

FILED

07/31/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 06-0628

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 06-0628

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

RULES FOR LAWYER DISCIPLINARY
ENFORCEMENT

ORDER

ORIGINAL

On July 28, 2026, this Court adopted amendments the Montana Rules for Lawyer Disciplinary Enforcement proposed by the Office of Disciplinary Counsel and the Commission on Practice. The amended version of the rules was attached to the Order; however, the redlined version was inadvertently omitted.

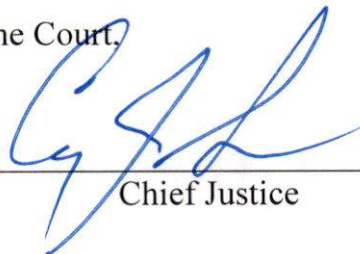
Attached to this Order is the redlined version of the Montana Rules for Lawyer Disciplinary Enforcement.

IT IS HEREBY ORDERED that the attached redlined version of the rules shall be posted on the Court's website.

The Clerk of this Court is directed to provide copies of this Order and the attachment to: the State Law Library, the Office of Disciplinary Counsel, the Commission on Practice, Todd Everts, Connie Dixon, Shana Harrington, and Karl Krempel at Montana Legislative Services, Eric Goodemote in the Thomson Reuters Rules department at Thomson Reuters, Patti Glueckert and the Statute Legislation department at LexisNexis, and the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means.

DATED this 31st day of July, 2026.

For the Court,



Chief Justice

RULE 2. THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF THE STATE OF MONTANA; APPOINTMENT; COMPOSITION; OFFICERS; ELECTIONS; POWERS AND DUTIES; QUORUM; MEETINGS

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, comprising the Eleventh and Nineteenth Judicial Districts;

Area B, comprising the Fourth, Twentieth, and Twenty-first Judicial Districts;

Area C, comprising the Second, Third, and Fifth Judicial Districts;

Area D, comprising the Eighth and Ninth Judicial Districts;

Area E, comprising the Seventh, Tenth, Twelfth, Fourteenth, Fifteenth, Sixteenth, and Seventeenth Judicial Districts;

Area F, comprising the First Judicial District;

Area G, comprising the Sixth and Eighteenth Judicial Districts; and

Area H, comprising the Thirteenth and Twenty-second Judicial Districts.

Except for the at-large lawyer member, the Supreme Court shall appoint one lawyer member and one alternate 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 alternate lawyer members will be available to serve in any proceeding in which any lawyer member of the Commission is disqualified or recused and other members of the Commission cannot be substituted.

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 that a non-lawyer member of the Commission is required or elects to recuse himself or herself due to an actual or perceived conflict of interest and another member of the Commission cannot be substituted, the Supreme Court shall appoint a substitute from a pre-selected panel of eligible non-lawyers who have been provided training on lawyer disciplinary procedures.

In the event of a vacancy on 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 a eChairperson, a vVice eChairperson, and an eExecutive sSecretary. The eChairperson and vVice eChairperson must be lawyer members of the Commission. The eChairperson, and in the absence of the eChairperson, the vVice eChairperson, shall preside at the meetings of the Commission except that in the conduct of disciplinary hearings the eChairperson may appoint another lawyer member of the Commission to act as presiding officer. A presiding officer shall have all of the powers of the eChairperson 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 eChairperson, by the vVice eChairperson, who shall determine the agenda for the meetings. Except in cases of emergency, notice of Commission meetings shall be given as provided by law or by these Rules at least seven calendar days in advance of the meeting. Notice may be delivered electronically or by mail. In cases of emergency requiring, in the judgment of the person calling the meeting, a shorter time, reasonable notice appropriate under the circumstances should be given. In addition, 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 above. The minutes of any meeting of the Commission shall state the form and time of notice of meeting given to the members.

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 above. 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 eChairperson, vVice eChairperson, and eExecutive sSecretary of the Commission shall constitute the eExecutive eCommittee. The principal function of the eExecutive eCommittee shall be to attend to the administrative matters during the interval between meetings of the Commission. The eExecutive eCommittee shall have such other duties and authority as the Commission shall determine from time to time.

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

G. Powers and Duties of the Commission. The Commission shall exercise the following powers and duties:

(1) Adopt rules or policies providing for the time and place of meetings, and such other procedural rules not in conflict with these Rules, as may be necessary to expedite the conduct of its business;

(2) Periodically review the operation of the lawyer disciplinary system with the Supreme Court;

(3) Establish Review Panels pursuant to Rule 3;

(4) Establish Adjudicatory Panels pursuant to Rule 4;

(5) Supervise Commission staff;

(6) Assure that a Review Panel member who sits on a particular case does not also sit on an Adjudicatory Panel for that case;

(7) Maintain all permanent records of disciplinary matters and proceedings; ~~and~~

- (8) Exercise such other authority and perform such other duties as are provided in these Rules, or that may be required in order to carry out the provisions of these Rules; and
- (9) Process, investigate, and issue an order of dismissal or findings and recommendations to the Supreme Court regarding grievances filed against Chief Disciplinary Counsel, and/or other Office of Disciplinary Counsel staff.

RULE 3. REVIEW PANELS: COMPOSITION; POWERS AND DUTIES; QUORUM

A. Composition. The Chairperson of the Commission shall appoint one or more Review Panels of five members each, at least two of whom shall be nonlawyers; shall designate a Chairperson for each Review Panel; and shall realign the membership of Review Panels from time to time.

