

***IN THE SUPREME COURT, STATE OF WYOMING***

***October Term, A.D. 2014***

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***In the Matter of the Repeal of the*** )  
***Adoption of the Wyoming Rules of*** )  
***Disciplinary Procedure*** )

**ORDER ADOPTING THE WYOMING RULES OF DISCIPLINARY PROCEDURE**

**AND**

**ORDER REPEALING THE DISCIPLINARY CODE FOR THE WYOMING STATE BAR**

**The Officers and Commissioners of the Wyoming State Bar** have recommended that the Wyoming Supreme Court repeal the Disciplinary Code for the Wyoming State Bar and replace that Code with the Wyoming Rules of Disciplinary Procedure. The Court, having carefully reviewed the proposed rules, finds the rules should be adopted, as revised.

The Disciplinary Code was last substantially revised in 2003. At that time, the Peer Review Panel (PRP) was created to oversee Bar Counsel. Over the years that followed, individuals working with the Disciplinary Code noted various deficiencies and concerns.

In 2012, the Court requested the ABA Standing Committee on Professional Discipline to review Wyoming's attorney discipline system. After spending a week in Cheyenne meeting with various individuals involved in the disciplinary process, the ABA's consultation team issued its *Report on the Wyoming Lawyer Discipline System* in January 2013. The report included a number of recommendations for changes to Wyoming's attorney discipline system.

After careful study of those recommendations and the Disciplinary Code, Bar Counsel, the Board of Professional Responsibility (BPR), and the PRP agreed a rewrite of the Disciplinary Code was needed. Bar Counsel took the lead role in developing the new rules, with the BPR and PRP assisting. In August of 2014, the draft rules were presented to the Board of Officers and Commissioners of the Wyoming State Bar, who approved the rules being circulated for comment.

The proposed rules were circulated to bar membership for comment on August 20, 2014, with the comment period to close September 30, 2014. When few comments were received, the comment period was extended to October 24, 2014. On October 16, 2014, Bar Counsel presented a free one-hour webinar on the proposed rules. Nearly 500 bar members registered for the webinar. Following the webinar, more comments were received.

Bar Counsel, the BPR, and the PRP reviewed all comments. Several revisions were made in response to comments from members. With those changes, the BPR and the PRP unanimously endorsed a final draft, which was submitted to the Board of Officers and Commissioners (Board) for approval. In November of 2014, the Board met and discussed the proposed rules. The Board was divided on a proposed rule to make lawyer discipline proceedings public upon the filing of a formal charge. A majority of the Board approved the proposed rule. The Board subsequently submitted the proposed rules to the Court.

The Court carefully reviewed the proposed rules. The Court determined that the proposed rule to make disciplinary proceedings public upon the filing of a formal charge required further study and did not adopt proposed rules pertaining to that issue. The Court concluded that the remaining proposed rules, with minor revisions, should be adopted. The Court expresses its deepest gratitude to all who have devoted their time and talent to this important project. It is, therefore,

**ORDERED** that the Wyoming Rules of Disciplinary Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective July 1, 2015; and it is further

**ORDERED** that effective July 1, 2015, the existing Disciplinary Code for the Wyoming State Bar is repealed; and it is further

**ORDERED** that this order and the attached rules shall be published in the advance sheets of the Pacific Reporter; the attached rules shall be published in the Wyoming Court Rules Volume; and that this order and the attached rules shall be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The Wyoming Rules of Disciplinary Procedure shall also be recorded in the journal of this Court.

**DATED** this 20<sup>th</sup> day of February, 2015.

**BY THE COURT:**

/s/

**E. JAMES BURKE**  
**Chief Justice**

# Wyoming Rules of Disciplinary Procedure

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### **Rule 1. Preamble.**

(a) *Statement of Policy.* All members of the Wyoming State Bar, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times. As officers of the Wyoming Supreme Court, attorneys must observe the highest standards of professional conduct. A license to practice law is a continuing proclamation by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence; that the attorney will be true to that trust; that the attorney will hold inviolate the confidences of clients; and that the attorney will competently fulfill the responsibilities owed to clients and to the courts. In order to maintain the highest standards of professional conduct, attorneys who have demonstrated that they are unable, or are likely to be unable, to discharge their professional responsibilities shall be subject to appropriate disciplinary or disability proceedings.

(b) *Jurisdiction.* Every member of the Wyoming State Bar, any attorney admitted *pro hac*

*vice*, and any attorney who is not admitted to the Wyoming State Bar but practicing law in Wyoming is subject to the disciplinary and disability jurisdiction of the Court. By practicing law in Wyoming, an attorney is deemed to consent to the disclosure of any Wyoming disciplinary action to those jurisdictions in which the attorney is licensed to practice.

(c) *Standards of Conduct.* Acts or omissions by an attorney, individually or in concert with any other person or persons which violate the Wyoming Rules of Professional Conduct or these rules shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. Failure to respond to a request from Bar Counsel or to comply with the requirements of these rules may be grounds for discipline.

(d) *Plenary Power of the Court.* The Court reserves the authority to review any determination made in the course of a disciplinary proceeding and to enter any order with respect thereto, including an order directing that further proceedings be conducted as provided by these rules.

## **Rule 2. Definitions.**

(a) “Attorney” means a person duly admitted to practice law in this state, a person permitted by rule to practice in this state, or a person admitted to practice law in any other jurisdiction who engages in the practice of law within this state.

(b) “Bar Counsel” means a member of the Wyoming State Bar employed by the Wyoming State Bar to perform duties pursuant to these rules. “Bar Counsel” includes “Special Bar Counsel.”

(c) “BPR” means the Board of Professional Responsibility.

(d) “BPR Chair” means the Chair of the BPR or, as appropriate, another member of the BPR or a Disciplinary Judge designated by the Chair of the BPR to act in his or her stead with respect to specific matters.

(e) “BPR Clerk” means the Clerk of the Board of Professional Responsibility.

(f) “Complaint” means any written allegation of attorney misconduct.

(g) “Complainant” means any person who makes a complaint.

(h) “Court” means the Wyoming Supreme Court.

(i) “Disciplinary Judge” means a lawyer appointed by the Court to exercise the powers specified in Rule 7.

(j) “Disciplinary proceeding” means a proceeding that is initiated with the filing of a formal charge as provided in these rules.

(k) “Office of Bar Counsel” means Bar Counsel and all employees under the supervision of Bar Counsel.

(l) “Respondent” means an attorney against whom a complaint has been made or an investigation has been initiated.

(m) “ROC” means Review and Oversight Committee.

(n) “Served,” with respect to a document, means emailed, faxed, mailed, hand delivered, or any other means of transmitting a document. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon the party, and the notice or document is served upon the party by mail, three days shall be added to the prescribed period, provided, however, that such response time for documents required to be served by certified mail shall run from the date of receipt of the certified mailing.

(o) “Special Bar Counsel” is included within the definition of “Bar Counsel.”

**Rule 3. Confidentiality of Proceedings Under these Rules.**

(a) All proceedings pursuant to these rules are confidential unless and until an order of public discipline is issued by the Court, except that the pendency, subject matter, and status of an investigation may be disclosed by Bar Counsel if:

- (1) The respondent has waived confidentiality;
- (2) The proceeding is based upon allegations that include either the conviction of a crime or public discipline imposed by a foreign jurisdiction;
- (3) The proceeding is based on allegations that have become generally known to the public;
- (4) There is a need to notify another person or organization, including the Clients’ Security Fund, to protect the public, the administration of justice, or the legal profession;
- (5) An Order of Immediate Suspension has been entered pursuant to Rule 17; or
- (6) As necessary in Bar Counsel’s discretion to conduct any investigation or proceedings pursuant to these rules.

(b) *Proceedings Regarding Disability.* In proceedings regarding an attorney’s disability, all orders transferring an attorney to or from disability inactive status shall be matters of public record, but otherwise, such proceedings shall be confidential and shall not be made public, except by order of the Court.

(c) *Disclosure to Law Firms.* When Bar Counsel obtains an order transferring the respondent to disability inactive status or is authorized to file a formal charge, the respondent shall make written disclosure to the respondent's current firm and, if different, to the respondent's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within 14 days of the date of the order or of the date of filing of a formal charge.

(d) *Pending Investigations.* Except as provided by section (a) of this rule, Bar Counsel shall treat as confidential investigations pending with Bar Counsel or before the ROC.

(e) *Cases Dismissed.* Except as provided by section (a) of this rule, Bar Counsel shall treat as confidential complaints that have been dismissed.

(f) *Production of Records Pursuant to Subpoena.* Bar Counsel, pursuant to a valid subpoena, shall not permit access to files or records or furnish documents that are confidential as provided by these rules unless the Court orders otherwise. When Bar Counsel is permitted to disclose confidential documents contained in files or confidential records, a reasonable fee may be charged for identification of and photocopying the documents and records.

(g) *Response to False or Misleading Statement.* If public statements that are false or misleading are made about any disciplinary investigation or proceeding or disability inactive status proceeding, Bar Counsel may disclose information to the extent necessary to correct the false or misleading statements.

(h) *Request for Nonpublic Information.* A request for nonpublic information other than that authorized for disclosure under section (a) of this rule shall be denied unless the request is from:

- (1) An agency authorized to investigate the qualifications of persons for admission to practice law;
- (2) An agency authorized to investigate the qualifications of persons for government employment;
- (3) An attorney discipline enforcement agency;
- (4) A criminal justice agency; or
- (5) An agency authorized to investigate the qualifications of judicial candidates. If the Judicial Nominating Commission requests the information it shall be furnished promptly and Bar Counsel shall give written notice to the attorney that specified confidential information has been so disclosed.

(i) *Notice to the Attorney.* Except as provided in section (h)(5) of this rule, if Bar Counsel is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by

whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of 21 days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Court requiring its release.

