

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2003

***In the Matter of
Complete Revision to the
Disciplinary Code for the
Wyoming State Bar***

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IN THE SUPREME COURT
STATE OF WYOMING
FILED

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JUDY PACHECO, CLERK
Coral Thompson
by DEPUTY

**ORDER ADOPTING REVISED DISCIPLINARY CODE
FOR THE WYOMING STATE BAR**

The Wyoming State Bar having recommended to the Court complete revision of the Disciplinary Code for the Wyoming State Bar, attached hereto; and the Court ~~having examined~~ the proposed revisions and deeming the revisions advisable; it is,

ORDERED that effective November 1, 2003, Rules I through XXVI (inclusive) of the present Disciplinary Code for the Wyoming State Bar shall be withdrawn; and it is further

ORDERED that the revised Disciplinary Code for the Wyoming State Bar, attached hereto, be, and hereby is, adopted by the Court to be effective November 1, 2003; and it is further

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

DATED this 10TH day of July, 2003.

BY THE COURT:

William U. Hill

**WILLIAM U. HILL
Chief Justice**

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Section 1. Preamble.

- (a) Any attorney is subject to the exclusive disciplinary jurisdiction of this Court and the Board of Professional Responsibility.
- (b) Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt.

Section 2. Duty to act professionally; grounds for discipline.

- (a) The license to practice law in this state is a continuing proclamation by the Court that the holder is fit to be entrusted with professional, legal, and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of all recipients of that privilege to conduct themselves at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.
- (b) Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct as adopted by this Court, 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.
- (c) Failure to timely respond to a request from Bar Counsel, the Peer Review Panel, a Disciplinary Judge, or the Board of Professional Responsibility may be grounds for discipline.

Section 3. Definitions.

For purposes of these rules, the following definitions shall apply:

- (a) "Attorney" means a person duly admitted to practice law in this state, a person admitted to practice law by a court of 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 Commissioners to perform duties pursuant to these rules. "Bar Counsel" includes "Special Bar Counsel."
- (c) "BPR" means the Board of Professional Responsibility.
- (d) "Complaint" means any allegation of attorney misconduct.
- (e) "Complainant" means any person who makes a complaint.
- (f) "Commissioners" means the Board of Commissioners for the Wyoming State Bar.
- (g) "Confidential information" means the information contained in files, records, or documents generated during any stage of a disciplinary proceeding.
- (h) "Conviction" or "convicted" means a judgment of guilt by a court following a trial, a plea of guilty, or a plea of nolo contendere.
- (i) "Costs" means actual expenses incurred by Bar Counsel, the Panel, the BPR, and the Wyoming State Bar in connection with a disciplinary proceeding or diversion program, and any administrative fees.
- (j) "Court" means the Wyoming Supreme Court.
- (k) "Disability inactive status" means the indefinite suspension of an attorney from the practice of law pursuant to Section 15.
- (l) "Disciplinary Judge" means a lawyer appointed by the Court to exercise the powers specified in Section 8.
- (m) "Disciplinary proceeding" means a proceeding that is initiated by the opening of a disciplinary file by Bar Counsel pursuant to Section 11(a).
- (n) "Discipline" means any of the penalties described in Section 4.
- (o) "Diversion" means a voluntary program that diverts the emphasis in cases involving minor acts of misconduct away from disciplinary sanctions and towards rehabilitation pursuant to Section 14.

