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Commission on Practice

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 06-0628

)	
IN THE MATTER OF PROPOSED)	
REVISION TO THE RULES FOR LAWYER)	PETITION TO AMEND RULES
DISCIPLINARY ENFORCEMENT)	AND MEMORANDUM IN
)	SUPPORT
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The Office of Disciplinary Counsel (“ODC”) and the Commission on Practice (“COP”) petition the Court to amend the Montana Rules for Lawyer Disciplinary Enforcement (2021) (“MRLDE”) as set forth in Appendix A, attached hereto. This petition is made on the grounds and for the reasons set forth in the following memorandum.

Memorandum in Support

Contested litigation over the past several years has demonstrated deficiencies or ambiguities in some procedures outlined in the MRLDE. As a result, ODC and the COP propose several changes that will provide more specificity to certain procedural rules and creates one new rule. The proposed amendments also contain numerous non-substantive language changes to make grammatical corrections or ensure consistency within the MRLDE.

For example, current Rule 2 instructs that after appointment, members of the COP are to annually elect a “chairperson” and “vice chairperson”. Rule 2(B). Rule 2 continues to refer to the chairperson and vice chairperson in lowercase, while others, such as Rules 3, 4, 12, capitalize “Chairperson,” only to revert back to lowercase in Rule 19. Notably, “vice chairperson” is capitalized in Rule 19, while also being hyphenated. The proposed changes seek to make this capitalization and referral to those COP positions, as well as other grammatical changes, consistent throughout the MRLDE.

The proposed new rule outlines an administrator planning process that would be required for lawyers in private practice. Over the last few years, there has been a significant increase in the appointment of Rule 33 Trustees. These are individuals appointed to protect client interests upon the death, incapacity, abandonment or incarceration of an attorney. Several of these appointments have resulted in the

Trustee, ODC, and the State Bar of Montana expending significant time, often hundreds of hours, in the process of retrieving, relocating, inventorying, and returning client files. This includes gaining access to the offices, including their paper and electronic files and records, or sometimes, storage facilities, operating and IOLTA/Trust Accounts, as well as contacting clients and delivering their property to them.

It is rare that a Trustee has a staff person or a singular individual with enough knowledge about the attorney's practice, including passwords, that can assist with the necessary tasks of closing the practice, which include, but are not limited to: reconciling the IOLTA/Trust Account, issuing clients necessary reimbursement, paying outstanding bills (if there are even funds to do so), and where appropriate, referring them to new counsel, or auditing and processing file retention (i.e., destruction of files). In the past two years, nearly 1,000 hours have been expended performing these kinds of duties. Significantly, Trustees are largely not compensated for their time, only reimbursed their expenses. Often, the subject attorney has little to no funds to reimburse the Trustee's expenses, which leaves ODC to issue reimbursement, or take on the costs itself (e.g., destruction of files).

The Trustee's duties are incredibly difficult and time-consuming, even where the lawyer has staff. These duties are more so when there is no person affiliated with the law firm who can provide ready access to bank accounts, passwords, case

management systems, and computers, among other things. Determining the number of active clients and the status of their cases in those circumstances is arduous at best, and virtually impossible, at worst.

Montana's attorney population is experiencing a significant shift to an older demographic, and reliable data suggests that mental health, substance abuse, and process addiction continue to plague the legal profession. (*See 2024 Attorney Well-Being Report: The Divide Between Health & the Legal Industry*, Bloomberg Law.) These factors, particularly when taken together, provide compelling grounds for the proposed revision to Rules 33 and adoption of a new Rule 34 regarding appointment of administrators.

As an attorney in Montana, lawyers have an ethical obligation to protect their client's interests, even in the event of an unforeseen tragedy. *See* Rule 1.6, Confidentiality of Information, Rule 1.9, Duties to Former Clients, Rule 1.15, Safekeeping Property, and Rule 1.16(d), Terminating Representation, Montana Rules of Professional Conduct. Without a qualified individual to assist in those circumstances, clients can suffer severe consequences such as missing filing deadlines or court hearings in pending cases, being unable to locate vital documents and pleadings, losing their right to appeal, or being unable to recover funds or property entrusted to the attorney. The implementation of an Administrator Rule will protect clients, the legal profession, and assist in the administration of justice.

Fortunately, Montana is not at the forefront of the planning administrator movement. As of 2019, approximately 38 other jurisdictions recommended, but did not mandate successor planning; some with optional designation upon annual registration/renewal, while only four required designations. Montana was one of eight jurisdictions with neither a mandate, nor recommendation. *State Mandatory Succession Rule Chart, Am. Bar Ass'n* (2019). Now, several other states have mandated the designation of an administrator: Michigan, Maine, South Carolina, New Mexico, Arizona, Florida, and Iowa, with others making proposed amendments to do so (Pennsylvania), and at least one creating an active registry identifying designated administrators (New Jersey). The proposal being offered here, is largely modeled after Michigan's Rule, which was ordered and adopted in 2023. *Rule 21, Rules Concerning the State Bar of Michigan*, attached as Appendix B.

The proposed addition of this rule would be enumerated as a new Rule 34, which would then renumerate the remaining Rules accordingly. The new Rule 34 would require all lawyers in private practice to designate an interim administrator, who can be an individual, or a law firm, to ensure client matters are properly transitioned in the event of an emergency with the affected lawyer.

The addition of this Rule will lessen the frequency and necessity of Rule 33 Trustees, and its accompanying burden of lack of access and resources, which in turn lessens the burden of time and expenses on both ODC and the State Bar of Montana.

This change ensures clients' important legal matters are sufficiently protected and thereby instills the necessary confidence and trust in the legal profession.

While the proposed amendments are more fully addressed in Appendix A, the following outline highlights the proposed amendments and their intent. (Proposed changes made specific to grammar, consistency, or renumeration are not specifically outlined.)