(j) *Release Without Notice.* If an agency otherwise authorized by section (h) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

- (1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;
- (2) The information is essential to that investigation; and
- (3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

(k) *Notice to National Regulatory Data Bank.* Bar Counsel shall transmit notice of all public discipline imposed against an attorney, transfers to or from disability inactive status, and reinstatements to the National Regulatory Data Bank maintained by the American Bar Association.

(l) *Duty of Officials and Employees.* All officials and employees within the Office of Bar Counsel, the ROC, the BPR, and a Disciplinary Judge shall conduct themselves so as to maintain the confidentiality mandated by this rule.

(m) *Evidence of Crime.* Nothing in these rules shall be construed to preclude any person from giving information to authorities authorized to investigate criminal activity.

#### **Rule 4. Review and Oversight Committee.**

(a) *Appointment.* The Court shall appoint a Review and Oversight Committee (ROC) consisting of three members, all of whom shall be attorneys. Consideration shall be given to the appointment of members who reside in different parts of the state and who have differing degrees of experience and types of expertise in the practice of law.

(b) *Terms; governance; temporary members.* When the ROC is first selected, one member shall be appointed to a three year term, one member shall be appointed to a two year term, and one member shall be appointed to a one year term. Thereafter, all terms shall be three years.

- (1) One member shall be designated by a majority vote of the ROC as Chair, and one member as vice-Chair to act in the absence or disability of the Chair.
- (2) The ROC shall act only upon concurrence of two of the three members.

- (3) For good cause shown, the Court may appoint a temporary replacement member or members in situations in which one or more of the regularly-appointed members are not available to serve.

(c) *Powers and duties of the ROC.* The ROC shall:

- (1) Prepare and submit an annual budget for the Office of Bar Counsel to the Board of Officers and Commissioners. In the event the ROC's annual budget is not approved by the Board of Officers and Commissioners and no agreement can be reached, the Court will be consulted and the Court's decision will control.
- (2) In consultation with the Executive Committee of the Wyoming State Bar and the Court, make decisions regarding the hiring, compensation and termination of Bar Counsel;
- (3) Approve the hiring of Special Bar Counsel in cases in which a complaint has been made against Bar Counsel, Bar Counsel has a conflict of interest, or for other good cause shown, and approve for payment by the Wyoming State Bar all invoices for services provided thereby;
- (4) Provide general supervision of, guidance to, and oversight of the Office of Bar Counsel, including engaging in privileged communications with Bar Counsel regarding ongoing matters;
- (5) Report to the Board of Officers and Commissioners regarding the performance of the Office of Bar Counsel;
- (6) Determine whether sufficiently credible or verifiable information exists to warrant an investigation by Bar Counsel where no written complaint has been received;
- (7) Perform requested reviews of Bar Counsel's dismissal of a complaint;
- (8) Issue private reprimands;
- (9) Determine whether a complaint should be diverted pursuant to Rule 11 and make determinations regarding compliance with or violations of a diversion agreement;
- (10) Determine whether probable cause exists justifying the filing of a formal charge or a petition for disability inactive status; and
- (11) Take any other action authorized by the Court.

(d) *Abstention.* A member of the ROC shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain.

(e) *Reimbursement of expenses.* Members of the ROC shall be entitled to reimbursement for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

(f) *Confidentiality of ROC proceedings.* All communications between Bar Counsel and the ROC and all records, findings, and proceedings of the ROC are confidential and privileged, and are not subject to discovery or introduction into evidence in any civil action.

**Rule 5. Bar Counsel.**

(a) *Terms of employment.* Bar Counsel shall be an employee of the Wyoming State Bar and shall serve at the pleasure of the ROC.

(b) *Qualifications.* Bar Counsel shall be an active member of the Wyoming State Bar with no less than five years' experience in the practice of law.

(c) *Bar Counsel's non-disciplinary powers and duties.* Bar Counsel shall:

- (1) Supervise staff provided for the performance of Bar Counsel functions, including hiring, performance review, compensation and termination, all in consultation with the ROC;
- (2) Assist the ROC in developing an annual budget for the office of Bar Counsel for submission to the Board of Officers and Commissioners of the Wyoming State Bar;
- (3) Perform such duties relating to regulation of the practice of law as may be assigned by the ROC in consultation with the Court and the Executive Committee of the Wyoming State Bar;
- (4) Attend meetings of the Board of Officers and Commissioners of the Wyoming State Bar;
- (5) Advise and support the staff of the Wyoming State Bar with respect to matters requiring or benefiting from legal experience and training, including without limitation drafting, interpretation and revision of rules; responding to inquiries from the public; negotiation, preparation and interpretation of contracts and other legal documents; personnel matters; and issues relating to the professional practice of law in the State of Wyoming;
- (6) Participate in continuing legal education and similar activities relating to the professional practice of law in the State of Wyoming;
- (7) Contribute to the *Wyoming Lawyer* as requested by the editor; and
- (8) Perform such other duties as the ROC may direct.

(d) *Bar Counsel's disciplinary powers and duties.* Bar Counsel shall:

- (1) Investigate allegations of attorney misconduct;
- (2) Prepare and prosecute disciplinary and disability matters;
- (3) In appropriate cases, negotiate dispositions of pending matters including stipulated discipline and diversions;
- (4) Promptly notify the complainant and the respondent of the disposition of each complaint;
- (5) Prosecute contempt and other proceedings for violations of these rules or the orders of the BPR or the Court;
- (6) Prepare and prosecute petitions for immediate suspension;
- (7) Represent the Wyoming State Bar with respect to petitions for reinstatement;
- (8) Take appropriate disciplinary action with respect to attorneys who are convicted of crimes;
- (9) Assist the Wyoming State Bar in dissemination of information regarding disciplinary matters;
- (10) Provide a written status report to the BPR and ROC no less than quarterly on those matters within their duties and responsibilities;
- (11) Without disclosing the identities of complainants and respondents, provide a written status report to the Board of Officers and Commissioners no less than quarterly regarding all pending matters;
- (12) Maintain a summary of all disciplinary orders to be made available to the public and members of the Wyoming State Bar;
- (13) Respond to inquiries from the Court and from disciplinary counsel in other jurisdictions regarding an attorney's disciplinary history; and
- (14) Perform such other duties as the ROC may direct.

(e) Bar counsel may respond to inquiries from members of the Wyoming State Bar relating to application or interpretation of the Wyoming Rules of Professional Conduct.

(f) *Special Bar Counsel.*

- (1) Special Bar Counsel may be employed in cases in which a complaint has been made against Bar Counsel, Bar Counsel has a conflict of interest, or for other good cause shown.
- (2) Special Bar Counsel shall have the same powers and duties as Bar Counsel.

- (3) Special Bar Counsel shall not represent an attorney in any matter arising under these rules while acting as Special Bar Counsel.

**Rule 6. Board of Professional Responsibility.**

(a) *Appointment.* The Court shall appoint, upon the advice of the president of the Wyoming State Bar, a Board of Professional Responsibility (BPR), consisting of seven members, five of whom shall be members of the Wyoming State Bar and two of whom shall be non-attorneys. Consideration shall be given to the appointment of members who reside in different parts of the state and who have differing degrees of experience and types of expertise in the practice of law.

(b) *Terms; governance; temporary members.* One member shall be designated by a majority vote of the BPR as Chair, a second as vice-Chair to act in the absence or disability of the Chair, and a third as second vice-Chair to act in the absence or disability of the Chair and vice-Chair.

- (1) Each member of the BPR shall serve a three year term. If a member does not complete a term, the Court shall appoint another person to complete that term.

- (2) Attorneys must succeed attorneys and non-attorneys must succeed non-attorneys on the BPR.

- (3) No member shall serve for more than two consecutive terms, although a former member may be appointed to serve again after having been off the BPR for at least three (3) years.

- (4) The BPR shall act only upon concurrence of a majority of a quorum. A quorum shall be no fewer than five (5) members.

- (5) For good cause shown, the Court may appoint a temporary replacement member or members in situations in which one or more of the regularly-appointed BPR members are not available to serve.

(c) *Powers and duties of the BPR.* The BPR shall:

- (1) Hold all necessary hearings upon formal charges and petitions filed pursuant to these rules;

- (2) Assign a Disciplinary Judge to preside over such matters as may be appropriate under these rules;

- (3) With regard to any matter for which a Disciplinary Judge has not been assigned, appoint a member of the BPR designated by the BPR Chair who shall have and exercise all of the powers of a Disciplinary Judge as provided in Rule 7;

- (4) When misconduct has been proved by clear and convincing evidence at a hearing, or misconduct has been established by default, issue a private reprimand or recommend an appropriate public discipline to the Court;

- (5) When the disability 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, recommend to the Court the placing of the attorney on disability inactive status;
- (6) Approve or disapprove all stipulations relating to public discipline or transfer to disability inactive status and make its recommendations on such stipulations to the Court;
- (7) Rule upon all dispositive motions;
- (8) Make recommendations to the Court regarding the reinstatement of a person to practice law; and
- (9) Take any other action authorized by the Court.

(c) *Abstention.* A member of the BPR shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain.

(d) *Reimbursement of expenses.* Members of the BPR shall be entitled to reimbursement for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

#### **Rule 7. Disciplinary Judge.**

(a) The Court may appoint, upon the advice of the BPR, a pool of up to five members of the Wyoming State Bar to act as Disciplinary Judges. Disciplinary Judges shall meet the qualifications of state district court judges.

(b) Upon a written request of Bar Counsel or the Respondent setting forth the reasons for the request, a Disciplinary Judge may be assigned in a proceeding by the BPR Chair, and shall have the following powers and duties:

- (1) To issue and enforce subpoenas;
- (2) To administer oaths and affirmations;
- (3) To conduct a scheduling conference if requested by a party, and to enter a scheduling order following the conference;
- (4) To conduct pre-hearing conferences and establish pre-hearing procedures in cases which involve formal charges of misconduct, petitions for reinstatement, or petitions for transfer to and from disability inactive status;
- (5) To rule upon nondispositive pre-hearing motions;

- (6) To preside at hearings and to rule on evidentiary matters as requested; and
- (7) To compel obedience to rulings, orders, and subpoenas, including the imposition of sanctions pursuant to the provisions of Rule 37, W.R.Civ.P.

