

RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

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The Supreme Court of the State of Montana (hereinafter referred to as “Supreme Court” or “Court”) declares that it possesses original and exclusive jurisdiction and responsibility under Article VII, Section 2(3), of the 1972 Montana Constitution and the provisions of Chapter 61, Title 37, Montana Code Annotated, in addition to its inherent jurisdiction, in all matters involving admission of persons to practice law in the State of Montana, and the conduct and disciplining of such persons. In the exercise of that jurisdiction, the Court hereby adopts and promulgates the following Rules for Lawyer Disciplinary Enforcement. These rules shall be referred to as the Rules For Lawyer Disciplinary Enforcement (2002) or RLDE (2002).

I. STRUCTURE AND SCOPE

RULE 1 - COMPREHENSIVE LAWYER REGULATION SYSTEM

The Court hereby establishes a comprehensive lawyer discipline and disability system, consisting of an Office of Disciplinary Counsel and a Commission on Practice. The Office of Disciplinary Counsel shall perform central intake functions and shall process, investigate, and prosecute those complaints against lawyers which are within the disciplinary jurisdiction of the Court. The Commission on Practice, which shall be divided into Review and Adjudicatory Panels, shall hear and decide complaints and in appropriate cases, shall make recommendations to the Court for discipline. Prosecutorial and adjudicatory functions shall be separated and managed to secure responsiveness, efficiency, and fairness.

RULE 2 - THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF THE STATE OF MONTANA

A. Appointment. The Court shall appoint a fourteen-member commission to be known as “The Commission on Practice of the Supreme Court of the State of Montana,” hereinafter referred to as the “Commission,” which shall consist of nine practicing lawyers, who shall be residents of the State of Montana and licensed and admitted to practice in the state of Montana, and five nonlawyers. One of said lawyers shall be appointed from each of the areas hereinafter defined. One lawyer member shall be at large and may be appointed from any area set forth below. The nonlawyer members of the Commission shall be appointed at large, but they shall be residents of the state of Montana. The term of office of all members of the Commission shall be four years. The persons serving on the Commission on the effective date of these Rules shall continue to serve on the Commission for the remainder of the terms for which they were appointed, unless their membership on the Commission is terminated as hereinafter provided.

The areas from which the lawyer members of the Commission shall be appointed shall be comprised of the various judicial districts of the state of Montana, and are to be designated as follows:

Area A shall comprise the Fourth, Eleventh, Nineteenth, Twentieth, and Twenty-first Judicial Districts.

Area B shall comprise the Second, Third, and Fifth Judicial Districts.

Area C shall comprise the Eighth and Ninth Judicial Districts.

Area D shall comprise the Twelfth, Fifteenth, and Seventeenth Judicial Districts.

Area E shall comprise the First, Sixth, and Eighteenth Judicial Districts.

Area F shall comprise the Tenth and Fourteenth Judicial Districts.

Area G shall comprise the Thirteenth and Twenty-second Judicial Districts.

Area H shall comprise the Seventh and Sixteenth Judicial Districts.

Except for the at-large lawyer member, appointments to the Commission of the lawyer members shall be made by the Supreme Court from a list of three practicing lawyers in each Area having the three highest number of votes in an election by the Area members of the State Bar of Montana. The time, place, and method of such election shall be in accordance with the orders of this Court. In the event that said election is not held in any Area as ordered, the Supreme Court shall appoint a member from that Area to serve on the Commission.

The nonlawyer members and the at-large lawyer member of the Commission shall not be subject to the election procedure, but shall be appointed by the Court.

In the event of a vacancy in the Commission, a successor shall be appointed by the Supreme Court for the unexpired term of the member whose office is vacated. Members of the Commission may terminate their membership at their pleasure, and their membership may be terminated by the Court at its pleasure.

B. Election of Officers. The members of the Commission shall annually elect lawyer members as chairperson, vice chairperson, and executive secretary. The chairperson, and in the absence of the chairperson, the vice chairperson, shall preside at meetings of the Commission except that in the conduct of disciplinary hearings the chairperson may appoint another lawyer member of the Commission to act as presiding officer.