B. Powers and Duties. A review Panel shall:

(1) Review Disciplinary Counsel's request to file a Complaint, together with the grievance, the response from the lawyer against whom the grievance was made, and any reply from the grievant, together with other relevant documents and Disciplinary Counsel's intake summary, investigative report, and recommendations;

(2) Refer the grievance to Disciplinary Counsel for any further investigation, if needed, to determine whether a Complaint is appropriate;

(3) Approve Disciplinary Counsel's request to file a Complaint when the facts appear to warrant disciplinary action or transfer to disability/inactive status or reject the request to file a Complaint if discipline does not appear to be warranted;

(4) Hear requests by Disciplinary Counsel for private ~~admonitions~~ discipline by the Commission and render the same upon approval;

(5) Hear and determine requests for review pursuant to Rule 10C(3) and for reconsideration pursuant to Rule 14;

~~(6) Authorize the stay of disciplinary proceedings for good cause shown pursuant to Rule 28;~~

~~(7)~~ Conduct show cause hearings when a lawyer has refused to respond to inquiries from the Office of Disciplinary Counsel or the Commission; and

~~(8)~~ Notify the Office of Disciplinary Counsel and the responding lawyer or his or her counsel of action by a Review Panel and the reasons for any denial of the request to approve the filing of a Complaint.

C. Review Panel File Review and Deliberation. The consideration of a request by the Office of Disciplinary Counsel for a private admonition or to review investigative materials and file a Complaint shall be made by a Review Panel. The Office of Disciplinary Counsel shall attend the file review for the purpose of responding to Panel members regarding its investigation and a request to approve a ~~private admonition~~ private discipline or to file a Complaint. Neither the Office of Disciplinary Counsel, the referenced attorney, nor his or her counsel shall be entitled to participate in or attend the Review Panel's deliberations, which are confidential.

D. Quorum. Three members of a Review Panel, at least two of whom are lawyers, shall constitute a quorum; however, any act of a Review Panel shall require the vote of a majority of the members present.

E. Review Panel Record.

(1) The Commission shall maintain a record of a Review Panel's consideration of the matters presented to it, which record shall include:

(a) the respondent attorney's name;

(b) the request made by the Office of Disciplinary Counsel;

(c) the Montana Rules of Professional Conduct alleged to have been violated and found applicable;

(d) the vote of the Review Panel on the Office of Disciplinary Counsel's request; and

(e) the basis of the Review Panel's decision if the Office of Disciplinary Counsel's request is not approved.

(2) The decision of the Review Panel shall be conveyed to the Office of Disciplinary Counsel, the Respondent attorney, and his or her counsel, if any, but shall not be public information. The decision may be made available to other Commission members in connection with administering private discipline, or when a Complaint is subsequently filed.

RULE 4. ADJUDICATORY PANELS: COMPOSITION; POWERS AND DUTIES; QUORUM

A. Composition. The Chairperson of the Commission shall appoint one or more Adjudicatory Panels of nine members each, at least three of whom shall be nonlawyers; shall designate a Chairperson for each Adjudicatory Panel; and shall realign the membership of Adjudicatory Panels from time to time.

B. Powers and Duties. Adjudicatory Panels shall, in accordance with the specific procedures and provisions of these Rules:

(1) Hold hearings on Complaints and Complaints for interim suspension filed by Disciplinary Counsel;

(2) After hearing, dismiss the Complaint, order discipline that may be imposed by the Commission under these Rules, or make findings of fact, conclusions of law, and recommendations to the Montana Supreme Court when indicated by these Rules, or engage in other disposition of Complaints;

(3) Hear and determine preliminary and procedural matters incidental to the exercise of its powers and duties. Except for the final Adjudicatory Panel decision on a Complaint following a hearing, the Chairperson will decide all preliminary and procedural matters, and administer oaths;

(4) Following the filing of a Complaint and proceedings thereon, an Adjudicatory Panel may determine to sanction a lawyer by the imposition of public admonition or a letter of a caution, which the Adjudicatory Panel shall administer or issue;

~~(5) Hear and determine requests for reconsideration pursuant to Rule 14;~~

~~(6) Administer oaths,~~ Provide for discovery, and exercise its subpoena power pursuant to Rule 19;

~~(7) Authorize the stay of a disciplinary proceeding for good cause shown pursuant to Rule 28E;~~

~~(8) Hold show cause hearings when a lawyer has refused to respond or cooperate with the Office of Disciplinary Counsel, a Review Panel, or an Adjudicatory Panel pursuant to Rule 24;~~

~~(9) Conduct proceedings relative to disability and transfer to inactive status pursuant to Rule 28;~~

~~(10) Hold hearings on petitions for reinstatement and make recommendations for their disposition to the Supreme Court pursuant to Rule 29; and~~

~~(11) Hold hearings and make recommendations to the Court concerning assessment of the costs of proceedings, investigations, and audits pursuant to Rule 9.~~

C. Quorum. Five members of an Adjudicatory Panel, at least three of whom are lawyers, shall constitute a quorum; however, any act of an Adjudicatory Panel shall require the vote of a majority of the members present.

RULE 5. OFFICE OF DISCIPLINARY COUNSEL

A. Appointment. The Court shall appoint a lawyer to serve as Chief Disciplinary Counsel and may appoint such Deputy Disciplinary Counsels as it deems necessary. Disciplinary Counsel shall not engage in private practice; shall be admitted to practice in Montana at the time of appointment or within a reasonable time thereafter as determined by the Court; and shall maintain offices in Helena, Montana, in facilities designated by the Court. Chief Disciplinary Counsel and Deputy Disciplinary Counsels serve at the pleasure of the Court.