1. Rule 2. The Commission on Practice: Appointment; Powers and Duties; Meetings

- a. Rule 2A. Outlines a conflicts procedure and provides that the Court appoint a member(s) from its own pre-selected panel of eligible attorneys or lay people, who have been provided training specific to the lawyer disciplinary process.
- b. Rule 2G(8) and (9). Establishes a procedure for processing the receipt of grievances against ODC and its staff, to include investigation and subsequent prosecution, where necessary.

2. Rule 3. Review Panels: Composition; Powers and Duties; Quorum

- a. Rule 3B(4). Clarifies the review panel's ability to hear and render private discipline; private discipline is broader than an admonition and can include the adoption of corrective action.
- b. Rule 3B(6). Removes language authorizing the stay of disciplinary

proceedings pursuant to Rule 28 (Disability/Inactive Status); Rule 28 proceedings are not heard before Review Panels; they are, by Rule 28, heard by this Court.

- c. Rule 3E. Establishes a record of Review Panel proceedings.

3. Rule 4. Adjudicatory Panels: Composition; Powers and Duties;

Quorum.

- a. Rule 4B(3). Clarifies and grants authority of the Chairperson to decide preliminary and procedural hearing and pre-hearing matters, as well as administer oaths (removed from 4B(6) to be included here).
- b. Rule 4B(5). Reconsiderations were removed in a prior Rule change and is thus, no longer accurate or relevant.

4. Rule 5. Office of Disciplinary Counsel

- a. Rule 5B(9). Specifies that the Court will select a panel of attorneys for ODC to utilize in the appointment of special investigators and counsel.

5. Rule 10. Office of Disciplinary Counsel (procedure)

- a. Rule 10A(2). Establishes a standing requirement for the filing of a grievance against an attorney: cognizable interest in the lawyer's conduct.

- b. Rule 10D(1). Language clarification and consistency with other changed references to private discipline.

6. Rule 20, Access to Disciplinary Information

- a. Rule 20B(3). Specifies that findings of fact, conclusions of law, and recommendations of the Commission submitted pursuant to Rule 26 (discipline by consent) are confidential until approved by the Court.

7. Rule 33, Appointment of Trustee to Protect Clients' Interests.

- a. Rule 33(G). Provides for the reimbursement of ODC's expenses by the Lawyer's Fund for Client Protection in the event the subject attorney and his or her firm are insolvent or otherwise unable to pay the fees and expenses; any claim must include an accounting.

8. (New) Rule 34. Administrator Planning.

- a. The new Rule would require all private practice attorneys, as part of the license renewal process, to name a "person with knowledge" of their practice and designate an "interim administrator."
- b. A "person with knowledge" is someone who knows the location of the attorney's professional papers and electronic files and other security protocols required to access the attorney's professional records and files. This person can be the same individual designated to serve as interim administrator. However, the "person

with knowledge” does not have to be a licensed attorney in Montana; thus, office staff can serve this function.

- c. An “interim administrator” must be an active Montana attorney or a law firm in good standing (other than the attorney nominating the firm as interim administrator) who would take on certain duties on behalf of a private practice attorney if they become unable to practice law, temporarily or permanently.
- d. Interim administrators would take on duties such as securing privileged documents, notifying clients, returning funds and files, and notifying courts on pending matters. Designated interim administrators have no duties unless the private practice attorney becomes unable to practice law.

WHEREFORE, ODC and the COP respectfully request that the Court, pursuant to § VI of the Court’s Internal Operating Rules, consider this Petition.

RESPECTFULLY SUBMITTED this 27 day of October, 2025.

COMMISSION ON PRACTICE

By: Ward "Mick" Taleff
Ward “Mick” Taleff
Chairperson

OFFICE OF DISCIPLINARY COUNSEL

By: Pamela D. Bucy
Pamela D. Bucy
Chief Disciplinary Counsel

Appendix A

RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

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 grievances 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 approve the filing of Complaints by the Office of Disciplinary Counsel, 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; 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, 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 that a 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 attorneys or lay people 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.

~~(8)(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;~~

~~(65) Administer oaths, p~~ Provide for discovery, and exercise its subpoena power pursuant to Rule 19;

~~(76)~~ Authorize the stay of a disciplinary proceeding for good cause shown pursuant to Rule 28E;

~~(87)~~ 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;

~~(98)~~ Conduct proceedings relative to disability and transfer to inactive status pursuant to Rule 28;

~~(109)~~ Hold hearings on petitions for reinstatement and make recommendations for their disposition to the Supreme Court pursuant to Rule 29; and

~~(110)~~ 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 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 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

A. Members of the State Bar of Montana. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these Rules, of the Montana Rules of Professional Conduct, or of the conditions of the order of discipline or transfer, is subject to the disciplinary jurisdiction of the Montana Supreme Court and the Commission.

B. Other Attorneys. Any lawyer specially admitted by a Montana court for a particular proceeding, appearing by pleading or otherwise in any judicial or administrative proceeding in Montana, and any lawyer not admitted in this jurisdiction who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the Supreme Court of Montana and the Commission for conduct pertaining to his or her practice of law in Montana.

C. Disciplined or Resigned Attorneys. If a lawyer is suspended, disbarred, or resigns as a member of the State Bar of Montana, or the lawyer's special admission or appearance in any judicial proceeding in Montana has terminated, the lawyer remains subject to disciplinary proceedings for conduct occurring prior to the effective date of the suspension, disbarment, resignation, or termination, or for conduct that violates the order of discipline.

D. Grounds Cumulative. The grounds for disciplinary jurisdiction enumerated herein are in addition to those set forth in Rule 8.5, Montana Rules of Professional Conduct.

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; or

(7) Willful contempt of court or of the Commission 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. Public censure declares the conduct of the lawyer improper but does not limit the lawyer's right to practice.

(4) Private admonition or a letter of caution. A private admonition by a Review Panel and a letter of caution are non-public forms of discipline. They should be imposed only in cases of minor misconduct or a technical violation of the Montana Rules of Professional Conduct 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 and a letter of caution are instructive, to inform the lawyer that his or her conduct is unethical but does not unnecessarily stigmatize a lawyer from whom the public needs no protection. Private admonitions may be delivered orally by a Review Panel of the Commission or in a writing. Private admonitions given orally are not recorded and, if given in writing, are not retained in the Commission's files. A private admonition and a letter of caution do not limit the lawyer's right to practice.