- (p) "Formal Charge" means a written statement prepared by Bar Counsel and filed with the BPR based upon a probable cause determination of the Panel or the Court.
- (q) "Misconduct" means any act or omission by an attorney, individually or in concert with any other person or persons, which violates the Rules of Professional Conduct or the Disciplinary Code for the Wyoming State Bar.
- (r) "Open a file" means when Bar Counsel commences the initial process of a disciplinary proceeding upon a finding of a prima facie violation.
- (s) "Panel" means the Peer Review Panel appointed by the Court to perform duties pursuant to Section 7.
- (t) "Prima facie violation" means when the allegations of a complaint, if substantiated, are sufficient to constitute misconduct.
- (u) "Probable cause" means a reasonable basis for believing that certain allegations are true, justifying the filing of a formal charge.
- (v) "Reinstatement" means the restoration of a disciplined attorney's right to practice law in this state.
- (w) "Respondent" means an attorney against whom a complaint has been made.
- (x) "Rules of Professional Conduct" means the Rules of Professional Conduct for Attorneys at Law adopted by the Court.
- (y) "Serious Crime" means:
 - (i) Any felony; and
 - (ii) Any lesser crime a necessary element of which involves dishonesty, moral turpitude, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy or solicitation of another to commit a "serious crime."
- (z) "Special Bar Counsel" means a member of the Wyoming State Bar employed by the Commissioners pursuant to Section 6, and is included within the definition of "Bar Counsel."

Section 4. Forms of Discipline.

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

- (a) Public discipline.
 - (i) Disbarment, which means the revocation by the Court of an attorney's right to practice law in this state, subject to reinstatement as provided in Section 24.
 - (ii) Suspension, which means the temporary suspension by the Court of an attorney's right to practice law in this state, subject to reinstatement as provided in Section 24. Suspension, which may be stayed in whole or in part, shall be for a definite period of time not to exceed five (5) years.
 - (iii) Public censure, which means an order of the Court condemning an attorney for misconduct, but not limiting the attorney's right to practice law. A public censure shall be a permanent part of the attorney's record.
 - (iv) Disability inactive status, pursuant to Section 15.
- (b) Private discipline.
 - (i) Private reprimand, which means a judgment of the BPR condemning an attorney for misconduct, but not limiting the attorney's right to practice law. A private reprimand shall remain on the attorney's record for a period not to exceed five (5) years, and then be removed.
- (c) The report and recommendations of the BPR for public discipline or reinstatement, as adopted by the Court, and the Court's order or opinion in that matter shall be published in the Pacific Reporter.

Section 5. Confidentiality and File Retention.

- (a) Confidential information shall not be disclosed by Bar Counsel, a Disciplinary Judge, the Panel, the BPR, or the Court, except when:
 - (i) Disclosures are required for a proper investigation and prosecution of the proceeding by Bar Counsel;
 - (ii) The Court orders public discipline or otherwise orders disclosure; or
 - (iii) Respondent waives confidentiality in writing.
- (b) Communications normally subject to the attorney-client privilege or the work product doctrine may be disclosed during a disciplinary proceeding.
- (c) All pleadings, exhibits, and proceedings relating to reinstatements are public, except that the files, records, and documents generated by Bar Counsel are confidential information.
- (d) All files, records, and documents regarding a disciplinary proceeding shall be retained by the Wyoming State Bar for a period of six (6) years after the conclusion of the matter, except as provided in Section 4. Such records may be maintained as hard copies or in electronic format.

Section 6. Bar Counsel and Special Bar Counsel.

- (a) The investigative and prosecutorial functions of a disciplinary proceeding shall be directed by Bar Counsel.
- (b) Bar Counsel shall have the following powers and duties:
 - (i) To review and investigate any complaint to determine whether a prima facie violation exists;
 - (ii) To issue subpoenas;
 - (iii) Upon finding that a prima facie violation exists, Bar Counsel may open a file. The determination of whether or not to open a file is vested within the sound discretion of Bar Counsel, and is not appealable;
 - (iv) To conduct all necessary investigations;

- (v) To conduct the prosecutorial function concerning disciplinary proceedings and reinstatement petitions;
 - (vi) To supervise staff provided for the performance of Bar Counsel functions;
 - (vii) To promptly notify the complainant and respondent of the disposition of each matter;
 - (viii) To assist the Wyoming State Bar in dissemination of information regarding public discipline imposed upon a respondent;
 - (ix) To notify each jurisdiction in which a respondent is known to be admitted of a reinstatement or any public discipline imposed;
 - (x) When it comes to the attention of Bar Counsel that an attorney has been convicted of a serious crime, to inform the disciplinary agency in each jurisdiction in which the attorney is known to be admitted;
 - (xi) To provide a written status report to the BPR and Panel no less than quarterly on those matters within their duties and responsibilities;
 - (xii) Without disclosing the identities of complainants and respondents, to provide a written status report to the Commissioners no less than quarterly regarding all open files.
- (c) Special Bar Counsel may be employed by the Commissioners 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. Special Bar Counsel shall have the same powers and duties as Bar Counsel.