(c) A Disciplinary Judge shall refrain from taking part in any proceeding in which the recusal of a judge, similarly situated, would be required. No attorney in the law firm of a member of a Disciplinary Judge may accept or continue in employment connected with any matter pending before the Disciplinary Judge.

(d) A Disciplinary Judge shall not represent an attorney in any matter arising under these rules while appointed to the pool of Disciplinary Judges.

(e) Rulings by a Disciplinary Judge shall be deemed to constitute rulings of the BPR.

(f) Disciplinary Judges shall be entitled to reimbursement for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.

**Rule 8. Grounds for Discipline.**

(a) Misconduct by an attorney, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

- (1) Any act or omission which violates the provisions of the Wyoming Rules of Professional Conduct;
- (2) Any criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action;
- (3) Any act or omission which violates these rules or which violates an order of discipline, a diversion contract or a determination of disability; or
- (4) Failure to respond without good cause shown to a request by Bar Counsel, the ROC, the BPR, a Disciplinary Judge, the Clients' Security Fund Committee or the Committee on Resolution of Fee Disputes, or obstruction of Bar Counsel, the ROC, the BPR, a Disciplinary Judge, the Clients' Security Fund Committee or the Committee on Resolution of Fee Disputes or any part thereof in the performance of their duties. Good cause includes, but is not limited to, an assertion that a response would violate the respondent's constitutional privilege against self-incrimination.

(b) This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions deemed by the ROC to constitute unprofessional conduct may constitute grounds for discipline.

**Rule 9. Forms of Discipline; Publication of Disciplinary Orders; Probation.**

(a) *Forms of discipline.* Any of the following forms of discipline may be imposed in those cases where grounds for discipline have been established:

(1) *Disbarment.* Disbarment is the revocation by the Court of an attorney's license to practice law in this state, subject to reinstatement as provided in Rule 22. Disbarment shall be for five years.

(2) *Suspension.* Suspension is the temporary suspension by the Court of an attorney's license to practice law in this state, subject to reinstatement as provided in Rule 22. Suspension, which may be stayed in whole or in part at the discretion of the Court when probation is imposed, shall be for a definite period of time not to exceed three years.

(3) *Public censure.* Public censure is an order of the Court censuring an attorney's misconduct but not limiting the attorney's right to practice law.

(4) *Private reprimand.* Private reprimand is an order from the ROC or the BPR admonishing an attorney for misconduct.

(A) An attorney who has been admonished by the ROC and who wishes to challenge the private reprimand may, by filing a written petition with the BPR Clerk within 20 days after the private reprimand was served on the attorney, demand as a matter of right that the private reprimand be vacated, that a formal charge be filed against the attorney, and that disciplinary proceedings continue in the manner prescribed by these rules. Upon the filing of a written petition, the private reprimand shall be withdrawn and Bar Counsel shall proceed with a formal charge. The fact that a private reprimand was issued by the ROC and rejected by the respondent shall not be admissible in the disciplinary proceeding.

(B) A private reprimand shall be part of an attorney's record for five years, then be removed. Private reprimands issued more than five years before a subsequent disciplinary hearing shall not be considered by the BPR for purposes of recommending subsequent discipline.

(C) For educational purposes, Bar Counsel may cause to be published a summary of any private reprimand without mention of the attorney's name and with other identifying information removed.

(b) *Publication in Pacific Reporter.* Orders of disbarment, suspension, public censure, transferring an attorney to disability inactive status and orders resulting from an attorney's petition for reinstatement shall be published in the Pacific Reporter and shall remain a permanent part of the attorney's record.

(c) *Probation.*

(1) *Eligibility.* As part of a conditional admission or during proceedings pursuant to Rule 15, when an attorney has demonstrated that the attorney:

- (A) is unlikely to harm the public during the period of probation and can be adequately supervised;
- (B) is able to perform legal services and is able to practice law without causing the courts or the profession to fall into disrepute; and
- (C) has not committed acts warranting disbarment,

then the attorney may be placed on probation. Probation shall be imposed for a specified period of time only in conjunction with a suspension which may be stayed in whole or in part. Such an order shall be regarded as an order of discipline. The period of probation shall not exceed three years unless an extension is granted upon motion by either party. A motion for an extension must be filed prior to the conclusion of the period originally specified.

(2) *Conditions.* The order placing an attorney on probation shall specify the conditions of probation. The conditions shall take into consideration the nature and circumstances of the attorney's misconduct and the history, character, and health status of the attorney and shall include no further violations of the Wyoming Rules of Professional Conduct. The conditions may include but are not limited to the following:

- (A) Making periodic reports to Bar Counsel as provided in subsection (c)(4) of this rule;
- (B) Monitoring the attorney's practice or accounting procedures;
- (C) Establishing a relationship with an attorney-mentor, and regular reporting with respect to the development of that relationship;
- (D) Satisfactory completion of a course of study;
- (E) Successful completion of the multi-state professional responsibility examination;
- (F) Refund or restitution;
- (G) Medical evaluation or treatment;
- (H) Mental health evaluation or treatment;
- (I) Evaluation or treatment in a program that specializes in treating disorders related to sexual misconduct;

- (J) Evaluation or treatment in a program that specializes in treating matters relating to perpetration of family violence, including but not limited to domestic partner, elder, and child abuse;
  - (K) Abstinence from alcohol and drugs; and
  - (L) No further violations of the Wyoming Rules of Professional Conduct.
- (3) *Costs.* The attorney shall also be responsible for all costs of evaluation, treatment and supervision. Failure to pay these costs prior to termination of probation shall constitute a violation of probation.
- (4) *Monitoring.* Bar Counsel shall monitor the attorney's compliance with the conditions of probation imposed under these rules.
- (5) *Violations.* If, during the period the attorney is on probation, Bar Counsel receives information that any condition may have been violated, Bar Counsel may file a motion with the BPR specifying the alleged violation and seeking an order requiring the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion shall toll any period of suspension until final action. A hearing shall be held upon motion of either party before the BPR. At the revocation hearing, Bar Counsel has the burden of establishing by a preponderance of the evidence the violation of a condition of probation. When, in a revocation hearing, the alleged violation of a condition is the attorney's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima facie evidence of a violation. Any evidence having probative value shall be received regardless of its admissibility under the rules of evidence if the attorney is accorded a fair opportunity to rebut hearsay evidence. Following the revocation hearing, the BPR shall issue a report and recommendation to the Court setting forth findings of fact, conclusions of law and recommended action with respect to the revocation.
- (6) *Independent charges.* A motion for revocation of an attorney's probation shall not preclude Bar Counsel from filing independent disciplinary charges based on the same conduct as alleged in the motion.
- (7) *Termination.* Unless otherwise provided in the order of suspension, within 28 days and no less than 14 days prior to the expiration of the period of probation, the attorney may file with the BPR an application for reinstatement and a supporting affidavit stating that the attorney has complied with all terms of probation. Upon receipt of said application and supporting affidavit, and absent objection from Bar Counsel, the BPR shall submit to the Court a report that the period of probation was successfully completed and recommending the attorney's reinstatement to the practice of law.

**Rule 10. Disciplinary Investigations.**

(a) *Commencement.* A disciplinary investigation may be commenced:

- (1) Upon receipt of a written complaint made by any person and directed to Bar Counsel;
- (2) Upon a report made by a judge or court clerk directed to Bar Counsel;
- (3) By Bar Counsel with approval from the ROC. The ROC shall not authorize an investigation in the absence of sufficiently credible or verifiable information warranting it.

(b) *Bar Counsel's determination to proceed.* Upon commencement of a disciplinary investigation, Bar Counsel shall determine:

- (1) If the attorney in question is subject to the disciplinary jurisdiction of the Court;
- (2) If there is an allegation made against the attorney in question which, if proved, would constitute grounds for discipline;
- (3) If an investigation should be stayed until underlying litigation is resolved; and
- (4) If the matter should be investigated or addressed by means of an alternative to discipline as provided in Rule 11.

In making a determination whether to proceed, Bar Counsel may make inquiry regarding the underlying facts and consult with the ROC. The decision of Bar Counsel shall be final, and the complainant shall have no right to appeal.

(c) *Procedures for investigation.* If Bar Counsel makes a determination to proceed with an investigation, Bar Counsel shall give the attorney in question written notice that the attorney is under investigation and will provide the attorney with a copy of the complaint or other information regarding the allegations prompting the investigation. The attorney in question shall file a written response to the allegations. The investigation shall continue until Bar Counsel is satisfied that sufficient information has been gathered to warrant a determination as to further action. Bar Counsel shall have a continuing obligation to disclose all exculpatory information to the respondent.

- (1) In connection with an investigation of allegations made against an attorney, Bar Counsel may issue subpoenas to compel the attendance of witnesses, including the attorney in question, and the production of pertinent books, papers, documents, or other evidence. All such subpoenas shall be subject to the provisions of Rule 45, W.R.Civ.P. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the ROC Chair.
- (2) Any person who fails or refuses to comply with a subpoena issued pursuant to this rule may be cited for contempt of the Court.
- (3) Any person who knowingly obstructs Bar Counsel or the ROC or any part thereof in the performance of their duties may be cited for contempt of the Court.

- (4) Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Court.
- (5) In the event any person fails or refuses to comply with the provisions of this rule, Bar Counsel may file with the ROC a motion for order to show cause why the person should not be held in contempt of court. The person against whom the motion is made shall file a written response within 10 days of service of the motion. The motion shall be heard by the ROC Chair. In the absence of good cause shown, the ROC Chair shall submit a report and recommendation to the Court. The Court shall then determine whether to impose contempt.

(d) *Stipulated disposition.* While the matter is under investigation, the respondent and Bar Counsel may tender an agreed upon conditional admission of misconduct as provided in Rule 12.

