

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

*April Term, A.D. 2019*

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*In the Matter of Amendments to the* )  
*Wyoming Rules of Disciplinary Procedure* )

**ORDER *NUNC PRO TUNC* AMENDING THE WYOMING RULES OF  
DISCIPLINARY PROCEDURE**

The Officers and Commissioners of the Wyoming State Bar have recommended that the Wyoming Supreme Court amend the Wyoming Rules of Disciplinary Procedure. That recommendation was made following a joint proposal from the Board of Professional Responsibility and the Review and Oversight Committee, in collaboration with the Office of Bar Counsel. The proposed amendments were also submitted to the members of the Wyoming State Bar for comment. Now, having carefully reviewed the proposed amendments to the Wyoming Rules of Disciplinary Procedure, the Court finds the amendments should be adopted. This *nunc pro tunc* order is being entered to correct the numbering of the subsections in Rule 6(b). It is, therefore,

**ORDERED** that the amendments to the Wyoming Rules of Disciplinary Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective September 1, 2019; and it is further

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

**DATED** this 12<sup>th</sup> day of July, 2019.

**BY THE COURT:**

/s/

**MICHAEL K. DAVIS**  
Chief Justice

## Wyoming Rules of Disciplinary Procedure

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### Rule 3. ~~Confidentiality of~~ Access to Information Concerning Proceedings Under these Rules.

(a) Availability of Information. Except as otherwise provided by these rules, all documents and information in a disciplinary proceeding on file with the BPR, commencing with the filing of the formal charge, shall be available to the public.

(1) A request to inspect or obtain copies of such records shall be in writing on a form provided by the BPR Clerk, and shall include sufficient information to reasonably identify what is being sought.

(2) The BPR Clerk shall comply with such requests within a reasonable time, except requests that are determined by the BPR Clerk to be unduly burdensome or made for the purpose of harassing or substantially interfering with the operations of the BPR. Documents or information not filed with the BPR Clerk, filed under seal or subject to a protective order shall not be available to the public. Documents produced pursuant to such a request shall be redacted as required by applicable court rules, statutes and to preserve the confidentiality of information as provided in W.R.P.C. Rule 1.6.

(3) Any person who is denied the right to inspect, receive copies or access any record pursuant to this rule shall be entitled to a review of the decision by the BPR Chair. The request for review shall be filed with the BPR Clerk within 10 business days of such denial. Upon review of the request and related documentation, the BPR Chair will inform the person whether the denial is affirmed or reversed.

~~(a)(b) Confidentiality.~~ Before the filing of a formal charge, ~~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, status, and information discovered in the course of an investigation conducted pursuant to these rules may be disclosed by Bar Counsel if: \*\*\*

~~(b)(c) Proceedings Regarding Disability.~~ \*\*\*

~~(e)(d) Disclosure to Law Firms.~~ \*\*\*

~~(d)(e) Pending Investigations.~~ \*\*\*

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

~~(f)(g) Production of Records Pursuant to Subpoena.~~ \*\*\*

~~(g)~~(h) *Response to False or Misleading Statement.* \*\*\*

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

~~(i)~~(j) *Notice to the Attorney.* Except as provided in section ~~(h)~~(i)(5) of this rule, \*\*\*

~~(j)~~(k) *Release Without Notice.* If an agency otherwise authorized by section ~~(h)~~ (i) of this rule \*\*\*

~~(k)~~(l) *Notice to National Regulatory Data Bank.* Bar Counsel or the Court \*\*\*

~~(l)~~(m) *Duty of Officials and Employees.* \*\*\*

~~(m)~~(n) *Evidence of Crime.* \*\*\*

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## **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~~ nine members, ~~five~~ six of whom shall be members of the Wyoming State Bar and ~~two~~ three 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.

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(4) The BPR shall act only upon concurrence of a majority of a quorum. A quorum shall be no fewer than five (5) members. A Hearing Panel or a Review Panel shall only act upon concurrence of two (2) 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. Such temporary replacement members may be either attorneys or non-attorneys, as required. Former members of the BPR shall be eligible to serve as temporary replacement members.

(c) *Powers and duties of members of the BPR.* Members of the BPR shall: \*\*\*

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## **Rule 12. Stipulated Discipline.**

(a) *Acceptance of conditional admission.* \*\*\*

(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 Clerk shall appoint a three-person Review Panel made up of members of the BPR, two of whom shall be attorneys and one of whom shall be a non-attorney, to review the stipulation. BPR members appointed to a Review Panel shall not be members of or eligible for membership on a Hearing Panel in the matter. The ~~BPR~~ Review Panel shall, after conducting a hearing as provided in this rule, if one is requested or if the ~~BPR~~ Review Panel 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.

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(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~~ Review Panel orders otherwise.

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

(a) *Pre-hearing procedures.*

(1) *Filing of documents.* \*\*\*

(2) *Appointment of a Hearing Panel.* Upon the filing of a formal charge, a petition for disability inactive status or a petition for reinstatement, the BPR Clerk (in consultation with the BPR Chair) shall appoint a Hearing Panel of three members of the BPR, two of whom shall be attorneys and one of whom shall be a non-attorney, for purposes of a hearing in the matter. The Hearing Panel shall choose one of its attorney members to serve as Hearing Panel Chair.

~~(2)~~ (3) *Scheduling.* The ~~BPR~~ Hearing Panel Chair shall conduct one or more scheduling conferences for purposes of managing the disciplinary proceeding and shall issue ~~an~~ an order establishing dates and deadlines including the time, date and location of any hearing to be held in the matter.

