

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2008

In the Matter of the Amendments to)
Rules 4, 9, 11, 12, and 15 of the)
Disciplinary Code for the)
Wyoming State Bar)

**ORDER AMENDING RULES 4, 9, 11, 12, AND 15 OF THE
DISCIPLINARY CODE FOR THE WYOMING STATE BAR**

The Officers and Commissioners of the Wyoming State Bar have recommended that the Wyoming Supreme Court amend Rules 4, 9, 11, 12, and 15 of the Disciplinary Code for the Wyoming State Bar. The Court, having carefully reviewed the proposed amendments, finds that the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rules 4, 9, 11, 12, and 15 of the Disciplinary Code for the Wyoming State Bar, attached hereto, be, and hereby are, adopted by the Court to be effective January 1, 2009; and it is further

ORDERED that the amendments to Rules 4, 9, 11, 12, and 15 of the Disciplinary Code for the Wyoming State Bar, attached hereto, shall be published in the advance sheets of the Pacific Reporter, the Wyoming Reporter, and in the Wyoming Court Rules; and that the amendments to Rules 4, 9, 11, 12, and 15 of the Disciplinary Code for the Wyoming State Bar shall thereupon be spread at length upon the journal of this Court.

DATED this 25th day of November, 2008.

BY THE COURT:

BARTON R. VOIGT
Chief Justice

DISCIPLINARY CODE FOR THE WYOMING STATE BAR

4. Forms of discipline.

Misconduct shall be grounds for the imposition of any of the following forms of discipline:

(a) Public discipline.

(iii) Public censure, which means an order of the Court condemning an attorney for misconduct, but not limiting the attorney's right to practice law. ~~A public censure shall be a permanent part of the attorney's record.~~

(b) Private discipline.

(i) Private reprimand, which means a judgment of the BPR condemning an attorney for misconduct, but not limiting the attorney's right to practice law. ~~A private reprimand shall remain on the attorney's record for a period not to exceed five (5) years, and then be removed.~~

(d) An order from the Court of any public discipline shall be a permanent part of the attorney's record.

(e) An order from the Board of Professional Responsibility of any private discipline shall be a part of the attorney's record for five years, then be removed.

9. Board of Professional Responsibility (BPR).

(b) The BPR shall have the following powers and duties:

(v) When the incapacity of an attorney to continue the practice of law by reason of mental infirmity, illness or substance abuse has been proved by clear and convincing evidence at a hearing, to recommend to the Court the placing of the attorney on ~~disability~~ inactive incapacitated status.

11. Pre-hearing procedures.

(b) If the investigation discloses that there is no clear and convincing evidence of a violation of the Rules of Professional Conduct, Bar Counsel may dismiss the complaint. Bar Counsel shall then serve a notice of dismissal upon the complainant and inform the complainant of the right to seek review of the dismissal by the Panel. Review by the Panel shall be limited to the issue of abuse of discretion. Any costs of preparing the record for review by the Peer Review Panel shall be paid by the complainant. Such costs must be paid before the record is prepared or the review will not proceed.

(m) If the respondent fails to answer the formal charge within twenty (20) days or other time period as stipulated with Bar Counsel or ordered by the BPR, Bar Counsel may file a motion for entry of an order of default. Bar Counsel shall file and serve on respondent a motion for entry of an order of default. The BPR shall then hold a hearing to inquire into the appropriate form of discipline. No order shall be entered or recommendation made to the Court without the BPR being satisfied that there is a factual basis for the violation and for imposition of the form of discipline. Respondent may only be heard by the BPR regarding the form of discipline to be imposed. The BPR may then order private discipline or it may make a recommendation to the Court for public discipline.

12. Probable cause determination.

(a) Before Bar Counsel may file a formal charge or a petition regarding disability incapacitated status in a matter arising under these rules, the Panel shall receive and review evidence to determine whether there is probable cause for the filing of a formal charge or a petition regarding disability incapacitated status.

(b) The test for determining the existence of probable cause is whether a factual situation is sufficient to warrant a reasonably prudent person to believe that a violation has been committed by respondent, justifying the filing of a formal charge, or that an attorney is incapacitated, justifying the filing of a petition regarding disability incapacitated status.