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

(1) Supervise Office of Disciplinary Counsel (Office) staff in performing central intake functions;

(2) Evaluate all information coming to the attention of the Office to determine whether it is within the disciplinary jurisdiction of the Court;

(3) Investigate all information coming to the attention of the Office which, if true, would be grounds for discipline or transfer to disability/inactive status;

(4) Investigate all facts pertaining to petitions for reinstatement or readmission;

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

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

(7) Request a Review Panel to approve a private admonition or for leave to file a Complaint when Disciplinary Counsel determines that disciplinary action by the Commission or the Montana Supreme Court is warranted;

(8) Prosecute before 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 who shall be selected from a panel of approved attorneys compiled by the Court;

(10) Notify promptly the grievant 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 10. OFFICE OF DISCIPLINARY COUNSEL

A. Central Intake and Evaluation. The Office of Disciplinary Counsel shall perform central intake functions including, but not limited to, the following:

(1) Receive information and grievances regarding a lawyer's alleged misconduct;

(2) Make appropriate referrals regarding information and grievances while assuring that any member of the public who wishes to make a grievance against a lawyer is able to do so;

(3) Provide the grievant access to a packet of written materials containing forms, instructions, and information about Montana's lawyer disciplinary process; and

(4) Receive written grievances on the forms provided.

B. Preliminary Review and Processing of Grievances. The Office of Disciplinary Counsel shall conduct a preliminary review of each written grievance received by the Office and determine whether the grievance involves a matter that is within the disciplinary jurisdiction of the Court.

C. Investigation.

(1) All investigations shall be conducted by or under the authority and direction of Disciplinary Counsel. Upon such investigation as Disciplinary Counsel deems appropriate, he or she may:

(a)(1) Send the grievance to the lawyer against whom the grievance is made;

(2) Send the lawyer's response to the grievant and, if appropriate, request his or her reply to the lawyer's response;

(3) Prepare an intake summary; and

(4) Conduct an investigation and prepare an investigative report; or

(b) With or without some or all of the process set for in Rule 10C(1)(a), dismiss the grievance without prejudice where the grievance does not appear to be within the disciplinary jurisdiction of the Court or the facts do not appear to warrant disciplinary action.

(c) Issue a letter of caution to a lawyer, request a Review Panel to approve a private admonition or issue a letter of caution, or take other corrective action when Disciplinary Counsel deems it appropriate. Any such action by Disciplinary Counsel is not disciplinary action.

(2) Notice of Disposition. In the event of a dismissal, Disciplinary Counsel shall give written notice to the grievant and to the lawyer of the dismissal, stating the reasons for the action taken, and advising the grievant of the right to request review of the dismissal.

(3) Request for Review. The grievant may file a written request for review of Disciplinary Counsel's dismissal within 30 days of the notice of disposition pursuant to Rule 10C(2).

Disciplinary Counsel's dismissal shall be reviewed by a Review Panel upon the record before it. The Review Panel may approve, disapprove, or modify Disciplinary Counsel's disposition.

A lawyer against whom Disciplinary Counsel determines to take corrective action other than a letter of caution may file a written request for review of Disciplinary Counsel's determination within 30 days after disciplinary counsel notifies the lawyer of the corrective action. Disciplinary Counsel's determination shall be reviewed by a Review Panel upon the record before the Review Panel. The Review Panel may approve, disapprove, or modify Disciplinary Counsel's determination as to corrective action.

D. Review Panel ~~Proceeding~~ Process. Disciplinary Counsel shall:

(1) Request leave of a Review Panel to approve ~~and deliver a private admonition~~ discipline to be administered by the Commission, or to file a Complaint; and

(2) Provide additional information to or conduct further investigation at the request of a Review Panel.

E. Adjudicatory Panel ~~Proceeding~~ Process. Disciplinary Counsel shall:

(1) Draft and prosecute Complaints and Complaints proposing interim suspension before an Adjudicatory Panel, represent the Office of Disciplinary Counsel in appeals from Adjudicatory Panel decisions or recommendations and in other disciplinary matters that come before the Commission, the Montana Supreme Court, or other courts;

(2) Recommend discipline or other disposition of a case to an Adjudicatory Panel;

(3) Conduct and respond to discovery pursuant to Rule 19; and

(4) Investigate a petition for reinstatement and present relevant evidence at an Adjudicatory Panel hearing on the petition.

11. LIMITATION ON TIME TO BRING COMPLAINT

A. Time Limit for filing a Complaint. Except as otherwise provided in these rules, from the ~~time date~~ the alleged misconduct giving rise to the inquiry or grievance is discovered, or with due diligence, should have been discovered, a Complaint must be filed within six years ~~from the date of the alleged misconduct~~.

B. When Violation Occurs. A Rule of Professional Conduct is violated when every element of a violation has occurred. If the violation is a continuing offense, the violation occurs when the offensive conduct ends.

C. Tolling. The six-year limit is tolled during the period:

(1) The lawyer represents the grievant, the grievant's family member, or the grievant's business or employer;

(2) The grievant is a minor, or is physically or mentally incapacitated;

(3) Civil, criminal, or administrative investigations or proceedings based on the same acts or circumstances as the violation are pending with any governmental agency, court, or tribunal;

(4) The lawyer conceals facts about the violation;

(5) The lawyer fails to cooperate with an investigation of the violation;

(6) The lawyer makes false or misleading statements to the Office of Disciplinary Counsel concerning the violation; or

(7) The disciplinary investigation or proceeding is ~~abated~~ stayed under Rule 28.

D. Rule of Repose. Except as provided in subsection 11E, notwithstanding any tolling under subsection 11C, a Complaint may not be filed more than 10 years after the date of the alleged misconduct.

E. Exceptions. There shall be no limit on the time to file a Complaint for:

(1) Any alleged misconduct based upon a plea of guilty to a felony, with or without a reference to an Alford or nolo contendere plea, or upon conviction of a felony; or

(2) Any alleged misconduct that constitutes a felony, without regard to whether the lawyer is charged, prosecuted, or convicted of a crime for the conduct.

