearing Panel reasonably expects the final report to be issued.

The Court may grant an extension for completing the final report for good cause shown.

(e) *Review by the Court.* Upon the submission by the Board of its report and recommendations to the Court for review, the Clerk of the Court shall notify the ODC and the respondent of their respective rights to file objections to the Board's report and recommendations within 20 days from the date of service, except for reports filed pursuant to Rule 17. The respondent and the ODC may waive the right to file objections. No further briefing will be permitted unless ordered by the Court for good cause.

(f) Witnesses and evidence.

(1) All witnesses shall be sworn in all proceedings. The court reporter or any member of the Board or the ODC may administer oaths and affirmations.

(2) The Delaware Uniform Rules of Evidence shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs, or as otherwise provided in these Rules.

(3) Where the respondent is or has been a party to or a participant in a proceeding, whether administrative, criminal, civil, or otherwise, the relevant portions of the transcript of the proceedings, exhibits, findings of fact, conclusions of law, opinions, decisions, and judgments, shall be admitted in evidence, if offered, and shall be accorded such weight as the Board shall deem appropriate; provided, however, that evidence of a conviction of the respondent for any crime shall be deemed conclusive as to the fact that such crime was committed, and evidence of the imposition of a disciplinary sanction in a foreign jurisdiction shall be deemed conclusive as to the fact of the disciplinary violation upon which such sanction was predicated. Relevant correspondence among and between the ODC, the respondent, and the complainant shall also be admitted in evidence, if offered, and shall also be accorded such weight as the Board shall deem appropriate. Evidence of conduct or statements made in compromise negotiations prior to a hearing shall not be admitted, unless there is no objection by any party.

(4) Information relating to prior discipline of a respondent shall not normally be divulged until after there is a finding of misconduct in the pending matter, unless the prior discipline is relevant to the current proceedings.

(5) After conviction of a felony or of any other form of criminal conduct demonstrating a significant threat of substantial harm to the public or to the orderly administration of justice, the sole issue to be determined by the Board shall be the discipline to be imposed, if any, provided that a disciplinary proceeding on such basis shall not be brought to a hearing until all appeals from the conviction are concluded, unless the respondent requests that the matter not be deferred.

(g) *Dismissals with warning.* When a disciplinary matter is dismissed, whether by the ODC, the PRC, or the Court, the written notice of dismissal that is sent to the respondent, whether in the form of a letter, report, order, or otherwise, may contain cautionary language directed to the respondent, for the purpose of directly informing and educating the respondent as to conduct which, while not violative of a disciplinary rule or worthy of a disciplinary sanction, nevertheless has raised professional concerns.

(h) *Retention of disciplinary files.* Files of the ODC, the PRC, and the Board in individual disciplinary matters in which no disciplinary sanction was imposed shall be retained for 5 years after the date that the matter was resolved, after which time such files may be destroyed; provided, however, that this requirement shall not apply to recordkeeping dockets and other listings of disciplinary matters, general tabulations of information, or statistical reports or summaries. Files in which a disciplinary sanction has been imposed shall be retained.

(i) *Limited expungement of disciplinary record.* A lawyer who has received a single private admonition and has received no other disciplinary sanction for a period of 10 years after the imposition of that sanction may request that the sanction be expunged from the lawyer's disciplinary record, for the sole purpose of precluding reference to that sanction in any future disciplinary proceeding. Any such request shall be in writing and shall be directed to the Administrative Assistant, who shall take the appropriate steps in having the sanction expunged from the lawyer's disciplinary record; provided, however, that no request for expungement shall be granted when there is a disciplinary matter relating to the lawyer that is pending at any stage of the proceedings described in these Rules.

History.

Amended, June 5, 2001; effective July 18. 2007; effective May 14, 2008.

Rule 10. Immunity.

All communications to and from the Board, PRC, or the ODC relating to lawyer misconduct or disability, and all testimony given in related proceedings, shall be absolutely privileged, and no civil suit predicated on those proceedings may be instituted against any complainant, witness or lawyer. Members of the Board, members of the PRC, members of the ODC and its agents and staff; Special Disciplinary Counsel and his or her agents and staff; the Administrative Assistant and staff; and receivers and their agents and staff shall be immune from civil suit for any conduct in the discharge of their official duties.

History.

Amended, effective July 15, 2008.

Rule 11. Service.

(a) *Service of petition.* Service of the petition upon the respondent or respondent's counsel in any disciplinary or disability proceeding shall be made by personal service by any person authorized by the ODC, or by registered or certified mail at the address last furnished by the respondent pursuant to Supreme Court Rule 69.

(b) *Service of other papers.* Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with the Rules of Civil Procedure for the Superior Court of the State of Delaware.

Rule 12. Subpoena power and discovery.

(a) Subpoenas.