(5) Public Admonition. An admonition by an Adjudicatory Panel is a public reprimand that declares the conduct of the lawyer in violation of the Montana Rules of Professional Conduct. Admonitions may be delivered orally by the Commission or in writing. Oral public admonitions are not recorded and no record is made of the content of a written public admonition. The fact a public admonition was delivered is a part of an attorney's disciplinary record.

(6) Probation. Probation allows a lawyer to practice under specified conditions and can be imposed alone or in conjunction with an admonition or a suspension or as a condition of readmission. A lawyer against whom disciplinary proceedings are pending may be placed on probation by the Supreme Court, or with the lawyer's concurrence, by an Adjudicatory Panel. The probation shall be for such time and upon such terms and conditions as are determined appropriate in the case. Discipline may be imposed for violation of any of the terms and conditions of such probation, including failure to satisfy completion of a diversion, mentoring, or treatment program.

(7) Interim suspension pending final determination of discipline.

B. Discipline Criteria. The following factors shall be considered in determining discipline to be recommended or imposed:

- (1) The gravity and nature of the duty violated, including whether the duty is owed to a client, to the public, to the legal system, or to the profession;
- (2) The lawyer's mental state;
- (3) The actual or potential injury caused by the lawyer's misconduct;
- (4) The existence of aggravating or mitigating factors; and
- (5) The existence of prior offenses.

Aggravating factors include but are not limited to:

- (a) dishonest or selfish motive;
- (b) a pattern of misconduct;
- (c) multiple offenses;
- (d) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (e) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (f) refusal to acknowledge wrongful nature of conduct;
- (g) vulnerability of victim;
- (h) substantial experience in the practice of law;
- (i) indifference to making restitution; and

(j) illegal conduct, including that involving the use of controlled substances.

Mitigating factors include but are not limited to

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to the Office of Disciplinary Counsel or cooperative attitude toward proceedings;
- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical or mental disability or impairment;
- (i) interim rehabilitation;
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse; and
- (m) remoteness of prior offenses.

C. Sanctions. The following non-exclusive and cumulative sanctions may be imposed in connection with a form of discipline;

- (1) Restitution to persons financially injured;
- (2) Disgorgement of any fees and costs earned or claimed;
- (3) Reimbursement to the Lawyers' Fund for Client Protection;
- (4) Assessment of the cost of proceedings, investigations, and audits;
 - (a) Whenever costs of proceedings are assessed by the Supreme Court or the Commission as part of the discipline imposed upon a lawyer, Disciplinary Counsel shall assemble and serve upon the lawyer an itemized list of those costs. The lawyer shall then have ten days thereafter in which to file written objections with the Commission and, if so desired, request a hearing before an Adjudicatory Panel on whether the amount of such costs is reasonable and necessary.
 - (b) An Adjudicatory Panel shall thereafter recommend an amount of costs to be imposed, and shall file its recommendation with the Supreme Court, which shall then issue an appropriate order assessing costs.
- (5) Probation; and
- (6) Other requirements the Commission or the Montana Supreme Court deems consistent with the purposes of lawyer sanctions.

D. Procedure for Discipline for Willful Contempt of Court or the Commission and Failure to Purge the Contempt. Upon receipt of a certified copy of an order of contempt that has become final, the Supreme Court may, in its discretion, issue an order to show cause why the lawyer's license to practice law should not be suspended or other discipline should not be imposed. The lawyer against whom such an order has been entered in district court or by the Commission shall not have the right or opportunity to re-litigate the merits of the contempt order, the right to hearing and due process having been afforded him or her in the district court or before the Commission.

In the alternative, the Supreme Court may direct an Adjudicatory Panel to issue the order to show cause or direct the lawyer to appear before the Adjudicatory Panel. In that event, the Adjudicatory Panel shall make a written recommendation to the Supreme Court regarding suspension of the lawyer's license or other discipline.

An attorney who has been purged of the contempt order may be reinstated to practice law. Prior to reinstatement, the lawyer shall be required to pay the costs of any proceedings before the Commission.

II. PROCEDURE

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-client of a lawyer, judge, or other individual with a cognizable interest regarding the lawyer's conduct, 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 ~~a-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 13. ADJUDICATORY HEARINGS; PUBLIC ADMONITIONS (ABROGATED)

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 15. EX PARTE COMMUNICATIONS PROHIBITED

Disciplinary Counsel, Disciplinary Counsel staff, members of Review or Adjudicatory Panels, the Commission, Commission staff, and the Supreme Court shall not communicate ex parte between or 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. In the event a Commission member is a potential or actual witness in a matter to come before the Commission, this Rules does not prevent such person from cooperating with the Office of Disciplinary Counsel and the respondent in their investigation, prosecution, and defense of any claimed ethical violations.

RULE 16. REVIEW BY THE SUPERME COURT AFTER CONTESTED CASE HEARING

After service of a copy of the Commission's findings of fact, conclusions of law, and recommendation, a party shall have thirty days from the date of service within which to file with the Supreme Court objections to the findings of fact, conclusions of law, and recommendation. The objecting party shall serve upon the opposing party a copy of any such objections. The opposing party shall have thirty days after date of service of such objections within which to file with the Court a written brief in opposition to such objections. A copy of such brief shall be served upon the objecting party. The Supreme Court may, in its discretion, set the matter for oral argument. In the event objections are not filed, the matter shall be deemed submitted at the expiration of the time for filing objections. The Supreme Court shall consider the matter, issue its written decision, and impose such discipline, if any, as it considers appropriate. The Supreme Court may consider a petition for rehearing in accordance with the provisions of M.R.App.P.20.