RULE 12. FILING, SERVICE, AND CASE PROCEDURES

A. Complaint and Citation. When a Review Panel has granted the Office of Disciplinary Counsel leave to file a Complaint against a respondent lawyer:

(1) Disciplinary Counsel shall file a Complaint with the Clerk of the Supreme Court and shall furnish a copy to the Commission;

(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 Chief Disciplinary Counsel or Deputy Disciplinary Counsel but need not be verified; and

(4) The Clerk of the Supreme Court shall issue a citation that, 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 of the Montana Supreme Court within twenty-one days and indicate that a failure to file an Answer within the time prescribed may subject the attorney to default as provided by Rule 12C(2).

B. Service.

(1) Service of Complaint. Service upon the lawyer of a Complaint shall be made by personal service as provided in Rule 4, Montana Rules of Civil Procedure, or by registered or certified mail to the last address that the lawyer provided to the State Bar of Montana. If service is made by registered or certified mail, service is deemed complete upon mailing.

(2) Service of Other Papers. Excepting the Complaint and Answer, service of all other pleadings, papers, or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with Rule 5, Montana Rules of Civil Procedure, and shall be filed with the Commission. The Commission shall maintain a docket record of all documents filed with it.

C. Answer.

(1) The lawyer shall furnish a copy of the Answer to the Commission at the time of filing with the Montana Supreme Court and service on Disciplinary Counsel.

(2) If the lawyer fails to file an Answer within the prescribed time, the allegations in the Complaint shall be deemed admitted and an Adjudicatory Panel to which the case has been assigned shall conduct a hearing to make findings of fact, conclusions of law, and impose discipline the Commission is authorized to order or make a recommendation to the Supreme Court for discipline or other disposition of the case.

(3) Absent good cause and entry of an order by the Commission, an Answer may not include motions under Rules 9, 11, 12, 13, or 14 of the Montana Rules of Civil Procedure.

(4) Amended and supplemental pleadings before the Commission shall be governed by Rule 15, Montana Rules of Civil Procedure.

D. Hearing, Findings, Conclusions, and Disposition or Recommendation.

(1) If the lawyer files an Answer, the Commission shall consult with Disciplinary Counsel and counsel for the respondent lawyer or, if not represented, the respondent, to determine a hearing date before an Adjudicatory Panel. The Commission shall file and serve upon Disciplinary Counsel, the lawyer, and the lawyer's counsel, if any, 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 the case and 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 case~~. 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 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 14. REQUEST FOR REVIEW BY GRIEVANT OF A REVIEW PANEL'S DECISION

A. Dismissal of Grievance. Upon review of Disciplinary Counsel's dismissal of a grievance pursuant to Rule 10C(3), if a Review Panel affirms the dismissal, ~~Disciplinary Counsel the Commission~~ shall notify the grievant in writing that the grievant may, within thirty days of the date on which the notice was sent, request, in writing to the Supreme Court, review of the disposition by the Supreme Court.

B. Review Discretionary. The Supreme Court may, in its sole discretion, review the Panel's disposition.

* * *

RULE 19. OATHS, SUBPOENA POWER, AND DISCOVERY

A. Oaths. ~~Any member of the Commission or other person authorized by law may~~ The Chairperson of the Commission or of an Adjudicatory Panel shall administer oaths and affirmations and issue subpoenas in matters pending before the Commission, but subpoenas may only be issued on approval of the chairperson of the Commission or the Chair of an Adjudicatory Panel.

B. Investigative Subpoenas.

(1) Before a Complaint has been filed, the ~~e~~Chairperson of the Commission or of an Adjudicatory Panel may cause subpoenas to be issued commanding the persons to whom they are directed to produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) An investigative subpoena may be issued upon the affidavit of Disciplinary Counsel showing good cause to believe that:

(a) the lawyer who is the subject of the investigation, or the person from whom information is sought, has failed to cooperate with Disciplinary Counsel's request for information in connection with that investigation;

(b) a violation of the Rules of Professional Conduct or these Rules has been committed; and

(c) the information relative to the ~~e~~Commission of that violation is in the possession or control of the person, entity or institution to whom the subpoena is directed.

(3) The lawyer who is the subject of the investigation need not be given advance notice of the investigative subpoena. Upon execution of the investigative subpoena and return of service,

Disciplinary Counsel shall provide a copy of the investigative subpoena to the lawyer who is the subject of the investigation.

C. Subpoenas for Deposition or Hearing. After a Complaint has been filed, ~~any member of the Commission~~ the Chairperson of the Commission or of an Adjudicatory Panel may, at the request of Disciplinary Counsel or the lawyer, compel, by subpoena or order, the attendance of witnesses and the production of ~~pertinent~~ relevant books, papers, and documents. A copy of the subpoena must be served on the opposing party at the time return of service is filed with the Commission.

D. Enforcement of Subpoenas. Any person subpoenaed or ordered to appear and give testimony, or to produce ~~pertinent~~ relevant books, papers, or documents, who fails or refuses to appear or to produce such books, papers, or documents, or any person having been sworn to testify, who refuses to answer any proper questions, may, upon request of ~~the Office of Disciplinary Counsel~~ either party or upon determination by the Chairperson, be cited for contempt. The Supreme Court may, upon proper application, also enforce the attendance of any witness and the production of any documents subpoenaed as well as hear proceedings based upon a finding of contempt by the Commission.

E. Subpoena Pursuant to Law of Another Jurisdiction. Whenever a subpoena is sought in Montana pursuant to the law of another jurisdiction for use in lawyer disciplinary or disability proceedings or investigations, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the ~~e~~Chairperson of the Commission, upon request of Disciplinary Counsel (in a case where the request is by the disciplinary authority of the foreign jurisdiction) or of an attorney admitted to practice in this jurisdiction (in a case where the request is by a respondent in a proceeding in the foreign jurisdiction), may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed to by the witness. Service, enforcement, or challenges to this subpoena shall be as provided in these Rules.