A presiding officer shall have all of the powers of the chairperson in any case in which he or she has been appointed.

C. Quorum. Eight members of the Commission shall constitute a quorum when the Commission is acting as a whole. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission.

D. Meetings. Members of the Commission shall meet at times and places designated by the chairperson or, in the absence of the chairperson, by the vice chairperson, who shall determine the agenda for the meetings. Notice of any such meeting shall be given by mail or by telephone not less than seven calendar days in advance of the time for such meeting, except in cases of emergency or urgency requiring, in the judgment of the person calling the meeting, a shorter time of notice. Also, the Supreme Court may call a meeting of the members to be held at a time and place ordered by the Court. Notice of such meeting shall be given as above provided. The minutes of any meeting of the Commission shall state the form and time of notice of meeting given to the members.

E. Executive Committee. The chairperson, vice chairperson,

or readmission;

(5) Dismiss a complaint that Disciplinary Counsel determines does not warrant disciplinary action;

(6) In addition to dismissing the complaint, Disciplinary Counsel may issue a letter of caution or take other corrective action when Disciplinary Counsel deems it appropriate;

(7) Request leave to file a formal complaint when Disciplinary Counsel determines that disciplinary action is warranted;

(8) Prosecute before Review Panels, Adjudicatory Panels, and the Court, discipline, interim suspension, reinstatement, and readmission proceedings, and proceedings for transfer to or from disability/inactive status;

(9) Employ and supervise Office staff needed for the performance of prosecutorial functions and, when circumstances necessitate their use, appoint and supervise special investigators and volunteer special counsel;

(10) Notify promptly the complainant and the lawyer that an investigation is to be initiated by Disciplinary Counsel or, where Disciplinary Counsel dismisses, provide a concise written statement of the facts and reasons a matter has been dismissed;

(11) Develop written guidelines for determining which matters fail to allege facts that would constitute grounds for disciplinary action;

(12) Request the Clerk of the Supreme Court to notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability/inactive status, reinstatement, readmission, or any public discipline imposed in this state;

(13) Whenever costs have been assessed against a lawyer by the Supreme Court, assemble and serve on the lawyer an itemized list of the costs of proceedings, investigations, and audits;

(14) Seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction;

(15) Forward a certified copy of the judgment of conviction to the disciplinary office in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a serious crime (as hereinafter defined) in this state;

(16) Maintain permanent records of discipline and disability matters and compile statistics to aid in the administration of the system;

(17) Prepare an annual budget for the Office and submit it to the Board of Trustees of the State Bar of Montana for review;

(18) Make reasonable and necessary expenditures pursuant to the reviewed budget to perform the duties of the Office;

(19) Supervise and direct Office staff and operations;

(20) Prepare and submit to the Court recommendations concerning the annual assessment of Bar members; and

(21) Make recommendations to the Court about the lawyer regulation system.

C. Prohibited Activities. Disciplinary Counsel shall not have authority to render advisory ethics opinions, either orally or in writing, or to impose any form of discipline on a lawyer.

RULE 6 - COSTS AND EXPENSES; FISCAL REVIEWS AND AUDITS

A. Office of Disciplinary Counsel. The costs and expenses of the Office of Disciplinary Counsel shall be paid from an annual assessment of active members of the State Bar of Montana and of nonmembers admitted to practice under the Montana State Bar pro hac vice rules. The Supreme Court shall determine the amount of the annual member assessment.

B. Commission on Practice. The costs and expenses of the Commission shall be paid from legislatively-appropriated public funds.

C. Fiscal Reviews and Audits. The Court may direct fiscal

reviews and audits of the components of the lawyer regulation system.

RULE 7 - JURISDICTION

Any lawyer admitted to practice law in the state of Montana and any lawyer specially admitted by a court of the state of Montana for a particular proceeding, or appearing by pleading or otherwise in any judicial proceeding in the state of Montana, or otherwise engaging in the practice of law in the state of Montana is subject to the disciplinary jurisdiction of the Supreme Court.