(e) *Determination by Bar Counsel after investigation.* At the conclusion of the investigation, Bar Counsel shall either dismiss the complaint, divert the matter pursuant to Rule 11, or report to the ROC for a determination as provided in subsection (f) of this Rule.

- (1) If Bar Counsel dismisses the complaint, the complainant may request a review of Bar Counsel's decision by the ROC.
- (2) The ROC shall sustain the dismissal unless it determines that Bar Counsel's determination constituted an abuse of discretion.
- (3) When the ROC sustains a dismissal, it shall furnish the complainant with a written explanation of its determination.

(f) *Determination by the ROC.* If, at the conclusion of the investigation, Bar Counsel believes that the ROC should admonish the respondent by means of a private reprimand or authorize Bar Counsel to prepare and file a formal charge or a petition for disability inactive status, Bar Counsel shall submit a report of investigation and recommendation to the ROC, which report and recommendation shall be confidential and not discoverable by the respondent. The ROC shall determine whether there is probable cause to believe grounds for further action exist and shall either:

- (1) Direct Bar Counsel to conduct further investigation;
- (2) Dismiss the complaint and furnish the complainant with a written explanation of its determination;
- (3) Divert the matter to the diversion program as provided in Rule 11;
- (4) Order a private reprimand; or
- (5) Authorize Bar Counsel to prepare and file a formal charge or a petition for disability inactive status.

(g) *Determination of probable cause for filing formal charge or petition for disability inactive status.* In determining whether to authorize Bar Counsel to file a formal charge or a petition for disability inactive status, or any other determination pursuant to Rule 10(f), the ROC shall proceed as follows:

- (1) In determining whether probable cause exists the ROC shall receive and review such evidence as Bar Counsel shall, in his or her sole discretion, present; provided, however, that Bar Counsel shall present all evidence exculpatory in nature. The ROC and the respondent shall have access to the investigative file, excluding Bar Counsel's work product and other privileged materials.
- (2) Concurrent with submitting a request for authorization to file a formal charge, a petition for disability inactive status or a recommendation for a private reprimand to the ROC, Bar Counsel shall provide notice to the respondent that such a request has been made. The respondent shall have 10 days from the date of service of such notice to submit any information to the ROC. The respondent shall not have a right to appear before the ROC, though the ROC in its sole discretion may request the respondent's appearance if it will assist the ROC in its determination.
- (3) The test for determining the existence of probable cause is whether there is sufficient evidence to lead a reasonably prudent person to believe that misconduct has been committed by a respondent justifying the filing of a formal charge, or that an attorney is incapacitated justifying the filing of a petition for disability inactive status.
- (4) If the ROC issues an order of probable cause, Bar Counsel shall file and serve a formal charge or a petition for disability inactive status, as the case may be.
- (5) The ROC's determination pursuant to this rule is not appealable by any person.
- (6) No record of proceedings relating to the probable cause determination shall be kept. Proceedings before the ROC are not subject to discovery.
- (7) Persons who provide information to the ROC are not prevented from testifying as to matters within their knowledge in any subsequent disciplinary proceeding or civil action, but they shall not be asked about nor disclose their communications with or submittals to the ROC.

#### **Rule 11. Diversion Program.**

(a) Diversion is a voluntary program diverting the emphasis in cases involving minor acts of misconduct away from disciplinary sanctions and towards rehabilitation. It is designed to address minor acts of ethical impropriety which typically can be linked to poor law office management, chemical dependency, or other behavioral health problems. As an alternative to discipline, diversion may be imposed for a definite period of time not to exceed five (5) years.

(b) A diversion program may include, but is not limited to, mediation, fee dispute resolution, law office management assistance, evaluation and treatment through the Wyoming Lawyer

Assistance Program, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education or any other rehabilitative measure authorized by the Court.

(c) Bar Counsel, the ROC, or the BPR may offer diversion to a respondent. The diversion program may be available at any stage of a matter arising under these rules.

(d) As an alternative to a form of discipline, a respondent may participate in an approved diversion program in cases where there is little likelihood that the respondent will harm the public during the period of participation, where the respondent can be adequately supervised in regard to the conditions of the diversion, and where diversion is likely to benefit the attorney and accomplish the goals of the program. A matter will not be diverted under this Rule when:

- (1) The presumptive form of discipline in the matter is likely to be greater than public censure;
- (2) The misconduct involves misappropriation of funds or property of a client or third party;
- (3) The misconduct involves a serious crime as defined by Rule 18(e);
- (4) The misconduct involves family violence;
- (5) The misconduct resulted in, or is likely to result in, actual injury (loss of money, legal rights, or property rights) to a client or third party, unless restitution is made a condition of diversion;
- (6) The respondent has been publicly disciplined in the last three years;
- (7) The matter is of the same or similar nature as misconduct for which the respondent has been disciplined within the past five (5) years;
- (8) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or
- (9) The misconduct is part of a pattern of similar misconduct.

(e) *Diversion agreement.* If a respondent agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written agreement. The agreement shall specify the program(s) to which the attorney shall be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.

- (1) If the agreement is entered prior to a determination to proceed is made pursuant to Rule 10(b), the agreement shall be between the respondent and Bar Counsel.
- (2) If diversion is offered and entered after a determination to proceed is made pursuant to Rule 10(c) but before authorization to file a formal charge, the diversion agreement

between the respondent and Bar Counsel shall be submitted to the ROC for consideration. If the ROC rejects the diversion agreement, the matter shall proceed as otherwise provided by these rules.

- (3) If diversion is offered and entered after a formal charge has been filed pursuant to Rule 13, the diversion agreement shall be submitted to the BPR for consideration. If the diversion agreement is rejected, the matter shall proceed as provided by these rules.

(f) The attorney shall pay all the costs incurred in connection with participation in any diversion program.

(g) Upon finalization and, when necessary, approval of the diversion agreement, the respondent shall enter into the diversion program(s) and complete the requirements thereof. Upon the respondent's entry into the diversion programs(s), the underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.

(h) *Effect of successful completion of the diversion program.* If diversion is entered prior to a determination to proceed pursuant to Rule 10(b)(4), and if Bar Counsel determines that the respondent has successfully completed all requirements of the diversion program, Bar Counsel shall close the file. If diversion is successfully completed in a matter that was determined to warrant investigation or other proceedings pursuant to these rules, the matter shall be dismissed and expunged pursuant to Rule 24. After the file is expunged, the attorney may respond to any general inquiry as provided in Rule 24(d).

(i) *Breach of diversion agreement.* The determination of a breach of a diversion agreement will be as follows:

- (1) If Bar Counsel has reason to believe that the respondent has breached the diversion agreement, and the diversion agreement was entered prior to a decision to proceed pursuant Rule 10(b), and after the respondent has had an opportunity to respond, Bar Counsel may elect to modify the diversion agreement or terminate the diversion agreement and proceed with the matter as provided by these rules.
- (2) If Bar Counsel has reason to believe that the respondent has breached the diversion agreement after a determination to proceed has been made, then the matter shall be referred to the BPR with an opportunity for the respondent to respond. Bar Counsel will have the burden by a preponderance of the evidence to establish the materiality of the breach, and the respondent will have the burden by a preponderance of the evidence to establish justification for the breach. If after consideration of the information presented by Bar Counsel and the respondent's response, if any, it is determined that the breach was material without justification, the agreement will be terminated and the matter will proceed as provided for by these rules. If a breach is established but determined to be not material or to be with justification, the diversion agreement may be modified in light of the breach. If no breach is found, the matter shall proceed pursuant to the terms of the original diversion agreement.

(j) *Confidentiality.* None of the files and records resulting from the diversion of a matter shall be made public except by order of the Court. Nevertheless, Bar Counsel may publish summaries of matters resulting in diversion for educational purposes so long as the attorney's name and other identifying information have been removed. Information provided by the attorney to a treatment provider or a monitor while in a diversion program is confidential to the extent it relates to misconduct that occurred before the attorney's entry into the diversion program.

**Rule 12. Stipulated Discipline.**

(a) *Acceptance of conditional admission.* A respondent may, at any point in the proceedings prior to final action by the BPR, tender a conditional admission of misconduct constituting grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by Bar Counsel prior to being tendered to the ROC or the BPR.

(1) If the form of stipulated discipline is a private reprimand, the conditional admission shall be tendered to the ROC for its review. The ROC shall either reject the conditional admission and order the proceedings continued in accordance with these rules, or accept the conditional admission and order a private reprimand imposed.

(2) If the form of stipulated discipline is disbarment, suspension, public censure, or a range that includes any of the former and a private reprimand, the conditional admission shall be tendered to the BPR for review. The BPR shall, after conducting a hearing as provided in this rule, if one is requested or if the BPR deems it appropriate, either reject the conditional admission and order the proceedings continued in accordance with these rules, or approve the conditional admission and submit an appropriate report and recommendation to the Court.

(3) Imposition of stipulated discipline pursuant to a conditional admission of misconduct shall terminate all proceedings conducted pursuant to these rules and pending against the respondent in connection with that misconduct.

(b) *Conditional admission—contents.* A conditional admission of misconduct shall be in the form of an affidavit, submitted by the respondent, and shall contain:

(1) An admission of misconduct which constitutes grounds for discipline;

(2) An acknowledgment of the proceedings pending against the attorney; and

(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the attorney is fully aware of the implications of the attorney's admission.

(c) *Conditional admission—hearing.*

(1) *Procedure.* A hearing on the conditional admission shall be set promptly. The hearing shall be conducted by telephone conference call unless the Chair orders otherwise.

(2) *Notice.* Reasonable notice of such hearing shall be provided to the respondent, the respondent's counsel, and the complainant. The notice shall designate the date, time and manner of the hearing. The notice shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing and to present argument regarding the form of discipline to be ordered.

(3) *Complainant.* In addition to the foregoing, the notice shall advise the complainant that the complainant has a right to be present at the hearing and to make a statement, orally or in writing, regarding the form of discipline.