RULE 17. PRIVILEGED COMMUNICATIONS AND IMMUNITY

A. Privileged Communications. Communications or grievances, oral or written, to or from the Commission and Office of Disciplinary Counsel, and testimony given in the proceedings, are privileged. Evidence thereof is inadmissible in any lawsuit against any grievant, witness, Commission member, Commission staff, Disciplinary Counsel, Office of Disciplinary Counsel

staff, investigator, special counsel, or other person employed or retained by the Office of Disciplinary Counsel. Wavier, if any, of such privilege by voluntary disclosure by a grievant or witness shall be determined under Rule 503, Montana Rules of Evidence.

B. Immunity from Civil Suit. Members of the Commission, Commission staff, Disciplinary Counsel, Office of Disciplinary staff, investigators, special counsel, any other person employed or retained by the Commission or the Office of Disciplinary Counsel to represent it in Commission matters, staff members, and persons acting for the Commission or the Office of Disciplinary Counsel shall be immune from suit for any conduct undertaken in good faith in the course of their official duties under these Rules. All of said persons are deemed officers and/or agents of the Court for all purposes mentioned in these Rules.

C. Immunity from Criminal Prosecution. Upon application of Disciplinary Counsel or the Commission and after reasonable notice to and written consent from the appropriate county attorney(s), the Supreme Court may order that a witness cannot be prosecuted or subjected to any penalty or forfeiture other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter, or thing concerning which the witness testified or produced in a lawyer disciplinary hearing.

RULE 18. SERVICE (ABROGATED)

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 eChairperson 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 eCommission 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 ~~v~~Vice ~~-e~~Chairperson ~~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 ~~v~~Vice ~~-e~~Chairperson, 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 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 admonition or censure, suspension, disbarment, and reinstatement to be given to the Clerks of all of the District Courts of the State of Montana, all 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 inconsistent with these Rules, the Rules of Civil Procedure of the State of Montana apply in disciplinary cases.

B. Standard of Proof. Allegations in a Complaint and grounds for reinstatement shall be established by clear and convincing evidence.

C. Burden of Proof. The burden of proof in 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 public hearing shall be made available to any person at his or her expense on request made to the Commission.

E. Related Pending Litigation. After the filing of a Complaint, disciplinary proceedings shall not be delayed because of substantial similarity to the material allegations of a pending criminal or civil litigation. The Chairperson of an Adjudicatory Panel in his or her discretion may, upon request of a party, authorize a stay for good cause shown, but only after notice and opportunity to be heard.

F. Delay Caused by Grievant. Neither withdrawal of an informal grievance by a grievant, ~~nor~~ a settlement, ~~nor~~ a compromise between the grievant and the lawyer, nor restitution by the lawyer shall, in itself, justify abatement of the processing of any grievance.

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. Grievances Against Commission Members. Allegations of grounds for discipline against lawyer 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.

I. Dismissed Grievances. A grievance that has been 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 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, to another tribunal, or because of a motion for a new trial.

C. Proceedings After a Conviction. The sole issue to be determined in the 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 underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any proceeding then pending against the lawyer, the disposition of which shall be determined by the Adjudicatory Panel on the basis of the available evidence.

F. Notice to Clients and Others on Interim Suspension. An interim suspension order entered pursuant to this Rule shall constitute a suspension of the lawyer for purposes of Rule 21.

RULE 24. FAILURE TO RESPOND TO THE OFFICE OF DISCIPLINARY COUNSEL OR THE COMMISSION

If a lawyer subject to the jurisdiction of the Supreme Court should fail or refuse to promptly and fully respond to a grievance or other inquiry communicated to such lawyer in writing by the Office of Disciplinary Counsel or the Adjudicatory or Review Panel before which the matter is pending, the Panel, in addition to other proceedings authorized by these Rules, may direct such lawyer to appear before the Panel and show cause why appropriate discipline or sanction should not be imposed for failure to respond or cooperate. If the matter is pending before a Review Panel, and the lawyer fails to show good cause, the Review Panel shall refer the matter to an Adjudicatory Panel. Notice of such show cause hearing shall be served upon the lawyer and provided to the Office of Disciplinary Counsel at least twenty days prior to the hearing. If at such hearing the lawyer fails to respond or show a just or reasonable cause for not responding, then in addition to the disciplines and sanctions otherwise provided by these Rules, the Adjudicatory Panel may, upon determination of its appropriateness, recommend to the Supreme Court the immediate interim suspension of such lawyer for a period not to exceed thirty days or recommend other interim discipline.

RULE 25. CONDUCT CONSTITUTING THREAT OF HARM TO CLIENTS OR THE PUBLIC

A. Petition for Interim Suspension. Upon receipt of evidence constituting probable cause that a lawyer subject to the disciplinary jurisdiction of the Supreme Court has committed a violation of the Rules of Professional Conduct or is incapacitated and, in either case, poses a substantial threat of serious harm to clients or the public, Disciplinary Counsel may file a petition with the Supreme Court to have the lawyer suspended pending proceedings. The clerk shall send the lawyer a copy of the petition to his or her last known address.

B. Interim Suspension. Upon review of the petition, the Supreme Court may either deny the petition or direct the lawyer to show good cause, if any, why the lawyer should not be suspended during the pendency of either criminal proceedings or disciplinary proceedings. After providing the lawyer with the opportunity to be heard, the Court may enter an order suspending the lawyer from the practice of law or may order such other action as it deems appropriate.

C. Notice to Clients. A lawyer suspended pursuant to this Rule shall comply with the notice requirements of Rules 30 and 32.

RULE 26. DISCIPLINE BY CONSENT

A. Adjudicatory Panel Approval of Tendered Admission.

(1) A lawyer against whom a Complaint has been filed may tender to the Office of Disciplinary Counsel within the time set by scheduling order a conditional admission to the Complaint,

addressing all of the alleged rule violations in the Complaint, in exchange for a stated form of discipline.

(2) If accepted by the Office of Disciplinary Counsel, the conditional admission shall be filed and an Adjudicatory Panel shall determine whether to approve or reject it. In the event the tendered admission is not accepted by the Office of Disciplinary Counsel and the Commission, an adjudicatory hearing will be set at the next regular or special hearings session of the Commission.