(e) If the Panel finds probable cause, Bar Counsel shall file a formal charge or a petition regarding disability incapacitated status with the BPR and serve it on respondent as provided in Section 11.

(f) If the Panel does not find probable cause for a formal charge or a petition regarding disability incapacitated status to be filed, the file shall be closed.

15. Disability inactive status.

~~(a) Upon proper proof that an attorney has been judicially declared mentally incompetent, the Court shall enter an order placing the attorney on disability inactive status for an indefinite period until further order of the Court. A copy of the Court's order shall be served upon the Wyoming State Bar, the attorney, the attorney's guardian, if any, and, if the attorney is a patient in a mental health facility, on the director of the mental health facility.~~

~~(b) All attorneys and courts have an affirmative duty to notify Bar Counsel that mental competency or guardianship or conservatorship proceedings have been filed regarding an attorney licensed in the State of Wyoming or that such attorney has been judicially declared mentally incompetent or that a guardian or conservator has been appointed for such attorney.~~

~~(c) Bar Counsel may initiate an investigation into whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity, illness or substance abuse.~~

~~(i) If, after such investigation, Bar Counsel determines that a prima facie case has been made that the attorney is incapacitated as provided by this rule, then Bar Counsel shall prepare a petition to the BPR seeking disability inactive status and present evidence in support thereof to the Peer Review Panel for a probable cause determination pursuant to Section 12.~~

~~(ii) If the Peer Review Panel finds probable cause, the BPR shall then schedule a hearing at which Bar Counsel shall have the burden of proving by clear and convincing evidence that the attorney is so incapacitated.~~

~~(iii) At the conclusion of the hearing, the BPR shall issue a report with findings of fact, conclusions of law, and its recommendation on the petition to transfer the attorney to disability inactive status and shall file such report with the clerk of the Court. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings.~~

~~(iv) If the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney on disability inactive status for an indefinite period. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings.~~

~~(d) If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental infirmity, illness, or substance abuse, which makes it impossible for the respondent to adequately defend himself or herself, the Court, upon petition from the BPR, shall enter an order immediately suspending respondent's license to practice law and staying the pending disciplinary proceeding until a determination is made of the respondent's mental competence.~~

~~(e) An attorney who is placed on disability inactive status shall not engage in the practice of law until reinstated to active status in accordance with the provisions of subdivision (f).~~

~~(f) An attorney placed on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement no more often than once in any twelve month period, or at such shorter intervals as the Court may direct in the order placing the attorney on disability inactive status.~~

~~(i) A proceeding shall be commenced upon such application, and a hearing held in accordance with the provisions of subdivision (e) to determine the attorney's capacity to practice law, except that the burden of proof in any reinstatement proceeding shall be on the attorney to prove by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law.~~

~~(ii) At the conclusion of the hearing, the BPR shall issue a report with findings of fact, conclusions of law, and its recommendation on the petition for reinstatement and shall file such report with the clerk of the Court. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings. If the Court concludes that the attorney should be allowed to return to the active practice of law, it shall enter an order to that effect, including any conditions upon the attorney's practice as it deems just and proper. If the Court concludes that the respondent should not be allowed to return to the active practice of law, it shall enter an order stating that respondent shall remain on disability inactive status.~~

~~(iii) In its discretion, the Court may direct that the attorney shall pay the expense of any examination, investigation or hearing, together with costs.~~

~~(g) The filing of an application for reinstatement by an attorney placed on disability inactive status shall be deemed to constitute a waiver of any privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name and address of every psychiatrist, psychologist, physician, or other mental health care professional, and any hospital or other health care facility by whom or in which the attorney has been examined or treated since the transfer to disability inactive status. The attorney shall execute and~~

~~deliver to the Bar Counsel a written authorization, waiving all applicable physical and mental health care privileges and giving Bar Counsel unrestricted access to all psychiatric, psychological, medical, hospital, and other health care information concerning the attorney.~~

[Repealed]