If a lawyer, because of allegations of misconduct or against whom formal disciplinary proceedings have been filed, shall surrender his or her license to practice law, the Commission retains jurisdiction to proceed with formal disciplinary proceedings and shall thereafter enter its order of discipline or recommendation for discipline in accordance with the Rules.

RULE 8 - GROUNDS FOR DISCIPLINE

A. Reasons for Discipline. Discipline may be imposed for any of the following reasons:

(1) Acts or omissions by a lawyer, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct or the disciplinary rules adopted from time to time by the Supreme Court.

(2) Any act committed by an attorney contrary to the highest standards of honesty, justice, or morality, including but not limited to those outlined in Title 37, chapter 61, parts 3 and 4, MCA, whether committed in such attorney's capacity as an attorney or otherwise.

(3) Conduct which results in conviction of a criminal offense.

(4) Conduct which results in lawyer discipline in another jurisdiction.

(5) Violation of the terms of any discipline or disciplinary order.

(6) Failure to promptly and fully respond to an inquiry from Disciplinary Counsel, an investigator, or the Commission, or failure to justify such refusal or nonresponse.

(7) Willful contempt of court and failure to purge the contempt.

B. Relationship to Criminal Proceedings. Acquittal of a charge of crime, plea bargain, conviction of a lesser crime, or dismissal of a charge of crime after deferred imposition of sentence shall not constitute a bar to lawyer discipline for that act, nor shall conviction in a criminal proceeding be a condition precedent to the institution of disciplinary proceedings for that act.

RULE 9 - DISCIPLINE AND SANCTIONS

A. Forms of Discipline. Discipline may take one or more of the following forms:

(1) Disbarment. "Disbarment" means the unconditional termination of any privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(2) Suspension from the practice of law for a definite period of time or for an indefinite period of time with a fixed minimum term. "Suspension" means the temporary or indefinite termination of the privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

(3) Public censure.

(4) Admonition administered by an Adjudicatory Panel of the Commission.

(5) Probation.

RULE 12 - ADJUDICATORY PANEL PROCEDURES

A. Complaint and Citation. When a Review Panel has determined that formal disciplinary proceedings shall be instituted against a respondent lawyer:

- (1) Disciplinary Counsel shall file a formal complaint with the Clerk of the Supreme Court and shall furnish a copy to the Adjudicatory Panel;
- (2) The complaint shall set forth the charges with sufficient clarity and particularity as to inform the lawyer of the alleged misconduct;
- (3) The complaint shall be signed by Disciplinary Counsel but need not be verified; and
- (4) The Clerk of the Supreme Court shall issue a citation which, together with a copy of the complaint, shall be served on the lawyer; the citation shall require the lawyer to file a written answer to the complaint with the Clerk within twenty days.

B. Answer.

- (1) The lawyer shall serve a copy of the answer on the Commission and on Disciplinary Counsel.
- (2) If the lawyer fails to answer within the prescribed time, the charges shall be deemed admitted. An Adjudicatory Panel to which the case has been assigned may make findings and impose on the lawyer such discipline and sanctions as these Rules authorize.
- (3) An Adjudicatory Panel may elect to hold a hearing notwithstanding the lawyer's failure to answer, after notice of hearing has been given.

C. Hearing, Findings, and Conclusions.

- (1) If the lawyer files an answer, Disciplinary Counsel shall consult with the Commission to determine a hearing date before an Adjudicatory Panel. The Commission shall file and serve upon Disciplinary Counsel, the lawyer, the lawyer's counsel, if any, and any complainant, a notice of hearing setting forth the date, time, and place of hearing, which notice shall be served upon said persons at least twenty days in advance thereof. The lawyer is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The hearing shall be recorded.
- (2) In the conduct of a hearing, the Chairperson of an Adjudicatory Panel shall have authority to rule on all motions, objections, and other matters presented in connection with the hearing. Except as may otherwise be provided herein, and except as an Adjudicatory Panel Chairperson may determine in the interests of justice and fairness, hearings in formal disciplinary proceedings shall be conducted in accordance with the Montana Rules of Civil Procedure and the Montana Rules of Evidence.
- (3) Following the hearing, an Adjudicatory Panel shall make findings of fact, conclusions of law, and a recommendation to the Supreme Court for discipline or other disposition of the case.