(1) Before the filing of a petition for discipline, the ODC may compel by subpoena the testimony of witnesses (including the respondent) and the production of pertinent books, papers, and documents for purposes of evaluation or investigation.

(2) After the filing of a petition for discipline, the ODC or the respondent may compel by subpoena the testimony of witnesses, or the production of pertinent records, books, papers, and documents, at a deposition or hearing under these Rules. The Clerk of the Supreme Court shall issue such subpoenas as are requested in writing by the respondent. Upon the written request of either the ODC or the respondent to the Administrative Assistant, the Clerk of the Supreme Court shall issue a commission for the issuance of a subpoena where the evidence sought is beyond jurisdictional limits.

(3) Subpoenas issued by the ODC or by the Clerk of the Supreme Court shall clearly indicate on their face that the subpoenas are issued in connection with a confidential matter under these Rules. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

(b) *Quashing subpoena.* Any attack on the validity of a subpoena so issued shall be heard and determined by the Chair or Vice Chair of the Board. All orders by the Chair or Vice Chair of the Board relating to attacks on the validity of a subpoena are interlocutory and may not be appealed prior to the Board's submission to the Court of its final report.

(c) *Enforcement of subpoena.* The Court may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(d) *Subpoena pursuant to law of another jurisdiction.* Whenever a subpoena is sought in Delaware pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Clerk of the Supreme Court, upon request from the Chair or Vice Chair of the Board, and for good cause, may issue a subpoena as provided in this Rule to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement, or challenges to this subpoena shall be as provided in these rules.

(e) *Depositions.* The ODC and the respondent may take the deposition of a witness (including the respondent) by subpoena as set forth in Rule 12(a)(2) above. Testimony of a deponent to be presented at a hearing may be taken by deposition or by commission if the witness is not subject to service of subpoena issued by a Delaware tribunal or is unable to attend or testify at a hearing because of age, illness or other compelling reason. A complete record of the testimony so taken shall be made and preserved.

(f) *Witnesses and fees.* Subpoena and witness fees and mileage reimbursements shall be the same as those provided for in the Rules of Civil Procedure for the Superior Court of the State of Delaware.

(g) *Discovery.* Disputes concerning the scope and other aspects of the limited discovery afforded under these Rules shall be heard and determined by the Chair or Vice Chair of the Board, unless a Hearing Panel has been assigned to the matter, in which case such disputes shall be heard and determined by the chair of the Hearing Panel. All discovery orders by the Chair or Vice Chair of the Board or the chair of a Hearing Panel are interlocutory and may not be appealed prior to the Board's submission to the Court of its final report. As soon as is practicable after a petition for discipline is filed, the ODC shall provide to the respondent access to any exculpatory evidence.

(h) *Exchange of information.* The ODC and the respondent shall exchange names of witnesses and copies of documents to be used by each side in its case in chief 10 business days prior to any hearing, and may supplement those lists thereafter with the approval of the opposing party or the chair of the Hearing Panel. Recorded statements, if any, of all witnesses so designated shall be exchanged at the same time. The exchange may take place by first-class mail to the respondent's last known address. The Hearing Panel may exclude any evidence offered by a party who fails to comply with this Rule.

(i) *Duty to respond.* Nothing in these Rules shall be deemed to limit the respondent's obligation to respond at any point in the disciplinary process to a lawful demand for information from the ODC under the Delaware Lawyers' Rules of Professional Conduct or any subsequent rules or code adopted by the Court in lieu thereof.

History.

Amended, effective May 14, 2008.

Rule 13. Access to disciplinary information.

(a) *Confidentiality.* Prior to the Hearing Panel's submission to the Court of its final report, and except as otherwise described in these rules, disciplinary and disability proceedings and the official record in such matters are confidential. If the Hearing Panel's report recommends that the matter be dismissed, that a lawyer not be transferred to disability inactive status, or that a private sanction be imposed, any further proceedings by the Court and the official record in the matter are confidential unless and until otherwise ordered by the Court.

(b) *Protective orders.* Upon proper application with good cause shown, or on a sua sponte basis, the Chair or Vice Chair of the Board, the Chair of the Hearing Panel, or the Court may issue appropriate protective orders with respect to any proceedings, reports, documents, or other information which may otherwise be made public, for the purpose of preserving confidentiality.

(c) *Complainant's right to appear.* The complainant in a disciplinary matter, if any, shall have the right to appear at any Board hearing on sanctions or any Court hearing on a petition for interim suspension relating to the matter for the sole purpose of making a statement on the record regarding the matter.

(d) *Requests for confidential information.* A request for the release of confidential information as described under these Rules shall be made by written application, with good cause shown, directed to the Administrative Assistant. Such application shall be considered and determined by the Court.