(3) When a tendered conditional admission is submitted to an Adjudicatory Panel, the tendered conditional admission shall remain confidential until the Supreme Court issues an order approving or modifying an Adjudicatory Panel's recommendation.

(4) The Adjudicatory Panel may either approve or reject the tendered admission. The Adjudicatory Panel may hold a private hearing for the purpose of obtaining information to aid the Adjudicatory Panel in determining whether to approve or reject the tendered admission.

(a) If the tendered admission is approved by the Adjudicatory Panel, such approval shall be final if the stated form of discipline is a letter of caution, a public admonition, probation imposed by an Adjudicatory Panel as provided in Rule 9C of these Rules, or any combination of these forms of discipline, with or without imposition of costs of the proceeding; but, in all other instances, the tendered admission shall be subject to approval or rejection by the Supreme Court.

(b) If the tendered admission is rejected by either the Adjudicatory Panel or the Supreme Court, the admission shall be deemed withdrawn and cannot be used against the lawyer in any subsequent proceedings.

B. Affidavit of Consent. A tendered admission shall include an affidavit stating the lawyer's consent to the discipline and that:

(1) The lawyer's consent is freely and voluntarily tendered, and that the lawyer is not being subjected to coercion or duress, and that the lawyer is fully aware of the implications of submitting the consent;

(2) The lawyer is aware that there has been a Complaint filed against the lawyer, the nature of which the lawyer shall specifically set forth; and

(3) The lawyer acknowledges that the material facts so alleged are true or the lawyer submits his or her consent because he or she knows that if the case proceeded to a hearing, he or she could not successfully defend himself or herself.

The final order of discipline shall be predicated upon the Complaint, the conditional admission, the affidavit, and such other information and evidence to which Disciplinary Counsel and the lawyer may have stipulated, or which may have been elicited at a private hearing referred to in Rule 26A.

C. Order of Discipline. If the discipline by consent is a form of discipline that may be imposed by the Adjudicatory Panel, the Adjudicatory Panel shall enter the order. In all other instances in which the proposed discipline has been approved, the Supreme Court shall enter the order. The order of discipline by consent shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be served upon the lawyer, the lawyer's counsel, the Commission, Disciplinary Counsel, and the grievant.

D. Confidentiality. All tendered admission proceedings prior to the entry of a consent discipline order shall be confidential and subject to the provisions of Rule 20 of these Rules. Upon entry of an order imposing public discipline, the conditional admission and affidavit of consent shall be filed with the Clerk of the Supreme Court and made public.

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 31. EFFECTIVE DATE OF ORDER, WINDING UP AFFAIRS

Orders imposing discipline shall be effective immediately upon entry unless the Adjudicatory Panel or the Supreme Court specifies otherwise in the order. The lawyer, after entry of a disbarment or suspension order, shall not engage as a lawyer for any new case or legal matter of any nature. The lawyer shall refund any part of any fees paid in advance which have not been earned.

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 33. APPOINTMENT OF TRUSTEE TO PROTECT CLIENTS' INTERESTS

A. Appointment of Trustee. If a lawyer has been disbarred or suspended, or is deceased, disabled, or missing, and there is reasonable cause to believe it is necessary to protect the interests of a lawyer's clients, and no partner, personal representative, or other responsible party capable of conducting the lawyer's affairs is known to exist, a district judge in the judicial district in which the lawyer maintained his or her practice shall appoint an attorney or attorneys, including attorneys on inactive or senior status, as trustee over the lawyer's practice.

B. Terminology.

(1) "Disabled" means that a lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems, or age that significantly impairs the lawyer's ability to practice law. The term includes, but is not limited to, a lawyer who has been transferred to disability/inactive status.

(2) "Missing" means that a lawyer is unavailable or unwilling to attend to the needs of his or her client(s) for a period beyond what is reasonable and customary to the practice of law and/or by conduct has demonstrated that he or she is unlikely to properly discharge his or her professional duties in the future.

C. Procedure. The Office of Disciplinary Counsel shall file an ex parte verified petition, which may be based on hearsay, requesting the appointment of a trustee with the clerk of the district court for any county in the judicial district in which the lawyer maintained his or her practice. The petition may be filed without notice. The clerk shall send the lawyer a copy of the petition at his or her last known address. If a district judge in the judicial district in which the lawyer maintained his or her practice is unavailable, any district judge may consider the petition. The court may grant or deny the petition without a hearing. All orders issued by a district judge pursuant to this Rule shall be served upon the lawyer at his or her last known address.

D. Duties and Powers of Trustee. Upon appointment, the trustee shall take reasonable measures to protect the interests of the lawyer's clients. Such measures may include, but are not limited to, the following:

- (1) Take possession of and examine the files and records of the law practice and obtain information as to any pending matters which may require attention;
- (2) Provide notice to the lawyer's active clients of the lawyer's status;
- (3) Provide a client with his or her file on request;
- (4) With leave of the court, destroy any inactive or closed files;
- (5) With leave of the court, access and take possession of the lawyer's operating and trust bank accounts and, upon approval of the court, refund any unearned fees or funds belonging to third persons;
- (6) Make appropriate distribution, upon approval of the court, of any other assets in the lawyer's possession belonging to the lawyer, clients, or third persons;

(7) Notify persons and entities who appear to be clients of the lawyer that it may be in their best interest to obtain replacement counsel and advise them, when appropriate, of any statute of limitations;

(8) Apply for stays and extensions of time pending employment of replacement counsel by a client;

(9) Make referrals to replacement counsel with the agreement of a client or accept representation of a client with the agreement of the client;

(10) Retain the services of other professionals and third parties when necessary to perform the trustee's duties; and,

(11) Obtain further court orders or other relief necessary to perform the trustee's duties.