RULE 13 - ADJUDICATORY HEARINGS; ADMONITIONS

Following the filing of a formal complaint, an Adjudicatory Panel may determine to sanction a lawyer by the imposition of an admonition. The Adjudicatory Panel shall determine whether to impose the admonition publicly or privately after weighing, on a case-by-case basis, the lawyer's privacy interests and the public's right to know. The demands of the lawyer's individual privacy must clearly exceed the merits of public disclosure in order for an Adjudicatory Panel to impose a private admonition. An Adjudicatory Panel may do so, however, only after consulting Disciplinary Counsel and the lawyer subject to sanction, to apprise the interested parties of

its reasoning for such decision and to allow for comment. An Adjudicatory Panel's decision to close an adjudicatory hearing and/or impose an admonition, either publicly or privately, shall be final unless, within ten days of the Adjudicatory Panel's decision, the lawyer subject to sanction, Disciplinary Counsel, or a member of the public, files a petition with the Clerk of the Supreme Court asking the Court to review the Adjudicatory Panel's decision. The Court shall conduct an in-camera review of the Adjudicatory Panel's decision in which it evaluates the lawyer's privacy interest and the public's right to know.

A private admonition should be imposed only in cases of minor misconduct, when there is little or no injury to the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer. A private admonition informs the lawyer that his or her conduct is unethical, but does not unnecessarily stigmatize a lawyer from whom the public needs no protection.

RULE 14 - REQUEST FOR RECONSIDERATION BY COMPLAINANT

A Review or Adjudicatory Panel before which a matter is pending shall advise complainants in writing that a complainant who is not satisfied with the disposition of a complaint by the Panel may, within thirty days of receipt of notice of the disposition, petition the Panel for reconsideration. The Panel, upon reconsideration, may approve the disposition or take such other action as may be appropriate and notify the complainant and the lawyer. The Supreme Court may, in its sole discretion, review the Panel's disposition upon reconsideration.

RULE 15 - EX PARTE COMMUNICATIONS PROHIBITED

Disciplinary Counsel and members of Review Panels, Adjudicatory Panels, the Commission, and the Supreme Court shall not communicate ex parte among themselves or with others regarding the merits of a pending or impending investigation or a disciplinary proceeding except as permitted by the Rules for Lawyer Disciplinary Enforcement. Communications for purposes of scheduling, administration, and procedural matters shall not be prohibited but shall be conducted to assure fairness to all parties.

RULE 16 - REVIEW BY THE SUPREME COURT

After service of a copy of the findings of fact, conclusions of law, and recommendation of discipline to the lawyer and to the lawyer's counsel, if any, the lawyer shall have thirty days from the date of service within which to file with the Court objections to the findings of fact, conclusions of law, and recommendation of discipline, and a written brief in support thereof. The lawyer or the lawyer's counsel shall serve upon Disciplinary Counsel a copy of any such objections and brief in support thereof. Disciplinary Counsel shall have thirty days after the date of service of such objections and written brief within which to file with the Court a written brief in opposition to such objections, and a copy of such brief shall be served upon the lawyer or the lawyer's counsel. The Court may, in its discretion, set the matter for oral argument if the Court deems oral argument appropriate. Thereafter, or in the event objections are not filed by the lawyer, the matter shall be deemed submitted and the Court shall determine the appropriate discipline, if any, authorized by these Rules. In the event objections are not filed, the matter shall be deemed submitted at the expiration of the time for filing objections and the Supreme Court shall consider the matter, issue its written decision, and impose such discipline, if any, as it considers appropriate. In the imposition of discipline, the Court may fix a time and place