(e) *Release of confidential information.* The work product of the ODC may not be disclosed or released except pursuant to Rule 13(f). The pendency, subject matter, or status of a disciplinary matter may be disclosed or released if:

(1) the respondent has waived confidentiality in writing;

(2) the proceeding is based upon allegations which include the conviction of any crime;

(3) the respondent has been placed upon interim suspension or disability inactive status;

(4) such disclosure or release is necessary to obtain the assistance of another person, agency, or organization, provided that such person, agency, or organization agrees to maintain the confidentiality mandated by these Rules;

(5) the proceedings are based upon allegations which have otherwise been made public; or

(6) with the approval of the Court, such disclosure or release is necessary in order to correct false or misleading public statements with respect to any otherwise confidential proceeding or information, or is necessary to prevent public confidence in the disciplinary system from being undermined.

(f) *Cooperation with criminal justice authorities.* Any evidence or information obtained through the disciplinary process indicating criminal conduct by a lawyer, including documents, transcripts, and work product, or any selected portions thereof, may be disclosed or turned over to the appropriate criminal justice authorities for their independent review and investigation.

(g) *Duty of participants.* All participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality mandated by these Rules.

History.

Amended, effective May 14, 2008.

Rule 14. Dissemination of disciplinary information.

The ODC shall publicly disseminate all information relating to disciplinary matters and proceedings as is consistent with these Rules. In particular, the ODC shall transmit notices and information regarding the imposition of all public discipline, transfers to or from disability inactive status, or reinstatements to:

(a) the disciplinary enforcement agency in any jurisdiction in which the respondent is admitted,

(b) the chief judicial officers of all courts of this State,

(c) the chief judicial officers of all federal courts located in this State, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court,

(d) any national data bank maintained for the purposes of reporting disciplinary action relating to lawyers, and

(e) the news media.

Rule 15. Additional rules of procedure.

(a) *Nature of proceedings.* Disciplinary proceedings are neither civil nor criminal, but are *sui generis*.

(b) *Proceedings governed by Rules of Civil Procedure.* Except as otherwise provided in these Rules, the Rules of Civil Procedure for the Superior Court of the State of Delaware shall apply to the extent practicable in disciplinary and disability matters, provided that discovery procedures shall not be expanded beyond those provided in Rule 12 hereof, and there shall be no proceedings for summary judgment.

(c) *Standard of proof.* Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to and from disability inactive status shall be established by clear and convincing evidence.

(d) *Burden of proof.* The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on the ODC. The burden of proof in proceedings seeking reinstatement or transfer from disability inactive status is on the respondent.

(e) *Prehearing conferences.* Upon request of a party or at the discretion of the chair of the Hearing Panel, a prehearing conference may be held for the purpose of dealing with administrative, evidentiary, or procedural issues, obtaining admissions, identifying the issues to be presented at the hearing, or for other reasons. The conference shall be held before the chair of the Hearing Panel, and may be recorded in the chair's discretion.

(f) *Availability of hearing transcript.* The transcript and official record of any hearing shall be made available to the respondent at the respondent's expense.

(g) *Related pending litigation.* Where there are civil, criminal, or other disciplinary proceedings pending with respect to the respondent in a disciplinary matter, the PRC or the Board may stay the matter as appropriate and necessary, with notice to the Court of its reasons for taking such action.

(h) *Position of complainant.* Neither unwillingness nor neglect of the complainant to cooperate with the disciplinary process, nor settlement, nor compromise between the complainant and the respondent, nor restitution by the respondent, shall in itself justify abatement of the processing of any disciplinary matter. The complainant in a disciplinary matter shall not be considered as a party and shall have no standing to appeal the disposition of such matter.

(i) *Effect of time limitations.* Except as otherwise provided in these Rules, time provisions are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any disciplinary or disability investigation or proceeding.

(j) *Complaints against disciplinary agency members.* Disciplinary matters involving any member of the ODC, Special Disciplinary Counsel, or the Board shall be submitted directly to the Court for the assignment by the Court of a special disciplinary counsel pursuant to Supreme Court Rule 64(d) for the evaluation, investigation, and possible prosecution of the matter. Complaints against members of the PRC shall be submitted directly to the Board. The Chair or Vice Chair of the Board shall request assignment by the Court of a special disciplinary counsel.

(k) *ODC investigations of serious misconduct.* Where the misconduct under investigation by the ODC is deemed to be serious and potentially criminal in nature, and where other means of investigation may not be effective or practical, the ODC shall be authorized, with the approval of the Court for good cause shown, to use all investigatory means and methods as are commonly used by criminal prosecuting agencies.

History.

Amended, effective May 14, 2008.

Rule 16. Interim suspension.