(d) *Further proceedings.* If the conditional admission of misconduct is rejected and the matter is returned for further proceedings consistent with these rules, the conditional admission may not be used against the respondent.

### **Rule 13. Formal Charge – Contents, Service.**

(a) *Contents of a formal charge.* A disciplinary proceeding shall be initiated with the filing with the BPR Clerk of a formal charge which shall set forth clearly and with particularity the grounds for discipline with which the respondent is charged and the conduct of the respondent which gave rise to those charges.

(1) The formal charge shall inform the respondent of the respondent's obligation to file and serve an answer within 20 days after service of the formal charge.

(2) The formal charge shall include a statement identifying the categories and nature of costs that may be assessed against the respondent.

(3) All disciplinary proceedings filed as herein provided shall be conducted in the name of the Wyoming State Bar and shall be prosecuted by Bar Counsel.

(b) *Service of formal charge.* Service of a copy of the formal charge shall be made either personally upon the respondent or by certified mail sent to the respondent at the address most recently provided by the respondent to the Wyoming State Bar, or such later address as may be known to the person effecting service. If the attorney is not a member of the Wyoming State Bar, service shall be effected as provided in this subsection, and if service is by certified mail, it shall be made to the attorney's last known address.

### **Rule 14. Answer to Formal Charge – Filing, Failure to Answer, Default.**

(a) *Answer.* Within 20 days after service of the formal charge, or within such greater period of time as may be approved by the BPR or a Disciplinary Judge, the respondent shall file the original of an answer to the formal charge with the BPR Clerk and shall serve a copy upon Bar Counsel. In the answer the respondent shall either admit or deny every material allegation contained in the formal charge, or request that the allegation be set forth with greater particularity. In addition, the respondent shall set forth in the answer any affirmative defenses. Any objection to the formal charge which a respondent may assert, including a challenge to the

formal charge for failure to charge misconduct constituting grounds for discipline, must also be set forth in the answer.

(b) *Failure to answer; default; failure to appear.*

- (1) If the respondent fails to file an answer within the period provided by subsection (a) of this Rule, Bar Counsel shall file a motion for default with the BPR Clerk. Thereafter, the BPR Clerk shall enter a default and the formal charge shall be deemed admitted; provided, however, that a respondent who fails to file a timely answer may, upon a showing that the failure to answer was the result of mistake, inadvertence, surprise, or excusable neglect, obtain leave of the BPR to file an answer.
- (2) Notwithstanding the entry of a default, Bar Counsel shall give the respondent notice of the sanction hearing, at which Bar Counsel and the respondent may appear and present evidence and arguments to the BPR regarding the form of discipline to be imposed. Thereafter the BPR shall conduct a sanction hearing and submit its report and recommendation to the Court as provided in Rule 15.
- (3) If the respondent should fail to appear when specifically so ordered by the BPR, the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and/or to have conceded any motion or recommendations to be considered at such appearance. The BPR shall not, absent good cause, continue or delay proceedings due to the respondent's failure to appear.

**Rule 15. Proceedings Before the BPR.**

(a) *Pre-hearing procedures.*

- (1) *Filing of documents.* All documents required to be submitted to the BPR after the filing of a formal charge shall be filed with the BPR Clerk with copies served on all parties as provided in Rule 5, W.R.Civ.P. The provisions of Rules 6, 7, 8, 10, 11 and 15, W.R.Civ.P., apply to documents filed with the BPR Clerk to the extent those rules are in their nature applicable and consistent with these rules.
- (2) *Scheduling.* The BPR Chair shall conduct one or more scheduling conferences for purposes of managing the disciplinary proceeding and shall issue on order establishing dates and deadlines including the time, date and location of any hearing to be held in the matter.
- (3) *Discovery.* Discovery may be had as provided in Rules 26, 29, 30, 32, 33, 34, 35, 36 and 37, W.R.Civ.P., to the extent those rules are in their nature applicable and consistent with these rules. Bar Counsel shall have a continuing obligation to disclose all exculpatory information to the respondent.
- (4) *Order for examination.* When the mental or physical condition of the respondent has become an issue in the proceeding, the BPR Chair, on motion of Bar Counsel, may order the respondent to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that

reasonable cause exists and after notice to the respondent. The respondent will be provided the opportunity to respond to the motion of Bar Counsel, and the respondent may request a hearing before the BPR Chair. If requested, the hearing shall be held within 14 days of the date of the respondent's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(5) *Subpoenas.* Subpoenas may be issued by Bar Counsel, the respondent, or the BPR Chair as provided in Rule 45, W.R.Civ.P. Witness fees and mileage shall be the same as those for state district court proceedings.

(A) In the event any person fails or refuses to comply with a subpoena, the party causing the subpoena to be issued may file with the BPR Clerk a motion for order to show cause why the person should not be held in contempt of court.

(B) The person against whom the motion is made shall file a written response within 10 days of service of the motion.

(C) The motion shall be heard by the BPR Chair. In the absence of good cause shown, the BPR Chair shall submit a report and recommendation to the Court. The Court shall then determine whether to impose contempt.

(6) *Subpoenas for use in out-of-state attorney discipline matters.* Whenever a subpoena is sought in the State of Wyoming for use in lawyer discipline or disability investigations or proceedings in another jurisdiction, and where the application for issuance of the subpoena has been duly approved or authorized under the law of that jurisdiction, Bar Counsel or the BPR Clerk may issue a subpoena as provided in Rule 45, W.R.Civ.P, to compel the attendance of witnesses and production of documents in Wyoming or elsewhere as agreed by the witnesses, for use in such foreign investigations or proceedings. Service, enforcement and challenges to such subpoenas shall be as provided in these rules.

(7) *Motions.* Non-dispositive motions shall be determined by the BPR Chair. Motions for summary judgment brought pursuant to Rule 56, W.R.Civ.P., shall be decided by the BPR as a whole, or by a panel of not less than three of its members.

(b) *Hearings before the BPR.* Except as otherwise provided in these rules, hearings and all matters commencing with filing the formal charge shall be conducted in conformity with the Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over the respondent's objection if to do so would be in violation of the respondent's constitutional privilege against self-incrimination.

(1) Within a reasonable time in advance of the hearing, the BPR shall be provided with a copy of the formal charge, the respondent's answer, stipulated exhibits and proposed findings of fact and conclusions of law, if such have been filed pursuant to a scheduling order. Additional documents may be provided to the BPR in advance of the hearing at the discretion of the BPR Chair.

- (2) The BPR shall arrange for a complete record, either by stenographic or electronic means, to be made of all evidentiary hearings held in disciplinary proceedings. The respondent may obtain a transcript of such record at the respondent's expense. At the time of ordering the transcript, the respondent shall make arrangements, satisfactory to the reporter, for payment of costs of the transcript.
- (3) At the hearing, the BPR shall first receive evidence regarding whether a violation of the Wyoming Rules of Professional Conduct occurred. When all evidence on that issue has been received, the BPR shall recess to determine whether a violation has been proved by clear and convincing evidence.
- (A) Evidence of prior discipline shall not be admitted in the first phase of the hearing except to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
- (B) If the BPR determines by a majority of a quorum that a violation has not been proved by clear and convincing evidence, the BPR shall enter an order dismissing the formal charge. A copy of the order shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings. An order of dismissal is not appealable.
- (C) If the BPR determines by a majority of a quorum that there has been a violation, the BPR shall then receive evidence of aggravating or mitigating circumstances before determining the appropriate discipline for the violation. Evidence of prior discipline against the respondent shall be admissible in the second phase of the hearing regarding the appropriate discipline to be ordered or recommended.
- (D) In imposing a sanction after a finding of misconduct by the respondent, the BPR shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:
- (i) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
  - (ii) Whether the lawyer acted intentionally, knowingly, or negligently;
  - (iii) The amount of the actual or potential injury caused by the lawyer's misconduct; and
  - (iv) The existence of any aggravating or mitigating factors.
- (E) If the BPR finds the charges have been proved by clear and convincing evidence, and that a private reprimand is warranted, it shall issue an order of private reprimand with its findings of fact, conclusions of law, and the discipline imposed. A copy of the order shall be served on Bar Counsel,

complainant, respondent, and any counsel who represented respondent in the proceedings and shall include a description of any rights of appeal.

(F) If the BPR finds the charges have been proved by clear and convincing evidence and that public censure, suspension or disbarment is warranted, it shall issue a report and recommendation with its findings of fact, conclusions of law, and recommended discipline and file such report with the clerk of the Court. A copy of such report shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings. The Court shall act on the recommendation as it deems appropriate.

(4) The BPR shall announce its decision on the record at the conclusion of the hearing. The BPR's written order of private reprimand or report and recommendation shall be issued within 30 days of the hearing. If the BPR allows the parties to submit post-hearing, proposed findings of fact and conclusions of law, the written order of private reprimand or report and recommendation shall be issued within thirty days of the date such proposed findings of fact and conclusions of law are filed.

(5) *Hearing decorum.* Proceedings before the BPR, like any proceeding before a tribunal, are formal occasions. All participating in the process are expected to conduct themselves in a manner consistent with the solemnity of the occasion. Off-the-record socializing between or among participants is not appropriate.

#### **Rule 16. Proceedings Before the Court.**

(a) *Jurisdiction.* Review by the Court of an order of private reprimand by the BPR, or of the BPR's report and recommendation for a public censure, suspension, disbarment, order of reciprocal discipline, transfer to disability inactive status, or a denial of reinstatement shall be allowed as provided by these rules.

(b) *Standard of review.* The BPR is an ancillary body structured by the Court and has no independent power, jurisdiction, or authority other than that specifically delegated to it in accordance with these rules. The Court will give due consideration to the findings and recommendations of the BPR, but the ultimate judgment in proceedings under these rules is vested in the Court. Accordingly, the Court will examine the evidence, make findings, determine whether there has been an infraction of the Wyoming Rules of Professional Conduct, and impose the discipline which the Court considers appropriate.