F. Challenging Subpoena. Any challenge to the validity of a subpoena issued under this Rule shall be heard and determined by the ~~e~~Chairperson of the Commission or of the Adjudicatory Panel, or in his or her absence, the ~~¶Vice e~~Vice eChairperson ~~or executive secretary~~, subject to review by the Supreme Court, at the request of Disciplinary Counsel or the lawyer. Upon a determination that an investigative subpoena issued under Rule 19B was improper or overly broad, any information improperly obtained through the subpoena must not be used as evidence in any disciplinary proceeding against the lawyer who is the subject of the investigation unless such evidence is otherwise lawfully obtained.

G. Discovery. Disciplinary Counsel and the lawyer shall be afforded reciprocal discovery. Disputes concerning the scope and other aspects of discovery shall be determined by the ~~e~~Chairperson, or in his or her absence the ~~¶Vice e~~Vice eChairperson, of the Adjudicatory Panel.

H. Witnesses and Fees. Witness fees and mileage shall be the same as provided by law for witnesses in civil actions in the district courts of the state of Montana.

RULE 20. ACCESS TO DISCIPLINARY INFORMATION

A. Confidentiality. All disciplinary information provided to the Office of Disciplinary Counsel and proceedings before the Commission prior to the filing of a Complaint with the Clerk of the Supreme Court shall be confidential, except that Disciplinary Counsel may disclose information if:

- (1) The respondent has waived confidentiality;

(2) The proceeding is based upon allegations that include either the conviction of a crime or reciprocal discipline;

(3) The proceeding is based upon allegations that have become generally known to the public;

(4) There is a need to notify another person or organization, including the Lawyers' Fund for Client Protection Board, the Commission on Character and Fitness, other lawyer disciplinary agencies, law enforcement agencies, ~~and or~~ the Montana Lawyer Assistance Program, in order to protect the public, the administration of justice, or the legal profession, unless Disciplinary Counsel reasonably determines that disclosure would hinder an ongoing investigation or prosecution, infringe upon the privacy interests of a reporting or other third party, or constitute an unduly broad or burdensome request; or

(5) There is a need to disclose information to third parties while investigating a grievance.

B. Public Information. Upon the filing of a Complaint with the Clerk of the Supreme Court in a disciplinary matter, or upon the filing with the Clerk of the Supreme Court of a petition for reinstatement, the proceedings before the Commission and pleadings and other documents filed with the Clerk or Commission shall be public except for:

(1) Deliberations and minutes of the Commission;

(2) Information or proceedings with respect to which an Adjudicatory Panel or the Supreme Court has issued a protective order;

(3) Conditional admissions and affidavits of consent and the findings of fact, conclusions of law, and recommendations of the Commission submitted pursuant to Rule 26 of these Rules until, ~~and if,~~ approved by the Court or, if applicable, an Adjudicatory Panel, ~~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 27. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS

A. Office 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 Montana shall promptly inform the Office of Disciplinary Counsel of such action. Upon notification that a lawyer subject to the disciplinary jurisdiction of the Supreme Court has been disciplined or transferred to disability/inactive status in another jurisdiction, Disciplinary Counsel shall file a petition, attaching a certified copy of the order, with the Supreme Court.

B. Notice Served Upon the Lawyer. Upon receipt of Disciplinary Counsel's petition, the Court shall issue an order directing the lawyer to inform the Court, within thirty days from the date of service, of any claim by the lawyer predicated upon the grounds set forth in Rule 27D, that the imposition of the identical discipline or transfer to disability/inactive status in the state of Montana would be unwarranted and the reasons therefor. A copy of the order from the other jurisdiction shall be attached to the order.

C. Effect of Stay of Discipline in Other Jurisdiction. In the event the discipline imposed in another jurisdiction has been stayed, any reciprocal discipline imposed in Montana may be deferred until the stay expires upon entry of an order by the Supreme Court.

D. Discipline to be Imposed or Transfer to Disability/Inactive Status. Upon expiration of thirty days from service of the order pursuant to the provisions of Rule 27B, the Supreme Court shall impose the identical discipline or transfer the lawyer to disability/inactive status 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) 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 exist, 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 or transferred to disability/inactive status shall establish conclusively the misconduct or disability for purposes of proceedings in Montana.

RULE 28. DISABILITY/INACTIVE STATUS

A. Automatic Transfer to Disability/Inactive Status. The Supreme Court shall enter an order immediately transferring a lawyer to disability/inactive status upon receipt of a certified copy of a judgment, order, or other appropriate document demonstrating that the lawyer:

- (1) Was found to be incapable of assisting in his or her own defense in a criminal action;
- (2) Was acquitted of a crime based on mental disease or defect;
- (3) Had a guardian or conservator appointed, but not a temporary guardian or conservator, for his or her person or estate on a judicial finding of incapacity; or,
- (4) Was involuntarily committed to a mental health facility.

A copy of the order shall be served, in the manner the Court may direct, upon the lawyer, his or her guardian, or the director of the institution to which the lawyer has been committed.

B. Assertion of Inability to Assist in Defense. If, during the course of a disciplinary investigation or proceeding, a lawyer alleges an inability to assist in his or her defense due to mental or physical incapacity, Disciplinary Counsel shall notify the Court. The Court shall immediately transfer the lawyer to disability/inactive status until further order of the Court.

C. 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. All orders transferring a lawyer to or from disability/inactive status are public.

D. 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 transfer to active status as may be appropriate.

E. Stay of Disciplinary Proceedings. Pending disciplinary proceedings shall be deferred during the period a lawyer is on disability/inactive status. Such proceedings shall be heard and disposed of as provided in these Rules upon reinstatement of the lawyer to active status.