(a) *Transmittal of evidence.* Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of the Court (i) has been charged with or convicted of a felony, (ii) has been charged with or convicted of other criminal conduct which demonstrates that the lawyer poses a significant threat of substantial harm to the public or to the orderly administration of justice, or (iii) has otherwise engaged in professional misconduct which demonstrates that the lawyer poses a significant threat of substantial harm to the public or to the orderly administration of justice, the ODC shall transmit such evidence to the Court together with a petition and proposed order for the lawyer's immediate interim suspension pending the disposition of disciplinary proceedings as otherwise described in these Rules. The ODC shall also take all appropriate steps to process the matter through the disciplinary system as otherwise described in these Rules. The ODC's filing of a petition for interim suspension, and all subsequent proceedings, shall be confidential unless otherwise ordered by the Court.

(b) *Certificate of conviction conclusive.* A certified copy of a judgment of conviction of an attorney for any crime shall be prima facie evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(c) *Petition for interim suspension.* The ODC's petition for interim suspension shall set forth a plain and concise statement of the grounds, shall be verified by the member of the ODC signing the petition, or otherwise supported by an affidavit, and shall be filed with the Court and served upon the respondent.

(d) *Hearing before the Court.* The Court shall promptly schedule a hearing on the petition for interim suspension, with notice to the ODC and the respondent. The notice of hearing shall state that the respondent is entitled to be represented by a lawyer at the respondent's expense, to cross-examine

witnesses, and to present evidence. At the request of the respondent, the Clerk of the Court shall compel by subpoena for any such hearing the attendance of witnesses and the production of pertinent records, books, papers, and documents. The ODC may exercise its subpoena powers as otherwise described in these Rules for purposes of the proceedings described in this Rule.

(e) *Standard and burden of proof.* The standard of proof in proceedings under this Rule shall be that the misconduct or charges are supported by clear and convincing evidence. The burden of proof in such proceedings shall be upon the ODC.

(f) *Disposition by the Court.* Following the hearing, the Court may enter an order suspending the respondent from the practice of law on an interim basis pending the disposition of disciplinary proceedings as otherwise described in these Rules, or may enter such orders as it deems necessary to protect the interests of the public and the orderly administration of justice, including but not limited to orders restricting the respondent's right to practice pending the ultimate disposition of disciplinary proceedings.

(g) *Publicity.* If the Court issues an order that suspends or otherwise restricts the respondent's authority to practice law, such order shall be public, and shall be disseminated as otherwise described in these Rules, unless otherwise ordered by the Court. If the Court issues an order which dismisses the petition, such order shall remain confidential unless otherwise ordered by the Court.

(h) *Appointment of receiver.* In the event that the Supreme Court enters an order suspending the respondent from the practice of law on an interim basis, the Supreme Court may direct that proceedings be instituted by the ODC for the appointment of a receiver of the respondent's law practice by the Court of Chancery pursuant to Rule 24.

(i) *Cooperation and compliance by respondent.* Any lawyer suspended under this Rule shall comply with the notice and other requirements for suspensions set forth in these Rules, and with any other conditions set forth in the Court's disposition of the matter. A lawyer not suspended by the Court under this Rule but whose law practice or conduct is restricted by the Court shall take all appropriate steps to comply fully with the Court's orders.

(j) *Reinstatement upon dismissal of charges or reversal of conviction.* If a lawyer suspended on an interim basis under these Rules later demonstrates to the Court that the criminal charges have been dismissed or the underlying conviction has been reversed or vacated, the order for interim suspension may be vacated by the Court upon motion, and the lawyer reinstated to practice. The vacating of the interim suspension shall not automatically terminate any other disciplinary proceedings currently pending involving the lawyer with the ODC, the PRC, or the Board, the disposition of which shall be determined on the basis of the available evidence.

(k) *Duty to report.* Any lawyer subject to the disciplinary jurisdiction of the Court who is charged with or convicted of a felony, whether within or outside of this State, shall within 10 days of such charge or conviction report the matter to the ODC.

Rule 17. Conditional admissions and discipline by consent.

(a) *Conditional admission and proposed sanction.* A lawyer against whom a petition for discipline has been filed may offer to the Board a conditional admission to the petition or to a particular count or counts thereof in exchange for a specific disciplinary sanction, provided that the ODC agrees in writing to the conditional admission and proposed disciplinary sanction.

(b) *Affidavit of consent.* A conditional admission offered to the Board shall be accompanied by the respondent's proposed affidavit setting forth the following:

(1) A description of the specific factual allegations and the particular count or counts of the petition for discipline which are being conditionally admitted, and

(2) A statement that the respondent desires to consent to the imposition of the proposed sanction, that such consent is freely and voluntarily given and is not the subject of coercion or duress, and that the respondent is fully aware of the implications of submitting such consent.