(c) *Appeals and objections—how taken.*

(1) *Appeal from order of private reprimand.* The respondent may appeal an order of private reprimand issued by the BPR by filing a Petition for Review of Private Reprimand, which shall set forth the specific exceptions to the private reprimand. The petition shall be accompanied by a brief complying with W.R.A.P. 7.01 through 7.04. The petition and brief must be filed within 30 days of service of the order of private reprimand. Bar Counsel may file a responsive brief within 20 days of service

of the respondent's brief. If Bar Counsel's brief raises a cross-appeal, the respondent may file a reply to the cross appeal within 20 days of service of Bar Counsel's brief.

- (2) *Respondent's objections to report and recommendation for public discipline.* The respondent may object to a report and recommendation of the BPR for public censure, suspension or disbarment by filing a brief complying with W.R.A.P. 7.01 through 7.04, except that instead of the statement of issues required by 7.01(d), the respondent shall set forth the specific exceptions to the report and recommendation. The brief must be filed within 30 days of service of the report and recommendation. Bar Counsel may file a responsive brief within 20 days of service of the respondent's brief. If Bar Counsel's brief raises a cross-appeal, the respondent may file a reply to the cross appeal within 20 days of service of Bar Counsel's brief.
  - (3) *Respondent's objections to report and recommendation not to reinstate, to transfer to disability inactive status, or for discipline pursuant to Rule 19.* The respondent may object to a report and recommendation of the BPR that respondent not be reinstated, that respondent be transferred to disability inactive statute, or that respondent be disciplined pursuant to Rule 19 by filing a brief complying with W.R.A.P. 7.01 through 7.04, except that instead of the statement of issues required by 7.01(d), the respondent shall set forth the specific exceptions to the report and recommendation. The brief must be filed within 30 days of service of the report and recommendation. Bar Counsel may file a responsive brief within 20 days of service of the respondent's brief.
  - (4) *Extensions.* The Court may extend the time for filing of briefs for good cause shown.
  - (5) If respondent files an appeal or objection, the Court shall calendar the matter for such proceedings or argument as it may deem appropriate and shall thereafter enter its judgment.
  - (6) If respondent files a statement that respondent does not wish to object to a report or if respondent does not object, the Court shall proceed with such discipline or other action as it may determine to be appropriate.
- (d) *Record on appeal.* The record on appeal shall consist of all pleadings; all orders entered by the BPR or a Disciplinary Judge; the BPR's report and recommendation; all hearing transcripts and exhibits; and all other documents on file with the BPR Clerk. The record shall be properly paginated, fully indexed and bound for transmission to the Court.
- (e) *No other evidence to be considered.* During its review, the Court shall not receive or consider any evidence that was not presented to the BPR, except upon notice to the respondent and Bar Counsel and opportunity to respond.
- (f) *Publication and Notice of Orders.* The Clerk of the Court shall release for publication orders of disbarment, suspension, or transfer to disability inactive status, and shall promptly transmit such orders to all courts in this state.

**Rule 17. Immediate Suspension Pending Further Proceedings.**

(a) Immediate suspension is the temporary suspension by the Court of an attorney's license to practice law for a definite or indefinite period of time while proceedings conducted pursuant to these rules are pending against the attorney. Although an attorney's license to practice law shall not ordinarily be suspended during the pendency of such proceedings, the Court may order the attorney's license to practice law immediately suspended when there is reasonable cause to believe that:

- (1) The attorney is causing or has caused immediate and substantial public or private harm and the attorney:
  - (A) Has converted property or funds;
  - (B) Has abandoned clients; or
  - (C) Has engaged in conduct which poses an immediate threat to the effective administration of justice.
- (2) The attorney has been convicted of a serious crime as defined in Rule 18(e).
- (3) The attorney is not cooperating by failing to produce information or documents requested by Bar Counsel and has not interposed a good-faith objection to producing the information or documents.

(b) *Petition for Immediate Suspension.*

- (1) Bar Counsel shall file a petition for immediate suspension with the Court. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause that the alleged conduct has in fact occurred. A copy of the petition shall be served on the attorney pursuant to these rules.
- (2) Respondent shall have fifteen (15) days from date of service to respond to the petition.
- (3) Upon review of the petition, affidavit, and response by the respondent, if the Court finds by clear and convincing evidence that respondent poses an imminent threat of substantial harm to the public, the Court shall issue an order of interim suspension. The order shall be transmitted by the Court to respondent by certified mail and to the clerks of court.
- (4) Within fifteen (15) days of the entry of an order of immediate suspension, Bar Counsel shall file a formal charge. The matter shall then proceed pursuant to these rules.

(c) *Petition for Dissolution or Modification of an Order of Immediate Suspension.*

- (1) Respondent may file a petition with the Court for dissolution or modification of an order of immediate suspension at any time following its entry. The petition shall be

supported by an affidavit setting forth sufficient facts to prove by clear and convincing evidence that respondent does not pose an imminent threat of substantial harm to the public and that the order of immediate suspension should be dissolved or modified. A copy of the petition shall be served upon Bar Counsel by respondent.

(2) Bar Counsel shall have fifteen (15) days from date of service to respond to the petition.

(3) Upon review of the petition, affidavit, and response by Bar Counsel, if the Court finds clear and convincing evidence that respondent does not pose an imminent threat of substantial harm to the public and that the order of immediate suspension should be dissolved or modified, the petition shall be granted subject to any conditions imposed by the Court. The order dissolving or modifying the immediate suspension shall be transmitted by the Court to respondent.

(d) An order of immediate suspension, when served by certified mail, return receipt requested, on a financial institution maintaining a trust account for respondent, shall constitute an injunction prohibiting the financial institution from disbursing any funds from that account except as ordered by the Court. Bar Counsel shall serve the order on the financial institution as deemed necessary.

**Rule 18. Attorney Convicted of a Crime.**

(a) *Proof of Conviction.* Except as otherwise provided by these rules, a certified copy of the judgment of conviction from the clerk of any court of criminal jurisdiction indicating that an attorney has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings in this state and shall be conclusive proof of the commission of that crime by the attorney.

(b) *Duty to Report Conviction.* Every attorney subject to these rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations not involving the use of alcohol or drugs, shall notify Bar Counsel in writing of such conviction within 14 days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to Bar Counsel within 14 days after the date of the conviction a certified copy of the judgment of conviction.

(c) *Commencement of Disciplinary Proceedings Upon Notice of Conviction.* Upon receiving notice that an attorney subject to these rules has been convicted of a crime, other than a serious crime as hereinafter defined, Bar Counsel shall, following an investigation as provided in these rules, make a determination as provided by Rule 10(e) or refer the matter to the ROC for further proceedings consistent with Rule 10(f). If the conviction is for a serious crime as hereinafter defined, Bar Counsel shall obtain the record of conviction and prepare and file a formal charge against the respondent as provided in Rule 13. A certified copy of the judgment of conviction of a serious crime as defined in this Rule shall be conclusive evidence of the commission of that crime in a subsequent disciplinary proceeding.

(d) *Conviction of a Serious Crime—Immediate Suspension.* Bar Counsel shall report to the Court the name of any attorney who has been convicted of a serious crime, as hereinafter defined. The report shall be in writing and accompanied by a copy of the judgment of conviction. The Court shall thereupon issue an order directing the convicted attorney to show cause why the attorney's license to practice law should not be immediately suspended pursuant to Rule 17. Upon full consideration of the matter, the Court may either impose immediate suspension for a definite or indefinite period or may discharge the order to show cause. The fact that a convicted attorney is seeking appellate review of the conviction shall not limit the power of the Court to impose immediate suspension.

(e) *Serious Crime Defined.* The term serious crime as used in these rules shall include:

(1) Any felony; and

(2) Any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, or theft; or an attempt or conspiracy to commit such crime; or solicitation of another to commit such crime.

(f) *Conviction Defined.* The term conviction as used in these rules shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of *nolo contendere*, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.

(g) *Notice to Clients and Others of Immediate Suspension.* An order of immediate suspension of an attorney pursuant to this rule shall constitute a suspension of the attorney for the purpose of the provisions of Rule 21.

#### **Rule 19. Discipline Imposed by Foreign Jurisdiction.**

(a) *Proof of Discipline Imposed.* Except as otherwise provided by these rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these rules, conclusively establish such misconduct.

(b) *Duty to Report Public Discipline Imposed.* Any attorney subject to these rules against whom any form of public discipline has been imposed by the authorities of another jurisdiction, or who voluntarily surrenders the attorney's license to practice law in connection with disciplinary proceedings in another jurisdiction, shall notify Bar Counsel of such action in writing within 14 days thereof.

(c) *Commencement of Proceedings Upon Notice of Voluntary Surrender of License.* Upon receiving notice that an attorney subject to these rules has voluntarily surrendered his or her license to practice law in another jurisdiction, Bar Counsel shall, following investigation

pursuant to these rules, refer the matter to the ROC for further proceedings consistent with Rule 10(f).

(d) *Commencement of Proceedings Upon Notice of Discipline Imposed.* Upon receiving notice that an attorney subject to these rules has been publicly disciplined in another jurisdiction, Bar Counsel shall obtain the disciplinary order and prepare and file a formal charge against the attorney as provided in Rule 13. If Bar Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the formal charge. If the attorney intends to challenge the validity of the disciplinary order entered in the foreign jurisdiction, the attorney must file with the BPR Clerk an answer and a full copy of the record of the disciplinary proceedings which resulted in the imposition of that disciplinary order within 21 days after service of the formal charge or such greater time as the BPR Chair may allow for good cause shown. At the conclusion of proceedings brought under this Rule, the BPR shall issue a report and recommendation that the same discipline be imposed as was imposed by the foreign jurisdiction, unless it is determined by the BPR that:

- (1) The procedure followed in the foreign jurisdiction did not comport with requirements of due process of law;
- (2) The proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the BPR cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;
- (3) The imposition of the same discipline as was imposed in the foreign jurisdiction would result in grave injustice; or
- (4) The misconduct proved warrants that a substantially different form of discipline be recommended by the BPR.