E. Review of Court Orders. Within thirty days from the filing of any order issued pursuant to this rule, the lawyer or someone on his or her behalf, a client or former client, or any other interested person may file a written request that the court reconsider its order de novo. Within thirty days of the filing of the court's decisions reconsidering its order, the trustee, the lawyer or someone on his or her behalf, a client or former client, or any other interested person may file a petition requesting review of the decision with the Supreme Court.

F. Protection of Client Information. A trustee shall not be permitted to disclose any information contained in any client file without the consent of the client to whom the file relates, except as necessary to carry out the trustee's duties.

G. Expenses. Any fees and expenses associated with the appointment of a trustee shall be paid by the Office of Disciplinary Counsel. The Office of Disciplinary Counsel may negotiate the fees and expenses for which it will be responsible prior to the attorney's appointment as trustee. The Office of Disciplinary Counsel shall be entitled to reimbursement from the lawyer for whom the trustee is appointed.

In the event that the lawyer and/or law firm is insolvent or otherwise unable to pay the fees and expenses associated with the appointment of the trustee, the Office of Disciplinary Counsel shall be entitled to reimbursement from the Montana Lawyer's Fund for Client Protection. The claim must include an accounting of all receipts, disbursements, and distributions of money.

H. Final Report. When the purposes of the trusteeship have been accomplished with respect to the lawyer's law practice, the trustee shall file a final report and an accounting of all funds and property coming into the custody of the attorney trustee. The trustee shall serve a copy of the final report on the Office of Disciplinary Counsel and upon the lawyer at his or her last known address. Upon the filing of the final report, the trustee is discharged from further duties, subject to further order of the court.

I. Immunity. A trustee shall be immune from suit for any conduct undertaken in good faith in the course of performing his or her duties. This immunity shall not extend to any matter in which a trustee has assumed representation of a client as an attorney.

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.

On the State Bar of Montana's annual licensing statement, the attorney shall, beginning in 2026, and annually thereafter, do the following:

(1) Designate 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.

The State Bar of Montana shall create a confirmation process for Designated Interim Administrators to confirm that they are willing to serve as Interim Administrators.

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, the Affected Attorney's estate, or the Montana Lawyers Fund for Client Protection.

(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 365. EFFECTIVE DATE

These rules are effective January 1, ~~2021~~2026, provided however that any matter then pending shall be concluded under the Rules existing on the date the Complaint was filed.

Appendix B

Order

Michigan Supreme Court
Lansing, Michigan

June 15, 2022

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-15

Amendment of Rule 2 and Addition
of Rule 21 of the Rules Concerning
the State Bar of Michigan and
Amendment of Rule 9.119 and
Addition of Subchapter 9.300 of the
Michigan Court Rules

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following Amendment of Rule 2 and Addition of Rule 21 of the Rules Concerning the State Bar of Michigan and Amendment of Rule 9.119 and Addition of Subchapter 9.300 of the Michigan Court Rules are adopted, effective September 1, 2023.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 2 Membership

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become section members of the State Bar Law Student Section. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual licensing statement~~due notice~~, must provide the State Bar with:

- (A) ~~The~~ the member's correct name, physical address, and email address, that can be used, among other things, for the annual licensing statement~~due notice~~ and to effectuate electronic service as authorized by court rule, and such additional information as may be required. If the physical address provided is a mailing address only, the member also must provide a street or building address for the member's business or residence. No member shall practice law in this state until the information required in this Rule has been provided. Members shall promptly notify~~update~~ the State Bar in writing of~~with~~ any change of name, physical address, or email address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under

these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office.

~~(B) Every active member shall annually provide a~~ A certification as to whether the member is in private practice. The signed certification shall be placed on the annual licensing statement and shall require the member's signature or electronic signature. If the member is in private practice, the certification must also include:

- (1) whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds; and
- (2) beginning in 2023, a designation of the attorney's Interim Administrator, as required by Rule 21. If the attorney is designating his or her own Interim Administrator, the designation must include the name and address of the active Michigan attorney in good standing or a Michigan law firm that includes at least one other Michigan attorney in good standing, who will serve, if needed, as the member's Interim Administrator.

~~The certification shall be included on the annual dues notice and shall require the member's signature or electronic signature.~~

(C) An indication whether the member is willing to be placed on the State Bar's list of members who agree to serve as Interim Administrator for other members.

[NEW] Rule 21 Mandatory Interim Administrator Planning

(A) 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 MCR 9.301 and pursuant to Rule 2(B) of the Rules Concerning the State Bar of Michigan. On the State Bar of Michigan annual licensing statement, the attorney shall, beginning in 2023 and annually thereafter,

- (1) designate another active Michigan attorney in good standing or law firm with at least one other active Michigan attorney in good standing to serve as the attorney's Interim Administrator, or indicate that he or she wishes to designate an attorney from the list maintained by the State Bar of Michigan; and
- (2) identify a person with knowledge of the location of the attorney's professional paper and electronic files and records and knowledge of the location of passwords and other security protocols required to access the

attorney's professional electronic records and files. The person so identified may be the same person designated as the Interim Administrator.

The State Bar of Michigan shall create a confirmation process for designated Interim Administrators to confirm that they are willing to serve as Interim Administrator.

- (B) A member who indicates in the annual licensing statement that he or she wishes to utilize the list maintained by the State Bar of Michigan must pay a \$60 fee to the State Bar of Michigan each time he or she chooses this option on the annual licensing statement. The fees collected under this subrule may only be used to fund activities related to Interim Administrators and Interim Administrator planning.
- (C) The State Bar of Michigan shall maintain a list of members who have indicated a willingness to serve as Interim Administrators under Rule 2(C) of the Rules Concerning the State Bar of Michigan. This list must include the member's name, address, and the judicial circuit(s) and practice area(s) in which he or she is willing to be appointed as an Interim Administrator. The State Bar of Michigan will only match an attorney to an Interim Administrator upon notification that the attorney has become an Affected Attorney as defined in MCR 9.301(A).
- (D) Every Interim Administrator, as that term is defined in MCR 9.301(E), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Michigan Court Rules.
- (E) The State Bar of Michigan shall submit a written report to the Michigan Supreme Court regarding the implementation of the Interim Administrator Program by January 1, 2024. The report shall contain an accounting of the funds received and expended under subrule (B).