(c) *Consideration by the Board.* Upon the offer to the Board of a conditional admission as described herein, the Board shall hold a hearing on the matter to determine the respondent's reasons for the proffered conditional admission and the agreement by the ODC. If the Board is satisfied that the conditional admission and the proposed sanction are appropriate, the Board shall issue a report with recommendations to the Court as described in Rule 9(d). If the Board is not satisfied with either the conditional admission or the proposed sanction, the Board shall inform the ODC and the respondent of its determination and reasons.

(d) *Rights of respondent.* If the Board rejects a proposed conditional admission, or if after the Board approves a proposed conditional admission, it is rejected by the Court upon review under Rule 9(e), the admissions made in the prior proceedings shall not be used against the respondent in the pending or any subsequently filed proceedings.

(e) *Disbarment by consent.* Where the respondent has admitted engaging in misconduct that is serious enough to warrant disbarment as a final disposition, the respondent and the ODC may submit at any stage of the disciplinary proceedings described in these Rules a written stipulation of disbarment by consent directly to the Court requesting that the Court enter an order of disbarment as soon as possible. Any such stipulation shall contain a detailed description of the misconduct in which the respondent admittedly engaged, an analysis of legal precedent for the imposition of such a sanction, a signed affidavit of consent from the respondent in the form described in subsection (b) of this Rule, and any other supplementary materials which may be appropriate for the Court to consider. The Court may thereupon enter an order of disbarment as it deems appropriate, or may remand the matter in its discretion to the ODC or the Board for further proceedings under these Rules.

Rule 18. Reciprocal discipline and reciprocal disability inactive status.

(a) *Duty of disciplinary counsel to obtain order of discipline or disability inactive status from other jurisdiction.* Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in Delaware shall promptly inform ODC of the discipline or transfer. Upon notification from any source that a lawyer within the Court's jurisdiction has been disciplined or transferred to disability inactive status in another jurisdiction, ODC shall obtain a certified copy of the disciplinary order and file it with the Board and with the Court.

(b) *Notice served upon respondent.* Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Delaware has been disciplined or transferred to disability inactive status in another jurisdiction, the Chair or Vice Chair of the Board shall forthwith issue a notice directed to the lawyer or to counsel containing:

(1) a copy of the order from the other jurisdiction; and

(2) an order directing that the lawyer or lawyer's counsel inform the Board and the Court, within 30 days from service of the notice, of any claim by the lawyer or lawyer'[s] counsel predicated upon the grounds set forth in paragraph (d), that the imposition of the identical discipline or disability inactive status in this State would be unwarranted and the reasons therefor.

(c) *Effect of stay of discipline or transfer in other jurisdiction.* In the event the discipline imposed or transfer in the other jurisdiction has been stayed there, any reciprocal discipline imposed or transfer in this State may be deferred until the stay expires.

(d) *Discipline to be imposed or transfer to disability inactive status.* Upon the expiration of 30 days from the service of the notice pursuant to the provisions of paragraph (b), the Board shall recommend to the Court that it shall impose the identical discipline or disability inactive status unless counsel or the lawyer demonstrates, or the Court finds that upon the face of the record on which the discipline is predicated it clearly appears that:

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

(2) there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject;

(3) the imposition of the same discipline by the Court would result in grave injustice; or

(4) the misconduct established warrants substantially different discipline or no discipline in this State; or

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

If the Court determines that any of those elements exists, the Court shall enter such other order as it deems appropriate.

(e) *Conclusiveness of adjudication in other jurisdiction.* In all other aspects, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

History.

Amended, Dec. 23, 2003; effective May 14, 2008.

Rule 19. Disability proceedings in which a lawyer is alleged or declared to be incompetent or incapacitated.

(a) *Involuntary commitment or adjudication of incompetency.* If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Court, upon proper proof of the fact, may enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order of the Court. A copy of the order shall be served upon the lawyer, the lawyer's guardian, and/or the director of the institution to which the lawyer has been committed in the manner the Court may direct.

(b) *Inability to properly defend.* If a respondent contends in the course of a disciplinary proceeding that the respondent is unable to assist in the respondent's defense due to mental or physical incapacity, the Court shall, upon application, promptly transfer the lawyer to disability inactive status pending determination of the incapacity.

If the Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be stayed and the respondent retained on disability inactive status until the Court subsequently considers a petition for transfer of the respondent to active status filed by the respondent or the ODC. If the Court determines that this petition for transfer shall be granted, the Court shall also determine the disposition of the interrupted disciplinary proceedings.

If the Court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding shall resume and the respondent shall promptly be placed on interim suspension pending final disposition of the matter, unless the respondent can demonstrate to the Court by clear and convincing evidence that interim suspension is not appropriate.