F. Reinstatement to Active Status.

(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 proceedings pursuant to Rule 29. Upon motion by Disciplinary Counsel, the eChairperson of the Adjudicatory Panel may order examination of the lawyer by qualified experts.

(3) A lawyer transferred to disability/inactive status based on an assertion of an inability to assist in his or her defense of disciplinary proceedings due to mental or physical incapacity must show by clear and convincing evidence the lawyer did in fact suffer from a condition that prevented the lawyer from assisting in his or her defense and that the lawyer can now assist in his or her defense.

(4) Except as otherwise provided in these Rules, any other petition for transfer to active status shall only be granted upon a showing by clear and convincing evidence that the disability has been removed.

(5) 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 FOLLOWING DISCIPLINE

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 Administrative Officer of the Commission and Disciplinary Counsel, an affidavit stating that the lawyer has fully complied with the requirements of the suspension order, and has paid 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.

The petition shall bear the case number and caption appearing in the order of discipline. An original and seven copies shall be filed with the Clerk of the Supreme Court. The lawyer shall serve a copy of the petition on the Commission and on Disciplinary Counsel. The petition shall set forth the facts that establish the lawyer ~~contends show that he or she has rehabilitated himself or herself, and that he or she is entitled to have the order of discipline vacated, terminated, or modified~~ should be reinstated to the practice of law in Montana.

C. Time for Filing Petition.

(1) A lawyer suspended from practice may not petition for reinstatement earlier than ninety days prior to the end of the period of the fixed term or minimum fixed term of the suspension.

(2) A lawyer serving an indefinite suspension beyond the minimum fixed term may petition for reinstatement at any time.

(3) A disbarred lawyer may not petition for reinstatement until at least five years have elapsed after the effective date of disbarment.

D. Hearing and Notice on Application. Upon receipt of a petition, the Commission shall, within ninety days after receipt of such petition, or such later date as may be mutually agreed upon by petitioner, Office of Disciplinary Counsel, and the Commission, schedule an Adjudicatory Panel hearing on the petition. The petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she meets the following criteria or, if not, has presented good and sufficient reasons why he or she should nevertheless be reinstated:

- (1) The lawyer has fully complied with the terms of all prior disciplinary orders;
- (2) The lawyer has not engaged nor attempted to engage in the unauthorized practice of law;
- (3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension, including alcohol or other drug abuse, the disability or infirmity has been removed, and where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer:
 - (a) has pursued appropriate rehabilitative treatment; and
 - (b) has abstained from the use of alcohol or other drugs for at least one year, and is likely to continue to abstain from alcohol or other drugs;
- (4) The lawyer recognizes the wrongfulness and seriousness of the misconduct;
- (5) The lawyer has not engaged in any other professional misconduct since suspension or disbarment;
- (6) The lawyer has the requisite honesty and integrity to practice law; and
- (7) The lawyer has kept informed about recent developments in the law and is competent to practice.

The proceedings before the Adjudicatory Panel relating to such petition shall be governed by the applicable provisions of these rules governing hearings in disciplinary proceedings including Rule 20 concerning confidentiality, unless otherwise provided herein or unless otherwise ordered by the Court.

Notice of such hearing shall be given to the public in such manner and to such extent as the Adjudicatory Panel deems appropriate in each case. In any event, notice of such application or petition shall be given to the Supreme Court, all of the Judges of the District Courts of the State of Montana, all the Federal District Judges of the District of Montana, and the Executive Director of the State Bar of Montana. The notice of hearing shall set forth that any interested person may testify at the hearing.

Disciplinary counsel may investigate the contentions set forth in the petition for reinstatement and present relevant evidence at the hearing.

E. Deposit for Cost of Proceeding. Upon receipt of a petition for reinstatement, an Adjudicatory Panel, before proceeding further, may require the petitioner to deposit with the Commission an amount deemed reasonable by the Commission to cover anticipated costs of the reinstatement proceedings.

F. Recommendation of Commission and Action by Court. The Adjudicatory Panel shall make a written recommendation to the Supreme Court on the petition for reinstatement, including the imposition of such conditions to reinstatement as it deems appropriate to protect the public interest. Thereupon the Supreme Court shall, in the exercise of its discretion, take such action as it deems advisable.

RULE 30. NOTICE TO CLIENTS AND OTHERS

A. Recipients of Notice and Contents of Notice. Unless otherwise ordered by the Adjudicatory Panel or the Supreme Court, within ten days after the date of the order of the Court imposing the discipline of disbarment or suspension, the lawyer 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 counsel in pending matters or, in the absence of such counsel, the adverse party or parties, that the Court has ordered the disbarment or suspension of the lawyer and that the lawyer is therefore disqualified to act as a lawyer after the effective date of the order; and

(4) any court in which the respondent attorney appears as counsel of record in any pending matter in compliance with the Uniform District Court Rule 10 (and any corresponding Local Rule), as well as § 37-61-403, MCA.

B. ~~Notice to Clients of Lawyers Who Are~~ Delivery or Transfer of Records by Disbarred or Suspended Lawyer. ~~The~~ A lawyer who has been suspended or disbarred 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.

C. Notification to Court. In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended lawyer to notify in writing the judge of the court having jurisdiction of the pending matter of the circumstances.

* * *

RULE 32. AFFIDAVIT FILED WITH COURT

Within twenty days after the effective date of the disbarment or suspension order, the lawyer shall file with the Supreme Court, the Adjudicatory Panel, and the Disciplinary Counsel an affidavit showing:

- (1) The lawyer has fully complied with the provisions of the order and with these Rules;
- (2) A list of all other state, federal, and administrative jurisdictions to which the lawyer is admitted to practice; and
- (3) The lawyer's residence or other physical or email addresses where communications may ~~thereafter be~~ directed to him or her.