Rule 9.119 Conduct of Disbarred, Suspended, or Inactive Attorneys

(A)-(F) [Unchanged.]

~~(G) Receivership.~~

- ~~(1) Attorney with a firm. If an attorney who is a member of a firm is disbarred, suspended, is transferred to inactive status pursuant to MCR 9.121, or resigns his or her license to practice law, the firm may continue to represent each client with the client's express written consent. Copies of the signed consents shall be maintained with the client file.~~
- ~~(2) Attorney practicing alone. If an attorney is transferred to inactive status, resigns, or is disbarred or suspended and fails to give notice under the rule,~~

~~or disappears, is imprisoned, or dies, and there is no partner, executor or other responsible person capable of conducting the attorney's affairs, the administrator may ask the chief judge in the judicial circuit in which the attorney maintained his or her practice to appoint a person to act as a receiver with necessary powers, including:~~

- ~~(a) to obtain and inventory the attorney's files;~~
- ~~(b) to take any action necessary to protect the interests of the attorney and the attorney's clients;~~
- ~~(c) to change the address at which the attorney's mail is delivered and to open the mail; or~~
- ~~(d) to secure (garner) the lawyer's bank accounts.~~

~~The person appointed is analogous to a receiver operating under the direction of the circuit court.~~

- ~~(3) Confidentiality. The person appointed may not disclose to any third parties any information protected by MRPC 1.6 without the client's written consent.~~
- ~~(4) Publication of Notice. Upon receipt of notification from the receiver, the state bar shall publish in the Michigan Bar Journal notice of the receivership, including the name and address of the subject attorney, and the name, address, and telephone number of the receiver.~~

[NEW] Subchapter 9.300 Interim Administrators

Rule 9.301 Definitions

- (A) "Affected Attorney" means an attorney who is either temporarily or permanently unable to practice law because the attorney has:
 - (1) resigned;
 - (2) been disbarred or suspended;
 - (3) disappeared;
 - (4) been imprisoned;
 - (5) abandoned the practice of law;

- (6) become temporarily or permanently disabled or incapacitated;
 - (7) been transferred to disability inactive status pursuant to MCR 9.121; or
 - (8) died.
- (B) “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.
- (C) “Appointed Interim Administrator” means an Interim Administrator who is appointed by the circuit court pursuant to MCR 9.305 to serve on behalf of the Affected Attorney.
- (D) “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.
- (E) “Interim Administrator” means a general term for an active Michigan attorney in good standing who serves on behalf of a Private Practice Attorney who becomes an Affected Attorney. It also means a law firm with at least one other active Michigan attorney that is designated to serve on behalf of a Private Practice Attorney who becomes an Affected Attorney.
- (F) “Law Firm” means the entity in which the Affected Attorney carries out the profession of being a lawyer.
- (G) “Private Practice Attorney” means an attorney who is an active Michigan attorney in good standing and who is subject to Rule 21 of the Rules Concerning the State Bar of Michigan, Mandatory Interim Administrator Planning.

Rule 9.303 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 circuit court appointment as Interim Administrator, provided:

- (A) the firm is the Affected Attorney’s Designated Interim Administrator;
- (B) the firm has at least one active Michigan attorney in good standing capable of competently representing the Affected Attorney’s Clients; and

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

Rule 9.305 Appointment of Interim Administrator.

- (A) Commencement of Proceeding for Appointment of Interim Administrator; Service of Process. 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 circuit court for the county in which the Affected Attorney lives, last lived, or maintains or last maintained an office for the practice of law. If an Interim Administrator is unable to serve, he or she must promptly notify the State Bar, and the State Bar must promptly identify a replacement Interim Administrator using the list maintained by the State Bar under Rule 21(C) of the Rules Concerning the State Bar of Michigan or its own staff under attorney supervision as a measure of last resort.
 - (1) The petition must set forth facts proving that
 - (a) the attorney is an Affected Attorney as defined in MCR 9.301(A).
 - (b) the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients or the interests of the Affected Attorney.
 - (c) the attorney proposed to be appointed as Interim Administrator is qualified under this rule.
 - (2) 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.
 - (3) 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. See MCR 2.103 – 2.108. If the petition is filed by the Designated Interim Administrator, it must also be served upon the State Bar of Michigan by email at an address designated by the State Bar of Michigan pursuant to MCR 2.107(C)(4) or by electronic service pursuant to MCR 1.109(G)(6).
- (B) Order of Appointment. If the circuit court determines that the petitioner has proven by a preponderance of the evidence that the attorney is an Affected Attorney as defined in MCR 9.301(A) and the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients or the interests

of the Affected Attorney, the circuit court shall appoint one or more Interim Administrators, as follows:

- (1) The circuit court must appoint the Designated Interim Administrator or the Interim Administrator proposed by the State Bar under subrule (A), unless good cause exists to appoint a different Interim Administrator.
 - (2) If good cause exists, the circuit 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 Affected Attorney in connection with the Law Firm, including all 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 the accounts.
 - (4) The order appointing an Interim Administrator takes effect immediately upon entry unless the circuit court orders otherwise.
 - (5) The circuit court may order the Interim Administrator to submit interim and final accountings and reports, as it deems appropriate. The circuit 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.
- (C) 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 P 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 on the State Bar of Michigan. If the petitioner is the State Bar of Michigan, service must also be

made on the Interim Administrator. The State Bar of Michigan must publish the notice in the Michigan Bar Journal and on the State Bar of Michigan website.

- (D) **Objection to Appointment.** Within 14 days after 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).

Rule 9.307 Duties and Powers of the Interim Administrator.