~~(3)~~ (4) *Discovery.* \*\*\*

~~(4)~~ (5) *Order for examination.* When the mental or physical condition of the respondent has become an issue in the proceeding, the BPR Hearing Panel 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 Hearing Panel 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)~~ (6) *Subpoenas.* Subpoenas may be issued by Bar Counsel, the respondent, or the BPR Hearing Panel 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.

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

~~(6)~~ (7) *Subpoenas for use in out-of-state attorney discipline matters.* \*\*\*

~~(7)~~ (8) *Motions.* Non-dispositive motions shall be determined by the BPR Hearing Panel Chair. Motions for summary judgment brought pursuant to Rule 56, W.R.Civ.P., shall be decided by the BPR Hearing Panel as a whole, ~~or by a panel of not less than three of its members.~~

(b) *Hearings before the BPR.* \*\*\*

(1) Within a reasonable time in advance of the hearing, the BPR Hearing Panel 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 Hearing Panel in advance of the hearing at the discretion of the BPR Hearing Panel Chair.

(2) The BPR Hearing Panel 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 Hearing Panel 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 Hearing Panel 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 Hearing Panel determines by a majority of a ~~quorum~~ that a violation has not been proved by clear and convincing evidence, the BPR Hearing Panel 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 Hearing Panel determines by a majority of a ~~quorum~~ that there has been a violation, the BPR Hearing Panel 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 Hearing Panel shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions, which standards shall be applied by the BPR Hearing Panel in determining the appropriate sanction: \*\*\*
  - (E) If the BPR Hearing Panel 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 Hearing Panel 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 Hearing Panel 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 Hearing Panel 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 days following conclusion of the hearing. The BPR's Hearing Panel's written order of private reprimand or report and recommendation shall be issued within thirty (30) days of the hearing. If the BPR Hearing Panel 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 Hearing Panel, 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 Hearing Panel Chair shall take such action as is necessary and appropriate to assure compliance with this rule.

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

(a) *Jurisdiction.* Review by the Court of an order of private reprimand by the BPR Hearing Panel, or of the BPR's Hearing Panel'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 Hearing Panel, 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 or Bar Counsel (in consultation with the ROC) may appeal an order of private reprimand issued by the BPR Hearing Panel 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 7.05 ~~7.04~~. The petition and brief must be filed within thirty (30) days of service of the order of private reprimand. The opposing party may file a responsive brief within thirty (30) days of service of the petition. If the responsive brief raises a cross-appeal, the petitioner may file a reply to the cross appeal within twenty (20) days of service of the responsive brief.

(2) *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 Hearing Panel for public censure, suspension or disbarment by filing a brief complying with W.R.A.P. 7.01 through 7.05 ~~7.04~~, except that instead of the statement of issues required by 7.01(~~d~~) (e), the 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. The opposing party may file a responsive brief

within thirty (30) days of service of the objecting party's brief. If the responsive brief raises a cross-appeal, the petitioner may file a reply to the cross appeal within twenty (20) days of service of the responsive brief.

- (3) *Objections to report and recommendation 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 Hearing Panel regarding a petition for reinstatement, a petition for transfer to disability inactive status, or a formal charge brought pursuant to Rule 19 by filing a brief complying with W.R.A.P. 7.01 through 7.05 ~~7.04~~, except that instead of the statement of issues required by 7.01~~(d)~~ (e), the 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. The opposing party may file a responsive brief within ~~twenty (20)~~ thirty (30) days of service of the objecting party's brief.

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(d) *Record on appeal.* The record on appeal shall consist of all pleadings; all orders entered by the BPR Hearing Panel or a Disciplinary Judge; the BPR's Hearing Panel'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 Hearing Panel, except upon notice to the respondent and Bar Counsel and opportunity to respond.

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

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(d) *Commencement of Proceedings Upon Notice of Discipline Imposed.* \*\*\* At the conclusion of proceedings brought under this Rule, the BPR Hearing Panel 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 Hearing Panel 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 Hearing Panel 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~~ Hearing Panel.

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**Rule 20. Disability Inactive Status.**

(a) *Disability Inactive Status.* \*\*\* 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~~ Hearing Panel 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.* \*\*\*

(c) *Procedure When Disability is Alleged.* After a petition for disability inactive status has been filed, the ~~BPR~~ Hearing Panel 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~~ Hearing Panel Chair; provided, however, that before any medical examination or other action may be ordered, the ~~BPR~~ Hearing Panel 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~~ Hearing Panel 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~~ Hearing Panel 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~~ Hearing Panel 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~~ Hearing Panel Chair shall order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the ~~BPR~~ Hearing Panel Chair may do any of the following:

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

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(b) *Reinstatement after disbarment or suspension for more than six months.* \*\*\*

(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~~ a Review Panel. 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 Hearing Panel as provided in Rule 15.
- (D) In deciding whether to recommend reinstatement, the BPR Hearing Panel shall consider the attorney's past disciplinary record. The BPR Hearing Panel 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.

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

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(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~~ a Review Panel. 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 Hearing Panel as provided in Rule 15.
- (4) In deciding whether to recommend reinstatement, the BPR Hearing Panel may condition a recommendation for reinstatement upon compliance with any additional requirements it deems appropriate.
- (5) An attorney for whom the BPR Hearing Panel does not recommend reinstatement may proceed before the Court as provided in Rule 16.

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### **Rule 26. General Provisions.**

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(d) *Protective Appointment of Counsel.* When an attorney has been transferred to disability inactive status; or when an attorney has become mentally or physically incapacitated and is unable to attend to his or her practice; 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 or her 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.

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