* * *

RULE 34. ADMINISTRATOR PLANNING

A. Annual Certification. Every Active Member of the State Bar of Montana admitted to the practice of law in this jurisdiction shall annually provide a certification as to whether the attorney is in private practice. The signed certification shall be placed on the State Bar of Montana's annual licensing statement and shall require the attorney's signature or electronic signature.

- (1) If the attorney is in private practice, the certification must include a designation of the attorney's Interim Administrator and identify a Person with Knowledge.

B. Designation of Interim Administrator. An attorney in private practice must designate an Interim Administrator to protect clients by temporarily managing the attorney's practice if the attorney becomes unexpectedly unable to practice law as set forth in Rule 34(C). The designation must include the name and address of the Active Member in good standing or a Montana law firm that includes at least one other Active Member in good standing, who will serve, if needed, as the attorney's Interim Administrator.

Beginning in 2027, and annually thereafter, every Active Member in private practice must submit to the State Bar of Montana:

(1) Designation of another Active Member in good standing or law firm with at least one other Active Member in good standing to serve as the attorney's Interim Administrator; and

(2) Identify a Person with Knowledge of the location of the attorney's professional paper and electronic files and records and knowledge of passwords and other security protocols required to access the attorney's professional electronic records and files. The Person with Knowledge identified may be the same person designated as the Interim Administrator.

C. Terminology.

(1) "Affected Attorney" means an attorney who is either temporarily or permanently unable to practice law because the attorney has:

(a) resigned;

(b) been disbarred or suspended;

(c) disappeared;

(d) been imprisoned;

(e) abandoned the practice of law;

(f) become temporarily or permanently incapacitated;

(g) been transferred to disability/inactive status pursuant to Rule 28; or

(h) is deceased.

(2) "Private Practice Attorney" means an attorney who is an Active Member of the State Bar of Montana in good standing and who is subject to Rule 34 of the Rules Concerning the State Bar of Montana, Mandatory Interim Administrator Planning.

(3) "Law Firm" means the entity in which the Affected Attorney carries out the profession of being a lawyer and has engaged in the practice of law.

(4) "Affected Attorney's Clients" are clients to whom the Affected Attorney is the attorney of record, regardless of whether the retainer agreement is with the Affected Attorney or the Affected Attorney's Law Firm.

(5) "Appointed Interim Administrator" means an Interim Administrator who is appointed by the district court pursuant to Rule 34(e)-(h) to serve on behalf of the Affected Attorney.

(6) "Interim Administrator" means a general term for an Active Attorney Member in good standing who serves on behalf of a private practice attorney who has become an Affected Attorney; this includes a law firm with at least one other Active Attorney Member designated to serve on behalf of their private practice attorney/partner, who has become an Affected Attorney.

(7) "Designated Interim Administrator" means an Interim Administrator that a private practice attorney has designated to serve and who has accepted the designation in the event the private practice attorney should become an Affected Attorney.

D. Affected Attorney With a Firm. The firm of an attorney who becomes an Affected Attorney may continue to represent each of the Affected Attorney's Clients without a district court appointment as Interim Administrator, provided:

(1) The firm is the Affected Attorney's Designated Interim Administrator;

(2) The firm has at least one active Montana attorney in good standing capable of competently representing the Affected Attorney's Client's; and

(3) Each Affected Client gives express written consent to the representation. Copies of the signed consents must be maintained with the client file.

E. Commencement of Proceeding for Appointment of Interim Administrator. A proceeding for the appointment of an Interim Administrator is commenced by the filing of an ex parte petition by the Interim Administrator in the district court for the county in which the Affected Attorney lives, last lived, or maintains or last maintained an office for the practice of law.

(1) The petition must set forth facts providing that:

(a) The attorney is an Affected Attorney as defined in Rule 34C;

(b) The appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Client's or the interests of the Affected Attorney; and

(c) The attorney proposed to be appointed as Interim Administrator is qualified under this rule.

(d) The petition must be verified or accompanied by an affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts.

F. Service of Petition. The petition and any supporting documents must be served upon the Affected Attorney if the whereabouts of the Affected Attorney are known, the Affected Attorney's estate if the Affected Attorney has died, and on the fiduciary for the Affected Attorney, if one has been appointed.

G. Order of Appointment. If the district court determines that the petitioner has proved by a preponderance of the evidence that the attorney is an Affected Attorney as defined in Rule 34C, and the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients and/or the interests of the Affected Attorney, the district court shall appoint one or more Interim Administrators, as follows:

(1) The district court must appoint the Designated Interim Administrator, unless good cause exists to appoint a different Interim Administrator.

(2) If good cause exists, the district court may appoint additional Interim Administrators.

(3) The order appointing an Interim Administrator shall specifically authorize the Interim Administrator to:

(a) take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the lawyer trust accounts, escrow accounts, payroll accounts, operating accounts, and special accounts;

(b) disburse funds to clients of the Affected Attorney or others entitled thereto; and

(c) take all appropriate actions with respect to accounts.

(4) The order appointing an Interim Administrator takes effect immediately upon entry unless the district court orders otherwise.

(5) The district court may order the Interim Administrator to submit interim and final accountings and reports, as it deems appropriate. The district court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the Affected Attorney to be filed under seal.

H. Service of Notice of Interim Administrator's Appointment. Upon receipt of an order of appointment of an Interim Administrator, the petitioner must serve the Notice of Appointment of an Interim Administrator's appointment, including the name and address of the Affected Attorney, and the name, business address, business telephone number, business email address, and phone number of the Interim Administrator on the Affected Attorney, the Affected Attorney's estate if

the Affected Attorney has died, and the Affected Attorney's fiduciary. If the petitioner is the Designated Interim Administrator, service must also be made upon the State Bar of Montana and the Office of Disciplinary Counsel. The State Bar of Montana must publish the notice in the Montana Lawyer and on the State Bar of Montana website.