- (A) 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 under MCR 9.313.
- (B) The general duties of the Interim Administrator are to:
- (1) take custody of the files and records.
 - (2) take control of accounts, including lawyer trust accounts and operating accounts.
 - (3) review the files and other papers to identify any pending matters.
 - (4) promptly notify all clients represented by the Affected Attorney in pending matters of the appointment of the Interim Administrator. Notification shall be made in writing, where practicable.
 - (5) promptly notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of an Interim Administrator for the Affected Attorney. Notification shall be made in writing, where practicable.
 - (6) 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.
 - (7) 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.

- (8) comply with the terms of the agreement between the Affected Attorney and the Interim Administrator.
- (C) Inventory; Accounting; Reporting.
- (1) The Interim Administrator shall file with the court an inventory of the Affected Attorney's interest-bearing trust accounts for deposit of client and third-party funds within 35 days after entry of the order of appointment, unless an inventory has already been filed with the court.
 - (2) The Interim Administrator shall account for all receipts, disbursements, and distributions of money and property for the Affected Attorney, including its interest-bearing trust accounts for deposit of client and third-party funds.
 - (3) The Interim Administrator shall file with the court a final written report and final accounting of the administration of the Affected Attorney and serve a copy of each on the State Bar of Michigan.
 - (4) The State Bar of Michigan may petition the court for an interim accounting if it has reason to believe the Affected Attorney's affairs are being mismanaged.
- (D) 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 must notify the client, the State Bar of Michigan, and the circuit court that made the appointment and take all appropriate action under the Michigan Rules of Professional Conduct.
- (E) 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.
- (F) The Interim Administrator may purchase the Law Firm only upon the circuit court's approval of the sale.

Rule 9.309 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 Michigan Rule of Professional Conduct 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.

Rule 9.311 Protection of Client Files and Property.

The circuit court has jurisdiction over all of the 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 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 maintain client documents in paper or electronic format. The Interim Administrator may destroy any client document pursuant to the law office file retention policy or as necessary to meet ethical obligations, whichever is shorter, without returning to the court for permission to do so.

Rule 9.313 Compensation and Reimbursable Expenses of Interim Administrator.

- (A) 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.
- (B) Request for Compensation or Reimbursement.
 - (1) 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, disbursements, and distributions of money and property of the Law Firm.

- (2) An Interim Administrator who was matched to an Affected Attorney through the list maintained by the State Bar of Michigan and who was subsequently appointed by the circuit court may seek payment or reimbursement from the State Bar of Michigan for expenses identified in subrule (A). The State Bar of Michigan will promulgate a process for reimbursement under this subrule.
- (C) Award of Compensation or Reimbursement. The circuit court may enter a judgment awarding compensation and expenses to the Interim Administrator against the Law Firm, Affected Attorney, or any other available sources as the court may direct. The judgment will be a lien upon all property of any applicable Law Firm or Affected Attorney retroactive to the date of filing of the petition for the appointment of an Interim Administrator under this 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.

Rule 9.315 Liability.

Every Interim Administrator, as that term is defined in MCR 9.301(A), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Rules Concerning the State Bar of Michigan.

Rule 9.317 Employment of the Interim Administrator as Attorney for an Affected Client.

An Interim Administrator shall not, without the informed written consent of the Affected Client represent such client in a pending matter in which the client was represented by the Affected Attorney, other than to temporarily protect the interests of the client, or unless and until the Interim Administrator has concluded the purchase of the Law Firm. Any informed written consent by the Affected Client must include an acknowledgment that the client is not obligated to retain the Interim Administrator.

Staff Comment: Beginning in 2023, these amendments impose new obligations on private practice attorneys and the State Bar of Michigan with regard to identifying, designating, and serving as Interim Administrators when an attorney becomes unable to practice.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 15, 2022

Clerk

are absolutely immune from suit for conduct arising out of the performance of their duties and responsibilities regarding the Client Protection Fund.

Section 5. Notwithstanding the confidentiality provisions of SBR 19, the State Bar of Michigan may disclose information concerning Client Protection Fund claims and information obtained during the investigation of Client Protection Fund claims to persons and entities authorized and empowered to investigate and administer Client Protection Fund claims in other states.

Rule 21. Mandatory Interim Administrator Planning.

(A) 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 MCR 9.301 and pursuant to Rule 2(B) of the Rules Concerning the State Bar of Michigan. On the State Bar of Michigan annual licensing statement, the attorney shall, beginning in 2023 and annually thereafter,

(1) designate another active Michigan attorney in good standing or law firm with at least one other active Michigan attorney in good standing to serve as the attorney's Interim Administrator, or indicate that he or she wishes to designate an attorney from the list maintained by the State Bar of Michigan; and

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

The State Bar of Michigan shall create a confirmation process for designated Interim Administrators to confirm that they are willing to serve as Interim Administrator.

(B) A member who indicates in the annual licensing statement that he or she wishes to utilize the list maintained by the State Bar of Michigan must pay a \$60 fee to the State Bar of Michigan each time he or she chooses this option on the annual licensing statement. The fees collected under this subrule may only be used to fund activities related to Interim Administrators and Interim Administrator planning.

(C) The State Bar of Michigan shall maintain a list of members who have indicated willingness to serve as Interim Administrators under Rule 2(C) of the Rules Concerning the State Bar of Michigan. This list must include the member's name, address, and the judicial circuit(s) and practice area(s) in which he or she is willing to be appointed as an Interim Administrator. The State Bar of Michigan will only match an attorney to an Interim Administrator upon notification that the attorney has become an Affected Attorney as defined in MCR 9.301(A).

(D) Every Interim Administrator, as that term is defined in MCR 9.301(E), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Michigan Court Rules.

(E) The State Bar of Michigan shall submit a written report to the Michigan Supreme Court regarding the implementation of the Interim Administrator Program by January 1, 2024. The report shall contain an accounting of the funds received and expended under subrule (B).

CERTIFICATE OF SERVICE

I, Pamela D. Bucy, hereby certify that I have served true and accurate copies of the foregoing Petition - Other to the following on 10-28-2025:

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Electronically signed by Sheena M. Broadwater on behalf of Pamela D. Bucy
Dated: 10-28-2025