(e) If Bar Counsel does not seek substantially different discipline and if the respondent does not challenge the order based on any of the grounds set forth in (d)(1) through (4) above, then the BPR may, without a hearing, issue a report and recommendation for the same discipline as imposed by the foreign jurisdiction.

#### **Rule 20. Disability Inactive Status.**

(a) *Disability Inactive Status.* Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney shall be transferred to disability inactive status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law. Proceedings instituted regarding an attorney pursuant to this rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings provided for by this rule shall not defer or abate other proceedings conducted pursuant to these rules, unless after a hearing the BPR determines that the attorney is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the

deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided in Rule 23.

(b) *Transfer to Disability Inactive Status Without a Hearing.* Where an attorney who is subject to these rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the BPR, upon proper proof of the fact, shall issue a report and recommendation that the attorney be transferred to disability inactive status. The matter shall proceed before the Court as provided in Rule 16. If the Court orders the attorney transferred to disability inactive status, such order shall remain in effect unless altered by the Court. A copy of the order transferring an attorney to disability inactive status shall be served upon the attorney and upon either the attorney's guardian or the superintendent of the hospital in which the attorney is confined.

(c) *Procedure When Disability is Alleged.* After a petition for disability inactive status has been filed, the BPR Chair shall direct such action as is deemed necessary or proper to determine whether the attorney is incapacitated, including an examination of the attorney by qualified medical experts designated by the BPR Chair; provided, however, that before any medical examination or other action may be ordered, the BPR Chair must afford the attorney an opportunity to show cause why such examination or action should not be ordered. An attorney against whom disability proceedings are pending shall be given notice of such proceedings. The BPR Chair may appoint counsel to represent the attorney if the attorney is without adequate representation. If, following a hearing and upon due consideration of the matter, the BPR determines that the attorney is incapable of continuing to practice law or is incapable of defending in proceedings conducted pursuant to these rules, the BPR shall issue a report and recommendation that the attorney be transferred to disability inactive status. The matter shall proceed before the Court as provided in Rule 16.

(d) *Procedure When Attorney During Course of Proceedings Alleges a Disability that Impairs the Attorney's Ability to Defend Himself.* If in the course of proceedings conducted pursuant to these rules the attorney alleges disability by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend adequately in such proceedings, such proceedings shall be suspended and the BPR Chair shall order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the BPR Chair may do any of the following:

- (1) Order a hearing on the issue of whether the attorney suffers from a disability that requires the attorney to be transferred to disability inactive status;
- (2) Order that the proceedings pending against the attorney be resumed;
- (3) Enter any other appropriate order, including an order directing further examination of the attorney.

(e) *Burden of Proof.* In a disability proceeding seeking the transfer of an attorney to disability inactive status Bar Counsel shall bear the burden of proof by clear and convincing evidence.

(f) *Hearings.* Any hearings held pursuant to this Rule shall be conducted in the manner prescribed by Rule 15.

**Rule 21. Required Action After Disbarment, Suspension or Transfer to Disability Inactive Status.**

(a) After the entry of an order of disbarment, suspension, or transfer to disability inactive status, the attorney may not accept any new retainer or employment as an attorney in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date the attorney may, with the written consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) *Notice to Clients in Pending Matters.* An attorney against whom an order of disbarment, suspension, or transfer to disability inactive status has been entered shall promptly notify in writing by certified mail each client whom the attorney represents in a matter still pending of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of such order, and advising such client to seek legal services elsewhere.

(c) *Notice to Parties in Litigation.* An attorney against whom an order of disbarment, suspension, or transfer to disability inactive status is entered and who represents a client in a matter involving litigation or proceedings before an administrative body shall notify that client as required by section (b) of this rule, and shall recommend that the client promptly obtain substitute counsel. In addition, the lawyer must notify in writing by certified mail the opposing counsel of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice to opposing counsel shall state the mailing address of the client of the attorney against whom the order was entered. If the client of the attorney against whom an order was entered does not obtain substitute counsel before the effective date of such order, the attorney must appear before the court or administrative body in which the proceeding is pending and move for leave to withdraw.

(d) *Affidavit Filed With Court.* Within 14 days after the effective date of the order of disbarment, suspension, or transfer to disability inactive status, or within such additional time as allowed by the Court, the attorney shall file with the Court an affidavit setting forth a list of all pending matters in which the attorney served as counsel and showing:

- (1) That the attorney has fully complied with the provisions of the order and of this Rule;
- (2) That the attorney has served on Bar Counsel a copy of the affidavit, a list of the clients notified pursuant to subsection (b) of this rule and a copy of each notice provided; and
- (3) That the attorney has notified every other jurisdiction before which the attorney is admitted to practice of the order entered against attorney.
- (4) Such affidavit shall also set forth the address of the attorney to which communication may thereafter be directed.

(e) *Return of Client Property.* The attorney who has been disbarred, suspended or transferred to disability inactive status 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 in obtaining the papers or other property. The attorney shall refund within ten days after entry of the order of disbarment, suspension or transfer to disability inactive status any fee paid in advance that has not been earned.

(f) *Duty to Maintain Records.* An attorney who has been disbarred, suspended or transferred to disability inactive status shall keep and maintain records of any steps taken by the attorney pursuant to this rule as proof of compliance with this rule and with the order entered against the attorney. Failure to comply with this section without good cause shown shall constitute contempt of the Court. Proof of compliance with this section shall be a condition precedent to any petition for reinstatement or readmission.

(g) *Duty to File Annual License Fee Statements.* The attorney shall continue to file an annual license fee statement during the period of suspension or for five years following the effective date of an order of disbarment, listing the attorney's residence or other address where communications may thereafter be directed to the attorney; provided, however, that the annual license fee need not be paid during such period unless and until the attorney is reinstated. Upon reinstatement the attorney shall pay the annual license fee for the year in which reinstatement occurs.

**Rule 22. Reinstatement After Disciplinary Suspension or Disbarment.**

(a) *Reinstatement after suspension for six months or less.* An attorney who has been suspended for six (6) months or less shall be reinstated automatically upon the expiration of the period of suspension and the filing of an affidavit with the Court, a copy of which shall be served upon the BPR and Bar Counsel, which shows:

- (1) The attorney is current on the payment of annual license fees and any late charges;
- (2) The attorney is current on continuing legal education, including the payment of any fees for delinquency or noncompliance;
- (3) There have been no claims or awards made in regard to an attorney on the Clients' Security Fund for which the fund has not been reimbursed; and
- (4) The attorney has complied with all requirements of the Court's disciplinary order.

(b) *Reinstatement after disbarment or suspension for more than six months.* An attorney who has been disbarred or suspended for a period of greater than six (6) months may seek to return to active status by filing a verified petition for reinstatement with the BPR and serving a copy on Bar Counsel.

- (1) A disbarred attorney may not file a verified petition for reinstatement until five years after the effective date of the order of disbarment.

- (A) Concurrent with the filing of a verified petition for reinstatement, a disbarred attorney shall submit a written request for preparation of a character report to the National Conference of Bar Examiners and shall pay the requisite fee for such report. A copy of the request shall be attached to the verified petition for reinstatement.
  - (B) A fee of one thousand dollars (\$1000.00) shall accompany the filing of a verified petition for reinstatement by a disbarred attorney.
- (2) An attorney who has been suspended for a period of greater than six (6) months may file a verified petition for reinstatement no sooner than ninety (90) days prior to the expiration of the period specified in the order of suspension unless another period is specified in the order. A fee of five hundred dollars (\$500.00) shall accompany the filing of a verified petition for reinstatement by a suspended attorney.
- (3) The verified petition for reinstatement shall set forth the facts other than passage of time and absence of additional misconduct upon which the petitioning attorney relies to establish that the attorney possesses all of the qualifications required of applicants for admission to the Wyoming State Bar, fully considering the previous disciplinary action taken against the attorney, and shall include certification that:
- (A) The attorney is current on the payment of annual license fees and any late charges;
  - (B) The attorney has complied with all continuing legal education requirements during the disciplinary period and has paid all necessary fees;
  - (C) Restitution has been made as ordered to any persons and the Clients' Security Fund, including the source and amount of funds used to make restitution; and
  - (D) The attorney has complied with all requirements of the Court's disciplinary order.
- (4) The attorney seeking reinstatement must prove by clear and convincing evidence that the attorney has been rehabilitated, has complied with all applicable disciplinary orders and with all provisions of these rules, has not engaged in the unauthorized practice of law, and is fit to practice law.
- (5) A copy of the verified petition for reinstatement shall be served upon all complainants in the underlying disciplinary proceedings, who shall have thirty (30) days to submit their written comments to the BPR.
- (6) *Reinstatement proceedings following disciplinary suspension or disbarment.*
- (A) Immediately upon receipt of a verified petition for reinstatement, Bar Counsel shall conduct any investigation Bar Counsel deems necessary. The petitioner shall cooperate in any such investigation.

- (B) Following investigation, Bar Counsel and the attorney may stipulate to reinstatement by submitting to the BPR a written stipulation and affidavit of the attorney which provides a detailed description of the factual basis for compliance with the requirements for reinstatement. Any such stipulation shall be approved or disapproved by the BPR. If the stipulation is approved, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue its order stating that the attorney is reinstated to the practice of law, which may include any conditions the Court deems appropriate.
- (C) If Bar Counsel and the attorney do not reach a stipulation for the attorney's reinstatement within 60 days of the filing of the verified petition for reinstatement and, if applicable, receipt of the character report of the National Conference of Bar Examiners, Bar Counsel shall file an answer to the petition. Thereafter, the petition for reinstatement shall proceed to a hearing before the BPR as provided in Rule 15.
- (D) In deciding whether to recommend reinstatement, the BPR shall consider the attorney's past disciplinary record. The BPR may condition a recommendation for reinstatement upon compliance with any additional requirements it deems appropriate, including but not limited to the payment of restitution to any person harmed by the misconduct for which the petitioner was suspended.
- (E) An attorney for whom the BPR does not recommend reinstatement may proceed before the Court as provided in Rule 16.
- (7) *Successive petitions.* No petition for reinstatement under this rule shall be accepted within two years following a denial of a previous petition for reinstatement filed on behalf of the same person. If a suspended or disbarred attorney has not obtained reinstatement within seven years after the effective date of the order of suspension or disbarment, the attorney's membership in the Wyoming State Bar shall terminate. Such attorney who thereafter seeks admission to the Wyoming State Bar shall comply with the admission requirements set forth in the Wyoming Rules and Procedures Governing Admission to the Practice of Law.
- (8) If an attorney who has been disbarred or suspended does not seek reinstatement within one (1) year from the date the attorney becomes eligible to seek reinstatement, such attorney's membership in the Wyoming State Bar shall terminate. Such attorney who thereafter seeks admission to the Wyoming State Bar shall comply with the admission requirements set forth in the Wyoming Rules and Procedures Governing Admission to the Practice of Law.