I. Objection to Appointment. Within 14 days after the service of the Notice of Appointment, any interested person may file objections to the order of appointment of an Interim Administrator specifying the grounds upon which the objection is based. Although the filing of one or more objections does not automatically stay the order appointing Interim Administrator, the court may order that the appointment be stayed pending resolution of the objection(s).

J. Duties and Powers of the Interim Administrator.

(1) The Interim Administrator is not required to expend his or her own resources when exercising the duties and powers identified in this rule. If the Interim Administrator does expend his or her own resources, the Interim Administrator may request reimbursement from the Affected Attorney or the Affected Attorney's estate.

(2) The general duties of the Interim Administrator are to:

(a) Take custody of files and records;

(b) Take control of accounts, including lawyer trust accounts and operating accounts;

(c) Review the files and other papers to identify any pending matters;

(d) Promptly notify all clients represented by the Affected Attorney in pending matters, to the extent they can be reasonably identified, of the appointment of an Interim Administrator for the Affected Attorney;

(e) Deliver the files, funds and other property belonging to the Affected Attorney's Clients pursuant to the clients' directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money or other property to the extent permitted by law;

(f) Take steps to protect the interests of the clients, the public, and, to the extent possible, and not inconsistent with the protection of the Affected Attorney's Clients, to protect the interests of the Affected Attorney;

(3) Inventory; Accounting; and Reporting. The Interim Administrator shall account for all receipts, disbursements, and distributions of money and property for the Affected Attorney, including IOLTA/Trust Accounts for deposit or refund of client and third-party funds.

(a) The Interim Administrator shall file with the court a final written report and final accounting of the administration of the Affected Attorney.

(b) The Office of Disciplinary Counsel and/or the State Bar of Montana may petition the court for an interim accounting if it has reason to believe the Affected Attorney's affairs are being mismanaged.

(4) If the Interim Administrator determines that there is a conflict of interest between the Interim Administrator and an Affected Attorney's Client, the Interim Administrator shall notify the client and the district court that made the appointment and take all necessary action under the Montana Rules of Professional Conduct.

(5) To the extent possible, the Interim Administrator may assist and cooperate with the Affected Attorney and/or the Affected Attorney's fiduciary in the continuance, transition, sale, or winding up of the Law Firm.

(6) The Interim Administrator may only purchase the Law Firm upon the district court's approval of the sale.

K. Protection of Client Information and Privilege. The appointment of the Interim Administrator does not automatically create an attorney and client relationship between the Interim Administrator and any of the Affected Attorney's Clients. However, the attorney-client privilege applies to all communications by or to the Interim Administrator and the Affected Attorney's Clients to the same extent as it would have applied to any communications by or to the Affected Attorney with those same clients. The Interim Administrator is governed by the Montana Rules of Professional Conduct, Rule 1.6, with respect to all information contained in the files of the Affected Attorney's Clients and any information relating to the matters in which the clients were being represented by the Affected Attorney.

L. Protection of Client Files and Property. The district court has jurisdiction over all files, records, and property of clients of the Affected Attorney and may make any appropriate orders to protect the interests of the clients of the Affected Attorney and, to the extent possible, and not inconsistent with the protection of the clients, the interests of the Affected Attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the Affected Attorney. The Interim Administrator may destroy client files pursuant to the law office policy or as necessary to meet ethical obligations, whichever is shorter, without returning to the court for permission to do so.

M. Compensation and Reimbursable Expenses of Interim Administrator.

(1) Compensation and Reimbursement Available. The Interim Administrator, except as otherwise provided by an agreement with the Affected Attorney, is entitled to reasonable compensation for the performance of the Interim Administrator's duties and reimbursement for actual and reasonable costs incurred in connection with the performance of the Interim Administrator's duties. Reimbursable expenses include, but are not limited to, the costs incurred in connection with maintaining the staff, offices, and operation of the Law Firm and the employment of attorneys, accountants, and others retained by the Interim Administrator in connection with carrying out the Interim Administrator's duties.

(2) Request for Compensation or Reimbursement.

(a) The Interim Administrator may file a motion with the court that ordered the appointment seeking compensation or reimbursement under this rule. Unless the Interim Administrator and the Affected Attorney or the Affected Attorney's estate have reached an agreement otherwise, the Interim Administrator will be paid from the Law Firm if funds are available; if funds are not available from the practice, the attorney may file a claim against the estate in a probate court. The claim must include an accounting of all receipts, disbursement, and distributions of money and property of the Law Firm.

(b) Award of Compensation or Reimbursement. The district court may enter a judgment awarding compensation and expenses to the Interim Administrator against the Law Firm, Affected Attorney, or other available sources as the court may direct. The judgment will be a lien upon all property of an applicable Law Firm or Affected Attorney retroactive to the date of the filing of the petition for appointment of an Interim Administrator under the Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to it taking effect and may be foreclosed upon in the manner prescribed by law.

N. Employment of the Interim Administrator as Attorney for an Affected Client. An Interim Administrator may, with the informed written consent of the Affected Client, represent the Affected Client in a pending matter in which the client was represented by the Affected Attorney.

Any informed written consent by the Affected Client must include an acknowledgement that the client is not obligated to retain the Interim Administrator.

O. Designated Interim Administrator Unable to Serve. In the event that the Designated Interim Administrator is unable to serve the Affected Attorney and the Affected Attorney is unable to designate a successor Interim Administrator, the Office of Disciplinary Counsel shall appoint a trustee pursuant to Rule 33, MRLDE.

RULE 345. 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, 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 Lawyer's Fund for Client Protection.

RULE 356. EFFECTIVE DATE

These rules are effective January 1, 2024~~7~~, provided however that any matter then pending shall be concluded under the Rules existing on the date the Complaint was filed.