- (1) Deliberations and minutes of the Commission;
 - (2) Information or proceedings with respect to which an Adjudicatory Panel or Supreme Court has issued a protective order;
 - (3) Conditional admissions and affidavits of consent submitted pursuant to Rule 26 of these Rules until, and if, approved by the Court and public discipline is imposed; and
 - (4) Hearings conducted pursuant to Rule 26 of these Rules.
- C. Admissibility in Other Proceedings. The conclusions, opinions, and recommendations of Disciplinary Counsel or any investigator or special counsel acting on behalf of the Office of Disciplinary Counsel while acting in those capacities are not relevant or admissible for any purpose in any quasi-judicial or judicial forum, exclusive of the Commission on Practice and the Montana Supreme Court in a disciplinary action.

RULE 21 - DISSEMINATION OF DISCIPLINARY INFORMATION

Notice of Discipline Imposed. The Clerk of the Supreme Court shall cause copies of orders and notices of transfer to disability/inactive status, public censure, suspension, disbarment, and reinstatement to be given to the Clerks of all of the District Courts of the State of Montana, all of the District Judges of the State of Montana, the Clerk of the Federal District Court for the District of Montana, the Clerk of the Circuit Court of Appeals of the Ninth Circuit, the Chairperson of the Commission, and the Executive Director of the State Bar of Montana, or as the Supreme Court otherwise may direct.

RULE 22- ADDITIONAL RULES OF PROCEDURE

- A. Proceedings Governed by Rules of Civil Procedure. Except as otherwise provided in these Rules, the Rules of Civil Procedure of the State of Montana apply in disciplinary cases.
- B. Standard of Proof. Formal charges of misconduct and grounds for reinstatement shall be established by clear and convincing evidence.
- C. Burden of Proof. The burden of proof in formal proceedings seeking discipline is on Disciplinary Counsel. The burden of proof in reinstatement proceedings is on the person seeking reinstatement.
- D. Availability of Hearing Transcript. A copy of the record of a hearing shall be made available to the lawyer at his or her expense on request made to the Commission.
- E. Related Pending Litigation. The proceeding of a disciplinary matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation unless a Review Panel or an Adjudicatory Panel in its discretion authorizes a stay for good cause shown, but only after notice to the complainant, Disciplinary Counsel, the lawyer, and the lawyer's counsel, and opportunity to be heard by the complainant.
- F. Delay Caused by Complainant. Neither unwillingness nor neglect of the complainant to sign a complaint nor to prosecute a charge, nor a settlement, nor a compromise between the complainant and the lawyer, nor restitution by the lawyer shall, in itself, justify abatement of the processing of any complaint.
- G. Effect of Time Limitations. Except as is otherwise provided in these Rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any disciplinary investigation or proceeding.
- H. Complaints Against Commission Members. Allegations of grounds for discipline against members of the Commission shall be processed in the same manner as allegations against nonmembers of the Commission; provided, however, that the Commission member against whom such allegations are made shall be disqualified from participating in any manner

as a Commission member with respect to that matter. Further, in the event of allegations of grounds for discipline being made against any member of the Commission, the Supreme Court will be immediately notified of such allegations, and the Commission will keep the Court informed in a timely manner of the status of the matter.

I. Dismissed Complaints. A complaint which is dismissed or upon which no disciplinary action is taken or recommended shall be expunged from Commission and Disciplinary Counsel records and for all purposes shall be considered as null, void, and nonexistent.

RULE 23 - LAWYERS CONVICTED OF A CRIMINAL OFFENSE

A. Transmittal of Certificate of Conviction. The clerk or other official of any court in this state in which a lawyer subject to the disciplinary jurisdiction of the Supreme Court has been convicted of a criminal offense shall, within thirty days of the date of conviction, transmit a certificate of conviction to the Supreme Court, Disciplinary Counsel, and the Commission on Practice.