(c) *Proceedings to determine incapacity.* Information relating to a lawyer's physical or mental condition which adversely affects the lawyer's ability to practice law shall be investigated by the ODC. If there are reasonable grounds to believe the interests of respondent's clients or the public are endangered, such information shall be the subject of formal proceedings to determine whether the respondent shall be transferred to disability inactive status. The procedures and hearings shall be conducted in the same manner as disciplinary proceedings. The Board may take or direct whatever action it deems necessary or proper to determine whether the respondent is so incapacitated, including the examination of the respondent by qualified medical experts at the respondent's expense. If, after reviewing the recommendation of the Board and upon due consideration of the matter, the Court concludes that the respondent is incapacitated from continuing to practice law, it shall enter an order transferring the

respondent to disability inactive status for an indefinite period and until further order of the Court. Any pending disciplinary proceedings against the respondent shall be held in abeyance.

The Board shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable. If the respondent is not represented by counsel, the Court shall appoint counsel for the respondent.

(d) *Public notice of transfer to disability inactive status.* The ODC may publicize any transfer to disability inactive status in the same manner as for the final imposition of public discipline.

(e) *Reinstatement from disability inactive status.* No respondent transferred to disability inactive status may resume active status except by order of the Court. Any respondent transferred to disability inactive status shall be entitled to petition the Court for transfer to active status once a year, or at whatever shorter intervals the Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. The petition may be granted by the Court upon a showing by clear and convincing evidence that the disability has been removed.

Upon the filing of a petition for transfer to active status, the Court may take or direct whatever action it deems necessary or proper, including a remand to the Board for hearing and recommendation, to determine whether the disability has been removed, and may order an examination of the respondent by qualified medical experts. In its discretion, the Court may direct that the expense of the examination be paid by the respondent.

The Court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the Board of Bar Examiners of the respondent's successful completion of an examination for admission to practice.

If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Court may dispense with further evidence that the disability has been removed and may immediately direct reinstatement to active status upon terms as are deemed proper and advisable.

(f) *Waiver of doctor-patient privilege.* The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the respondent during the period of disability. The respondent shall disclose the name of each psychiatrist, psychologist, physician, hospital or other institution by whom or in which the respondent has been examined or treated since transfer to disability inactive status. The respondent shall furnish the Court with written consents for each doctor to divulge information and records relating to the disability if requested by the Court or Court-appointed experts.

(g) Mental incompetency as a defense to misconduct.

(1) Mental incompetency is a complete defense to conduct of a lawyer which would otherwise warrant disciplinary action if:

A. such conduct was the result or consequence of mental incompetency; and

B. the mental incompetency which was responsible for such conduct has been cured so completely that there is no reasonable basis to believe there will be a recurrence of the condition. The burden of proof of this defense is upon the respondent.

(2) If the respondent is able to sustain the burden of proof as to mental incompetency at the time of the conduct that is the basis of the complaint, but is unable to prove recovery to the extent indicated in subsection (1) of this Rule, and the Board has reason to believe that such recovery is possible, the Board shall recommend to the Court that respondent be suspended until such time as the respondent can prove recovery; otherwise the Board shall recommend transfer to disability inactive status.

(3) Any respondent defending on the grounds of mental incompetency shall be suspended immediately on an interim basis until and unless the respondent shall sustain the burden of proof that the respondent has been cured so completely that there is no reasonable basis to believe there will be a recurrence of the condition.

Rule 20. Probation.

(a) *Imposition of probation.* Probation may be imposed by order of the Court in any disciplinary matter where there is no reasonable basis to conclude that the respondent will harm the public or the orderly administration of justice during the period of the probation, where the conditions of probation can be adequately supervised or monitored, and where the imposition of such a sanction is otherwise appropriate. Probation and any conditions attached thereto shall continue for any period of time deemed appropriate by the Court. When conditions are imposed, probation shall not terminate until;

(1) the expiration of the period established;

(2) the filing with the Court of an affidavit by the respondent averring that the respondent has complied with the conditions of probation; and

(3) an order of the Court that the probation has terminated.

(b) *Publicity.* If probation is imposed along with a private sanction, the probation itself and the terms thereof shall be confidential. If probation is imposed along with a public sanction, the probation itself and the terms thereof shall be public. If probation is imposed alone, the Court shall direct whether the existence and terms thereof shall be confidential or public.

Rule 21. Orders and post-order procedures.

Unless otherwise ordered, orders imposing discipline or transfers to disability inactive status are effective immediately. The respondent shall refund any part of any fees paid in advance which have not been earned. In the event the client does not obtain another lawyer before the effective date of a disbarment or suspension, it shall be the responsibility of the respondent to move the court, agency, or tribunal in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency, or tribunal before which the litigation is pending a copy of the notice pursuant to Rule 23 to opposing counsel or adverse parties.

Rule 22. Reinstatement proceedings.

