

Wyoming Rules of Disciplinary Procedure

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27. Citation to These Rules.

Rule 2. Definitions.

(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 or which may be served by certified mail shall run from the date of receipt of the certified mailing. In the event a certified mailing is sent to an attorney’s address of record and returned unclaimed, the date of service shall be the date of mailing.

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, and information discovered in the course of an investigation conducted pursuant to these rules may be disclosed by Bar Counsel if:

(4) There is a need to notify another person or organization, including the ~~Clients’ Security~~ Client Protection Fund of the Wyoming State Bar, to protect the public, the administration of justice, or the legal profession;

(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 fourteen (14) days of the date of the order or of the date of filing of a formal charge. In the event the respondent fails to provide Bar Counsel with confirmation of such disclosure, Bar Counsel shall make the disclosure.

(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 twenty-one (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.

Rule 5. Bar Counsel.

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

(8) Perform such other duties as the ROC or the Court may direct.

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

(13) Respond to inquiries from the Court and from disciplinary counsel in other jurisdictions regarding an attorney's disciplinary history; ~~and~~

(14) Respond to inquiries from the Court regarding an attorney's disciplinary history and promptly inform the Court in the event a private reprimand is issued to, or a diversion agreement is approved for, a member of a Court-appointed Board or Committee; and

(15) Perform such other duties as the ROC or the Court may direct.

Rule 6. Board of Professional Responsibility.

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

(9) Take any other action authorized or ordered by the Court.

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:

(4) Failure to respond without good cause shown to a request by Bar Counsel, the ROC, the BPR, a Disciplinary Judge, the ~~Clients' Security Client Protection~~ Fund Committee or the Fee Arbitration Committee on Resolution of Fee Disputes, or obstruction of Bar Counsel, the ROC, the BPR, a Disciplinary Judge, the ~~Clients' Security Client Protection~~

Fund Committee or the Fee Arbitration 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.

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:

(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 twenty (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.

(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. No period of suspension shall run concurrently with any period of probation. ~~Such an order~~ An order of probation 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 of Probation.* 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 a provision that there be no further violations of the Wyoming Rules of Professional Conduct. The conditions may include but are not limited to the following:

(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 probation 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. Such recommended action may include imposition, in whole or in part, of the stayed suspension.

~~(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. An attorney who has been suspended for six (6) months or less shall be reinstated automatically upon the expiration of the period of probation as provided in Rule 22(a). An attorney who has been suspended (with probation) for more than six (6) months shall seek reinstatement as provided in Rule 22(b).~~

(d) Conditions of Discipline. In ordering a private reprimand or in recommending an order of public discipline, the BPR may impose reasonable conditions thereon, including but not limited to those set forth in Rule 9(c)(2).

Rule 10. Disciplinary Investigations.

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

(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.

(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 ten (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.

(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.

In ordering a private reprimand, the ROC may impose reasonable conditions thereon, including but not limited to those set forth in Rule 9(c)(2).

(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:

(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 ten (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.

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 or unconditional 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 or unconditional 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 or unconditional 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 order a private reprimand or submit an appropriate report and recommendation to the Court.
- (3) Imposition of stipulated discipline pursuant to a conditional or unconditional admission of misconduct shall terminate all proceedings conducted pursuant to these rules and pending against the respondent in connection with that misconduct.

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

(4) For an unconditional admission only, a statement that the respondent understands that if the Court does not accept the recommendation of the BPR, the respondent has no right to withdraw the unconditional admission.

(d) *Further proceedings.* If the conditional or unconditional 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. The rejection of a stipulated discipline does not foreclose any further proceedings for a stipulated discipline.

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 twenty (20) days after service of the formal charge.

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

(a) *Answer.* Within twenty (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.*

(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 order a private reprimand or 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.*

(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 fourteen (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.

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

(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.

(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.