B. Procedure on Receipt of Certificate of Conviction. Upon receipt of the certificate of conviction, the Supreme Court, either on its own motion or on that of Disciplinary Counsel, shall determine whether the criminal offense is one which affects the lawyer's ability to practice law. If the Court determines that the lawyer was found guilty of a criminal offense that affects the lawyer's ability to practice law, the Supreme Court shall enter an order immediately suspending the lawyer from the practice of law pending final disposition of a disciplinary proceeding predicated upon the conviction. The Supreme Court shall in the same order direct Disciplinary Counsel to prepare and file a formal complaint against the lawyer predicated upon the conviction. If the criminal offense does not involve the lawyer's ability to practice law, the Supreme Court shall enter an order to that effect and, thereafter, the matter shall be processed like any other information coming to the attention of the Commission. The Court need not give notice to the lawyer, nor shall a hearing be required prior to its determination of whether the criminal offense of which the lawyer was convicted was one which affects the lawyer's ability to practice law, nor shall a hearing be required prior to the Supreme Court's entering an interim order of suspension. A copy of any order entered pursuant to this Rule shall be served upon the lawyer, Disciplinary Counsel, and the Commission. Upon good cause shown, the Court may in the interest of justice set aside or modify the interim suspension; however, the interim suspension may not be set aside solely by reason of a pending appeal of the conviction to the Supreme Court or because of an appeal by trial de novo.

C. Formal Proceedings After a Conviction. The sole issue to be determined in the formal disciplinary proceedings conducted after a lawyer is convicted of a criminal offense which affects the lawyer's ability to practice law shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded unless the lawyer requests that the matter not be deferred.

D. Certificate of Conviction Conclusive. A certificate of conviction of a lawyer for a criminal offense shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the lawyer based upon the conviction.

E. Automatic Reinstatement From Interim Suspension Upon Reversal of Conviction. If a lawyer suspended solely under the provisions of paragraph B above demonstrates that the

disciplined in another jurisdiction, Disciplinary Counsel shall obtain a certified copy of the disciplinary order and file it with the Commission and with the Supreme Court.

B. Notice Served Upon the Lawyer. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Montana has been disciplined in another jurisdiction, the Court shall forthwith issue a notice directed to the lawyer containing the following:

- (1) A copy of the order from the other jurisdiction; and
- (2) An order directing that the lawyer inform the Court, within thirty days from the date of service of the notice, of any claim by the lawyer predicated upon the grounds set forth in paragraph D of this Rule, that the imposition of the identical discipline in the state of Montana would be unwarranted and the reasons therefor.

C. Effect of Stay of Discipline in Other Jurisdiction. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in Montana may be deferred until the stay expires.

D. Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B of this Rule, the Supreme Court shall impose the identical discipline unless the lawyer demonstrates, or the Court finds, that upon the face of the record from which the discipline was 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) That there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Supreme Court could not, consistent with its duty, accept as final the conclusion on that subject;
- (3) The imposition of the same discipline by the Supreme Court would result in grave injustice; or
- (4) The misconduct established warrants substantially different discipline in the State of Montana.

If the Supreme Court determines that any of those elements exists, it 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 the state of Montana.

RULE 28 - DISABILITY/INACTIVE STATUS

A. Grounds. A lawyer subject to the disciplinary jurisdiction of the Supreme Court shall be transferred to disability/inactive status if:

- (1) The lawyer asserts an inability to assist in the defense of disciplinary proceedings;
- (2) The lawyer is determined, upon hearing, to have a physical or mental condition which adversely affects the lawyer's ability to practice law to the extent that the lawyer is incapacitated from continuing to practice law; or
- (3) The lawyer is judicially declared incompetent or involuntarily committed on grounds of incompetency or disability by a court of competent jurisdiction.