(a) *Proof of rehabilitation.* Reinstatement following suspension from practice, except for suspensions of 6 months or less or administrative suspensions to which Rule 22.1 applies, shall require proof of rehabilitation before the Board and a final order of reinstatement by the Court.

(b) *Reinstatement after suspension of 6 months or less.* A lawyer suspended for less than 6 months may resume practice at the end of the period of suspension by filing with the Court and serving upon ODC an affidavit affirming that the lawyer has fully complied with the requirements of the suspension order, and paying any required costs.

(c) *Reinstatement after disbarment.* A lawyer who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(d) *Successive petitions.* No petition for reinstatement shall be filed within one (1) year following an adverse judgment upon a prior petition for reinstatement.

(e) *Notice to ODC and deposit for costs.* Prior to filing a petition for reinstatement, a suspended or disbarred lawyer except for lawyers suspended pursuant to Rule 16 or suspended on a non-reciprocal basis pursuant to Rule 17, shall send a written notification to the ODC of the intent to petition for reinstatement. The lawyer shall thereupon comply with any procedures deemed appropriate by the ODC for the purpose of gathering information for presentation to the Board, including the submission of any information or waivers requested by the ODC, and the advance payment to the ODC of a deposit for the anticipated costs of the reinstatement proceeding. The ODC's gathering of information as to the lawyer's

proposed candidacy for reinstatement may include physical or psychological examinations of the lawyer at the lawyer's expense.

(f) *Petition to Board.* All petitions for reinstatement shall be filed with the Administrative Assistant and served upon the ODC. The petition and all subsequent proceedings shall be public. The petition shall set forth a plain and concise statement of the grounds therefor. The ODC may publicly solicit comments or other information on the petition from members of the legal community or the general public by any means the ODC deems appropriate. The ODC may file an answer to the petition with the Board within 30 days of service. The ODC may support, object to, or take no position with respect to the petition.

(g) *Hearing before Board.* After the time expires during which the ODC may file an answer to the petition for reinstatement, the Administrative Assistant shall schedule a hearing on the petition before the Board within 30 days. The petitioner shall have the burden of demonstrating, by clear and convincing evidence:

(1) the petitioner's professional rehabilitation, including substantial rehabilitation from any drug or alcohol problem from which the petitioner had suffered;

(2) the petitioner's compliance with all applicable disciplinary orders and other rules, including conditions of restitution;

(3) the petitioner's fitness to practice;

(4) the petitioner's overall competence and current awareness of recent developments in the law;

(5) that the petitioner has not engaged in any other professional misconduct in any jurisdiction since suspension or disbarment;

(6) that the petitioner sincerely recognizes the wrongfulness and seriousness of any misconduct upon which the suspension or disbarment was predicated;

(7) that the petitioner has the requisite honesty and professional integrity to resume the practice of law; and

(8) that the petitioner's resumption of the practice of law will not be detrimental to the administration of justice.

The ODC may in its discretion present evidence in support of or adverse to the petition, and upon the presentation of all evidence, the ODC may make a recommendation to the Board or take no position with respect to the petition. The Board shall conduct the hearing as otherwise provided in these Rules with respect to ordinary disciplinary proceedings. The Board shall file a report containing its findings and recommendations with the Court as provided in Rule 9(d)(5) hereof, within 60 days of the conclusion of its proceedings, with service upon the petitioner and the ODC.

(h) *Review by Court.* The petitioner or the ODC may file objections to the Board's report within 20 days from the date of service. If objections are filed to the Board's report, the Court may schedule the matter for briefing and argument as appropriate. If no objections are filed, the Court may request argument on the matter prior to entering a final order. If the Court finds that the petitioner has not shown good reasons for reinstatement, whether or not reinstatement has been recommended by the Board, the Court may dismiss the matter or remand it to the Board for further proceedings as appropriate. If the Court finds that the petitioner has shown good reasons for reinstatement, the Court may enter an appropriate order reinstating the petitioner. The Court may attach any conditions it deems appropriate to such a reinstatement order, including but not limited to, restitution to former clients or third parties, the successful completion of the bar examination administered by the Board of Bar Examiners, or a period of probation with such terms and conditions as the Court deems appropriate.

History.

Amended, effective May 7, 2002; October 8, 2025

Rule 22.1. Reinstatement following administrative suspension.

(a) A lawyer who has been administratively suspended under Supreme Court Rule 69(j) or Continuing Legal Education Rule 5(D) and fails to seek reinstatement by July 1 of the year of the administrative suspension may seek reinstatement by filing a petition for reinstatement with the Supreme Court and serving the petition upon the ODC. The petition shall include the petitioner's explanation for the administrative suspension and the petitioner's plans to remedy the basis for the administrative suspension. The petitioner bears the burden of demonstrating that there are good reasons for reinstatement.