Section 7. Peer Review Panel.

- (a) The Court shall appoint, upon the advice of the president of the Wyoming State Bar, a Peer Review Panel consisting of three members, all of whom shall be attorneys. One member shall be designated by a majority vote of the Panel as chair, and one member as vice-chair to act in the absence or disability of the chair.
- (b) When the Panel 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 (3) years.
 - (i) No member shall serve more than two consecutive terms, although a former member may be appointed to serve again after having been off the Panel for at least three (3) years.
 - (ii) 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.
- (c) The Panel shall:
 - (i) Provide general supervision of, guidance to, and oversight of Bar Counsel;
 - (ii) Report to the Commissioners regarding the performance of Bar Counsel;
 - (iii) Determine whether probable cause exists, justifying the filing of a formal charge or petition regarding disability status; and
 - (iv) Perform requested reviews of dismissals pursuant to Section 11(b).
- (d) The Panel shall act only upon concurrence of two of the three members.

Section 8. Disciplinary Judge.

- (a) The office of Disciplinary Judge is established pursuant to these rules.
- (b) The Court shall 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.
 - (i) Persons appointed to the pool shall serve at the pleasure of the Court;
 - (ii) Persons appointed may resign from the pool by tendering their resignation to the Court; and
 - (iii) Disciplinary Judges shall be assigned at random by the chair of the BPR.
- (c) A Disciplinary Judge shall be entitled to compensation as determined by the BPR and shall be reimbursed for reasonable travel, lodging and other expenses at the rates provided in W.S. §§ 9-3-102 and 103.
- (d) A Disciplinary Judge shall refrain from taking part in any proceeding in which the recusal of a state district court judge, similarly situated, would be required.
- (e) A Disciplinary Judge shall not represent an attorney in any matter arising under these rules while appointed to the pool of Disciplinary Judges.
- (f) A Disciplinary Judge may be requested by Bar Counsel, the Panel, the respondent, or the BPR. Requests for the appointment of a Disciplinary Judge shall be served no later than fifteen (15) days after an order setting the disciplinary hearing. A request shall specify those functions for which the Disciplinary Judge shall be appointed. If requested, the BPR shall promptly appoint a Disciplinary Judge. A Disciplinary Judge shall not be required in all proceedings or for all stages of a proceeding.
- (g) A Disciplinary Judge shall have the following powers and duties:
 - (i) To issue and enforce subpoenas;
 - (ii) To administer oaths and affirmations;
 - (iii) To conduct a scheduling conference if requested by a party, and to enter a scheduling order following the conference;
 - (iv) 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;

- (v) To rule upon nondispositive pre-hearing motions;
 - (vi) To preside at hearings and to rule on evidentiary matters as requested;
 - (vii) To compel obedience to the judgments, orders, processes, and subpoenas of the Panel, the Disciplinary Judge, and the BPR, and to enter orders and impose sanctions pursuant to the provisions of Rule 37, Wyoming Rules of Civil Procedure.
- (h) Upon appeal, rulings by a Disciplinary Judge shall be deemed to constitute rulings of the BPR.

Section 9. Board of Professional Responsibility (BPR).