B. Proceedings.

- (1) Proceedings to determine a lawyer's inability to assist in the defense of disciplinary proceedings or to determine incapacity shall be conducted in the same manner as formal disciplinary proceedings pursuant to Rules 11 and 12, except that all of the proceedings shall be confidential.
- (2) Counsel may be appointed by the Commission to represent a lawyer without adequate representation.
- (3) The Adjudicatory Panel may order examination of the lawyer by qualified medical experts selected by the Adjudicatory Panel.

C. Report and Recommendation. The report and recommendation of the Adjudicatory Panel shall be subject to review and determination by the Supreme Court as provided in Rule 16.

D. Notice of Transfer. Unless otherwise ordered by the Court, notice of transfer to disability/inactive status shall be given to those persons and in the manner provided in Rule 30.

E. Term of Disability/Inactive Status. Transfer to disability/inactive status, unless otherwise specified by order, shall be for an indefinite period and may include such terms and conditions for reinstatement as may be appropriate.

F. Stay of Disciplinary Proceedings. Pending disciplinary proceedings shall be deferred during the period of a lawyer's inability to defend. Such proceedings shall be heard and disposed of as provided in these Rules upon reinstatement of the lawyer to active status.

G. Reinstatement.

(1) A lawyer transferred to disability/inactive status may petition for transfer to active status after six months, or such other time period specified in the order of transfer, or in subsequent orders.

(2) Upon receipt of a petition for transfer to active status, the Adjudicatory Panel shall schedule a hearing on the petition as soon as practicable. Proceedings for transfer to active status shall be conducted in the same manner as formal proceedings pursuant to Rule 29, except that all of the proceedings shall be confidential. The Adjudicatory Panel may order examination of the lawyer by qualified medical experts selected by the Adjudicatory Panel.

(3) A petition for transfer to active status shall be granted upon a showing by clear and convincing evidence that the disability has been removed.

(4) A lawyer previously judicially declared incompetent may petition for immediate transfer to active status, without hearing, upon proof of judicial declaration of competency by a court of competent jurisdiction.

RULE 29 - REINSTATEMENT

A. After Suspension of Six Months or Less. A lawyer suspended for no more than six months may resume practice at the end of the period of suspension by filing with the Court, and serving upon the executive secretary of the Commission and Disciplinary Counsel an affidavit alleging that the lawyer has fully complied with the requirements of the suspension order, and paying any required fees and costs ordered by the Court.

B. After Disbarment or Suspension for More Than Six Months. Subject to the limitations set forth in Rule 29C, any lawyer who shall have been disbarred or who shall have been suspended indefinitely or for more than six months may, by verified petition, apply for:

- (1) An order of reinstatement;
- (2) An order shortening the term of a fixed period of suspension; or
- (3) An order modifying an order of indefinite period of suspension by fixing a definite period of suspension.

Such petition shall bear the case number and caption appearing in the order of discipline, and an original and one copy thereof shall be filed with Disciplinary Counsel, the Commission on Practice, and by the Commission filed with the Clerk of the Supreme Court and made a part of the record in said case. Such petition shall set forth the facts that show the lawyer contends that he or she has rehabilitated himself or herself, or that he or she is entitled to have the order of discipline vacated, terminated, or modified.

C. Time for Filing Petition.

- (1) A lawyer suspended from practice may not petition for

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

RULE 34 - VERIFICATION OF BANK ACCOUNTS

Whenever Disciplinary Counsel has probable cause to believe that the bank accounts of a lawyer that contain, should contain, or have contained funds belonging to clients, have not been properly maintained or that the funds have not been properly handled, the Disciplinary Counsel may initiate an investigation for the purpose of verifying the accuracy and integrity of all bank accounts maintained by the lawyer, and an investigator may be appointed by Disciplinary Counsel for that purpose.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these Rules and the attorney-client privilege, provided, however, that all investigatory materials may be provided to, or exchanged with, the State Bar of Montana, Lawyers' Fund for Client Protection.

RULE 35 - EFFECTIVE DATE

These rules are effective January 1, 2011, provided, however, that any matter then pending shall be concluded under the procedure existing prior to the effective date of these Rules.