(b) The ODC shall make a recommendation to the Court on how the petition should be addressed. In making its recommendation, the ODC should consider:

(i) the petition for reinstatement;

(ii) the length of time since the petitioner was administratively suspended;

(iii) the petitioner's fitness to practice, overall competence, and current awareness of recent developments in the law;

(iv) the petitioner's compliance with annual registration and continuing legal education requirements before their administrative suspension;

(v) the petitioner's status to practice in any other jurisdiction; and

(vi) any other information the ODC believes to be relevant.

(c) Within 30 days of service of the petition for reinstatement, the ODC shall file its recommendation, including the basis for the recommendation, with the Court. The ODC may recommend:

(i) granting of the petition, with or without conditions;

(ii) referring the petition to the Board on Professional Responsibility for further action in accordance with Rule 22 of these Rules;

(iii) referring the petition to the Board of Bar Examiners for determination of the petitioner's suitability to resume active status;

(iv) the denial of the petition; or

(v) any other course of action that the ODC believes is reasonable under the circumstances.

(d) Within 15 days of service of the ODC's recommendation, the petitioner may file a reply.

(e) The Court shall review the petition, recommendation, and reply, if any. If the Court finds that the petitioner has shown good reasons for reinstatement, the Court may enter an appropriate order reinstating the petitioner with any conditions. If the Court finds that the petitioner has not shown good reasons for reinstatement, regardless of whether reinstatement has been recommended by the ODC, the Court may deny the petition or direct further proceedings as appropriate.

History.

Added October 8, 2025

Rule 23. Notice to clients, adverse parties, and others.

(a) *Recipients of notice; contents.* Unless otherwise ordered, within 10 days after the date of a court order imposing a disciplinary sanction or transfer to disability inactive status, a respondent disbarred, transferred to disability inactive status, placed on interim suspension or suspended from practice shall notify or cause to be notified by registered or certified mail, return receipt requested:

(1) All clients being represented in pending matters;

(2) Any co-counsel in pending matters;

(3) Any opposing attorney in pending matters, or in the absence of such attorney, the adverse parties.

The notice shall advise of the order of the Court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order. The notice to be given to the opposing attorneys or the adverse party shall state the place of residence of the client of the respondent;

(4) All persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after discipline or transfer to disability inactive status; and

(5) All other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that respondent continues as an attorney in good standing.

(b) *Affidavit of compliance.* Immediately thereafter, the respondent shall file an affidavit with this Court indicating compliance with subsection (a).

(c) *Special notice.* The Court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

(d) *Return of client's property.* Unless otherwise ordered, any respondent described in paragraph (a) of this Rule shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

History.

Amended, June 5, 2001.

Rule 24. Law practice receivers.

(a) *Appointment of receiver of law practice.* If a lawyer has been transferred to disability inactive status, has died, has abandoned the lawyer's law practice, or has been suspended or disbarred under these Rules, and there is evidence that the lawyer has not complied with Rules 21 and 23, and no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist, the Court of Chancery, upon proper application by the ODC, shall appoint a receiver of the lawyer's law practice with such powers and authority as are appropriate and necessary.

(b) *Maintenance of client confidences.* Any receiver appointed under these Rules shall maintain the confidentiality of information contained in client files that have been entrusted to the receiver.

History.

Amended, June 5, 2001.

Rule 25. Notice of complainant.

The ODC shall notify in writing the complainant(s), as to the final disposition of each disciplinary matter promptly after the matter has been concluded, notwithstanding provisions elsewhere in these Rules relating to confidentiality. Such notice shall specify whether the matter has been dismissed, with or without conditions, or whether the matter has resulted in the imposition of a disciplinary sanction, and if so, a description of the sanction imposed and the misconduct upon which the sanction was predicated. Unless the sanction imposed is public as provided pursuant to these Rules, the complainant(s) shall be notified that all records and proceedings shall be private and confidential and shall not be subject to production in any later proceedings before any tribunal except future disciplinary proceedings involving the respondent before the PRC, the Board, or the Court where such prior proceedings may be relevant.

Rule 26. No limitations period.

There shall be no statute of limitations with respect to any proceedings under these Rules.

Rule 27. Payment of costs.

Unless otherwise ordered by the Court, costs of all proceedings conducted under these Rules shall be assessed against the respondent in any case where a disciplinary sanction is imposed or where there is a transfer to disability inactive status.

Rule 28. Effective date.

These Rules shall become effective on March 9, 2000, and any disciplinary or disability proceeding pending on that date shall be processed pursuant to these Rules from that point on unless otherwise directed by the Court.

Official Forms for Board on Professional Responsibility

For court forms associated with this rule set, see: http://courts.delaware.gov/forms/.

Index follows Rules.

INDEX TO DELAWARE LAWYERS' RULES OF DISCIPLINARY PROCEDURE