**Rule 23. Reinstatement After Transfer to Disability Inactive Status.**

- (a) An attorney placed on disability inactive status shall not engage in the practice of law until reinstated to active status in accordance with the provisions of this rule. Such attorney must comply with the duties of disbarred or suspended attorneys as set forth in the Rule 21.

(b) An attorney who has been transferred to disability inactive status may seek to return to active status by filing a verified petition for reinstatement with the BPR and serving a copy on Bar Counsel. Such attorney may not apply for reinstatement to active status more often than once in any twelve month period, or at such shorter intervals as the Court may direct.

(c) The verified petition for reinstatement shall set forth facts showing that the attorney has demonstrated sufficient recovery from the physical, mental or emotional infirmity or illness giving rise to the transfer to disability inactive status and the attorney possesses all of the qualifications required of applicants for admission to the Wyoming State Bar. The petition shall include certification that:

(1) The attorney is current on the payment of annual license fees and any late charges;

(2) The attorney has complied with all continuing legal education requirements during the period the attorney has held disability inactive status and has paid all necessary fees; and

(3) The attorney has complied with all requirements of the Court's order transferring the attorney to disability inactive status.

(d) The attorney's verified petition for reinstatement must be accompanied by a \$500.00 fee payable to the Wyoming State Bar. Said fee may be waived in the discretion of the BPR Chair for good cause shown.

(e) The filing of a verified petition for reinstatement by an attorney placed on disability inactive status shall be deemed to constitute a waiver of any privilege with respect to any health care treatment of the attorney during the period of incapacity. The attorney shall be required to disclose the name and address of every psychiatrist, psychologist, physician, or other health care professional, and any hospital or other health care facility or provider 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 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, and shall cooperate with Bar Counsel's request for an independent evaluation of the attorney's disability.

(f) If an attorney on disability inactive status has not obtained reinstatement within seven years after the effective date of the order transferring the attorney to disability inactive status, the attorney's membership in the Wyoming State Bar shall be terminated by order of the Court. Such attorney who thereafter seeks admission to the Wyoming State Bar shall comply with the admissions requirements set forth in the Wyoming Rules and Procedures Governing Admission to the Practice of Law.

(g) The attorney seeking reinstatement must prove by clear and convincing evidence that the attorney has sufficient recovery from the physical, mental or emotional infirmity or illness giving rise to the transfer to disability inactive status, has complied with all applicable orders and with

all provisions of these rules, has not engaged in the unauthorized practice of law, and is fit to practice law.

(h) *Reinstatement proceedings following transfer to disability inactive status.*

- (1) Immediately upon receipt of a verified petition for reinstatement, Bar Counsel shall conduct any investigation Bar Counsel deems necessary. The petitioner shall cooperate in any such investigation.
- (2) Following investigation, Bar Counsel and the attorney may stipulate to reinstatement by submitting to the BPR a written stipulation and affidavit of the attorney which provides a detailed description of the factual basis for compliance with the requirements for reinstatement. Any such stipulation shall be approved or disapproved by the BPR. If the stipulation is approved, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue an order stating that the attorney is reinstated to the practice of law, which may include any conditions the Court deems appropriate.
- (3) If Bar Counsel and the attorney do not reach a stipulation for the attorney's reinstatement within 60 days of the filing of the verified petition for reinstatement, Bar Counsel shall file an answer to the petition. Thereafter, the petition for reinstatement shall proceed to a hearing before the BPR as provided in Rule 15.
- (4) In deciding whether to recommend reinstatement, the BPR may condition a recommendation for reinstatement upon compliance with any additional requirements it deems appropriate.
- (5) An attorney for whom the BPR does not recommend reinstatement may proceed before the Court as provided in Rule 16.

**Rule 24. Expunction of Records.**

- (a) *Expunction—Self-Executing.* Except for records relating to proceedings that have become public pursuant to Rule 3, all records relating to proceedings conducted pursuant to these rules, which proceedings were dismissed, shall be expunged from the files of the ROC, the BPR, and Bar Counsel three years after the end of the year in which the dismissal occurred.
- (b) *Definition.* The terms “expunge” and “expunction” shall mean the destruction of all records or other evidence of any type, including, but not limited to, the request for investigation, the response, notes and communications relating to the investigation, and the report of investigation.
- (c) *Notice to Respondent.* If proceedings conducted pursuant to these rules (or their predecessor) were commenced, the attorney in question shall be given prompt notice of the expunction.

(d) *Effect of Expunction.* After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which have been expunged, the ROC, the BPR or Bar Counsel shall respond by stating that no record of the proceedings exists. The attorney in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The attorney in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed and that the record of the proceeding was expunged pursuant to this rule. After a response as provided in this rule is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged need be made.

(e) *Retention of Records.* Upon written application to the BPR, for good cause and with written notice to the attorney in question and opportunity for such attorney to be heard, Bar Counsel may request that records which would otherwise be expunged under this rule be retained for such additional period of time not to exceed three years as the BPR deems appropriate. Bar Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

#### **Rule 25. Expenses and Costs.**

(a) The expenses of members of the BPR, the ROC, Bar Counsel, and Special Bar Counsel, costs of a Disciplinary Judge, and other expenses incurred in the implementation or administration of these rules, shall be paid with funds allocated for that purpose by the Wyoming State Bar. The Wyoming State Bar shall compensate and pay the expenses of Disciplinary Judges.

(b) In addition to any costs assessed by the BPR, the ROC or the Court, an administrative fee of seven hundred fifty dollars (\$750.00) shall be imposed by the BPR in all cases where private discipline, diversion, or public discipline is ordered. The administrative fee shall be assessed on a per-complaint basis.

(c) "Costs" means actual expenses incurred by Bar Counsel, the ROC, the BPR, and the Wyoming State Bar in connection with a disciplinary proceeding, reinstatement proceeding or diversion program, including without limitation the cost of depositions used in a proceeding, hearing transcripts, copying costs, conference call and other telephone expenses, fees for service of process and subpoenas, witnesses fees, fees paid to expert witnesses, and costs associated with travel, meals and lodging for the ROC, the BPR, the BPR Clerk and the Office of Bar Counsel.

(d) When an attorney is privately disciplined, the BPR or the ROC may assess against the attorney the costs incurred in connection with the investigation and disciplinary proceeding, together with the administrative fee.

(e) When public discipline is recommended by the BPR, it shall certify to the Court the costs incurred in connection with the investigation and disciplinary proceeding, together with the administrative fee. The BPR may recommend to the Court the assessment of those costs and, if

the Court imposes discipline, the Court may assess all or any part of the certified costs, together with the administrative fee, against respondent.

(f) In any case where costs and fees are assessed, they shall be paid to the Wyoming State Bar.

**Rule 26. General Provisions.**

(a) *Privileges and Immunities.* Communications to Bar Counsel, the ROC, or the BPR relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the BPR, members of the ROC, Bar Counsel, monitors, or any person acting on their behalf, and staff shall be immune from suit for any conduct in the course of their official duties.

(b) *Ex Parte Communications.* Members of the BPR or the Court shall not communicate ex parte with Bar Counsel, a complainant, a respondent, respondent's counsel or any witness regarding a pending or impending investigation or disciplinary proceeding except as explicitly provided for by law or for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits provided that:

(1) It is reasonable to believe that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

(2) Provision is made to notify all other parties of the substance of the ex parte communication and an opportunity to respond is allowed.

(c) *Pending Litigation.* Investigations or disciplinary proceedings involving complaints with material allegations which are substantially similar to those made against the respondent in pending litigation may in the discretion of Bar Counsel, the ROC, or the BPR be deferred until the conclusion of such litigation. If the matter is deferred pending the conclusion of the litigation, the respondent shall make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation. If the respondent fails to take steps to assure a prompt disposition of the litigation, the investigation or disciplinary proceeding may be immediately resumed.

(d) *Protective Appointment of Counsel.* When an attorney has been transferred to disability inactive status; or when an attorney has disappeared; or when an attorney has died; or when an attorney has been suspended or disbarred and there is evidence that the attorney has not complied with the provisions of Rule 21, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is known to exist, a district judge in any judicial district in which the attorney maintained his office, upon the request of Bar Counsel, shall appoint legal counsel to inventory the files of the lawyer in question and to take any steps necessary to protect the interests of the attorney in question and the attorney's clients.

(1) Counsel appointed pursuant to this rule shall not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate,

except as necessary to carry out the order of the court that appointed the counsel to make such inventory.

(2) In protecting the best interests of the clients, any attorney or attorneys so appointed shall be immune from civil liability when his or her actions are performed in conformance with the Wyoming Rules of Professional Conduct.

(e) *Statute of Limitations.* A complaint against an attorney shall be filed within four years of the time that the complainant discovers or reasonably should have discovered the misconduct. There shall be no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.

(f) *Effective Date.* These rules shall become effective July 1, 2015, and any discipline or disability investigation pending on that date shall proceed under these rules. Any matter then pending with respect to which a formal charge has been filed shall be concluded under the procedure existing prior to the effective date of these rules.