(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, which standards shall be applied by the BPR in determining the appropriate sanction:

(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. The BPR may impose reasonable conditions thereon, including but not limited to those set forth in Rule 9(c)(2). 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~~ may announce its decision on the record at the conclusion of the hearing or may take the matter under advisement, provided that a decision shall be rendered within ten (10) days following conclusion of the hearing. The BPR's written order of private reprimand or report and recommendation shall be issued within thirty (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 (30) 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. The BPR Chair shall take such action as is necessary and appropriate to assure compliance with this rule.

Rule 16. Proceedings Before the Court.

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

(1) *Appeal from order of private reprimand.* The respondent or Bar Counsel (in consultation with the ROC) 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 thirty (30) days of service of the order of private reprimand. ~~Bar Counsel~~ The opposing party may file a responsive brief within ~~20~~ thirty (30) days of service of the ~~respondent's~~ brief ~~petition~~. If ~~Bar Counsel's~~ the responsive brief raises a cross-appeal, the ~~respondent~~ petitioner may file a reply to the cross appeal within twenty (20) days of service of ~~Bar Counsel's~~ the responsive brief.

(2) ~~Respondent's~~ Objections to report and recommendation for public discipline. The respondent or Bar Counsel (in consultation with the ROC) 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~~ brief shall set forth the specific exceptions to the report and recommendation. The brief must be filed within thirty (30) days of service of the report and recommendation. ~~Bar Counsel~~ The opposing party may file a responsive brief within ~~20~~ thirty (30) days of service of the ~~respondent's~~ objecting party's brief. If ~~Bar Counsel's~~ the responsive brief raises a cross-appeal, the ~~respondent~~ objecting party may file a reply to the cross appeal within twenty (20) days of service of ~~Bar Counsel's~~ the responsive brief.

(3) ~~Respondent's~~ Objections to report and recommendation not to reinstate in reinstatement proceedings, to transfer to disability inactive status, or for discipline pursuant to Rule 19. The respondent or Bar Counsel (in consultation with the ROC) may object to a report and recommendation of the BPR ~~that respondent not be reinstated regarding a petition for reinstatement, that respondent be transferred a petition for transfer to disability inactive statute status, or that respondent be disciplined a formal charge brought~~ 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~~ brief shall set forth the specific exceptions to the report and recommendation. The brief must be filed within thirty (30) days of service of the report and recommendation. ~~Bar Counsel~~ The opposing party may file a responsive brief within twenty (20) days of service of the ~~respondent's~~ objecting party'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 is filed, 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.~~

Rule 18. Attorney Convicted of a Crime.

(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 fourteen

(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 fourteen (14) days after the date of the conviction a certified copy of the judgment of conviction.

Rule 19. Discipline Imposed by Foreign Jurisdiction.

(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 fourteen (14) days thereof.

(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 twenty-one (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:

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

(d) *Affidavit Filed With Court.* Within fourteen (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:

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:

(3) There have been no claims or awards made in regard to an attorney on the ~~Clients'~~ Security Client Protection Fund for which the fund has not been reimbursed; and

(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.

(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:

(C) Restitution has been made as ordered to any persons and the ~~Clients'~~ Security Client Protection Fund, including the source and amount of funds used to make restitution; and

(6) *Reinstatement proceedings following disciplinary suspension or disbarment.*

~~(E) An attorney for whom the BPR does not recommend reinstatement may proceed before the Court as provided in Rule 16.~~

Rule 26. General Provisions.

~~(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. Refusal of Complainant to Proceed; Compromise; or Restitution. Abatement of an investigation into the conduct of a lawyer or other related proceedings shall not be required by the unwillingness or neglect of the complainant to cooperate in the investigation, or by any settlement, compromise or restitution. A lawyer shall not, as a condition of settlement, compromise or restitution, require the complainant to refrain from filing a complaint, to withdraw the complaint, or to fail to cooperate with the Bar Counsel.~~

Rule 27. Citation to These Rules.

These Rules shall be cited as the Wyoming Rules of Disciplinary Procedure.