- (a) The Court shall appoint, upon the advice of the president of the Wyoming State Bar, a Board of Professional Responsibility, consisting of seven members, five of whom shall be members of the Wyoming State Bar and two of whom shall be non-attorneys. 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.
 - (i) 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.
 - (ii) Attorneys must succeed attorneys and non-attorneys must succeed non-attorneys on the BPR.
 - (iii) 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.
 - (iv) 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.
 - (v) The BPR shall act only upon concurrence of a majority of a quorum. A quorum shall be no fewer than five (5) members.
- (b) The BPR shall have the following powers and duties:
 - (i) To hold all necessary hearings upon formal charges and petitions filed pursuant to these rules;
 - (ii) To assign a Disciplinary Judge to preside over a specific matter arising under these rules;
 - (iii) With regard to any matter for which a Disciplinary Judge has not been assigned, to appoint a member of the BPR designated by the chair who shall have and exercise all of the powers of a Disciplinary Judge as provided in Section 8;
 - (iv) When misconduct has been proved by clear and convincing evidence at a hearing, or misconduct has been established by default, to determine the appropriate private discipline to be imposed or to recommend an appropriate public discipline to the Court;

- (v) When the incapacity of an attorney to continue the practice of law by reason of mental infirmity, illness or substance abuse has been proved by clear and convincing evidence at a hearing, to recommend to the Court the placing of the attorney on disability inactive status;
- (vi) To approve or disapprove all stipulations relating to private discipline and diversion programs entered into by Bar Counsel and a respondent;
- (vii) To approve or disapprove all stipulations relating to public discipline and disability inactive status, and to make its recommendations on such stipulations to the Court;
- (viii) To rule upon all dispositive motions;
- (ix) To make recommendations to the Court regarding the reinstatement of a person to practice law; and
- (x) To take any other action authorized by the Court.

Section 10. Immunity.

Any person, official, institution, or agency participating in good faith in any act required or permitted under these Rules, is immune from any civil or criminal liability that might otherwise result by reason of the action and no action thereon may be filed against such entity. For the purpose of any civil or criminal proceeding, the good faith of any person, official or institution participating in any act permitted or required by these rules shall be presumed.

Section 11. Pre-hearing Procedures.

- (a) Upon receiving a complaint or information from any source stating a prima facie violation of the Rules of Professional Conduct, Bar Counsel may open a file and conduct an investigation into the allegations of the complaint. The decision not to open a file is not appealable.
- (b) If the investigation discloses that there is no clear and convincing evidence of a violation of the Rules of Professional Conduct, Bar Counsel may dismiss the complaint. Bar counsel shall then serve a notice of dismissal upon the complainant and inform the complainant of the right to seek review of the dismissal by the Panel. Review by the Panel shall be limited to the issue of abuse of discretion.
- (c) If the investigation discloses facts which Bar Counsel believes may prove by clear and convincing evidence a violation of a provision of the Rules of Professional Conduct, Bar Counsel and respondent may stipulate to a form of discipline pursuant to Section 16 or to a diversion program pursuant to Section 14. The BPR shall approve or disapprove any stipulation for private discipline or diversion program and issue an order thereon. Any stipulation for public discipline shall be approved or disapproved by the BPR and, if approved, recommended to the Court. The Court shall act on the recommendation, as it deems appropriate.
- (d) If Bar Counsel and respondent cannot agree on a stipulated form of discipline or diversion, Bar Counsel may present the matter to the Panel for a determination of probable cause, justifying the filing of a formal charge.
- (e) Service on a respondent is complete upon mailing by certified mail, return receipt requested, a copy of the formal charge to the respondent's last known address as shown in the records of the Wyoming State Bar.
- (f) After a formal charge is served on respondent, respondent shall have twenty (20) days to serve an answer on the BPR and Bar Counsel.
- (g) The BPR or Disciplinary Judge, if one is assigned, may conduct a scheduling conference or other pre-hearing conference for purposes of managing the action and shall issue an order on such conferences which shall govern the proceeding and the hearing.
- (h) All documents required to be served in a disciplinary proceeding, except interrogatories, requests for production and requests for admissions and their responses, shall be filed with the BPR at the address of the Wyoming State Bar offices and served upon all other parties.

- (i) Subpoenas may be issued in accordance with the procedure of Rule 45 of the Wyoming Rules of Civil Procedure. In the event a subpoena is not obeyed without adequate excuse pursuant to Rule 45(e) of the Wyoming Rules of Civil Procedure, Bar Counsel or respondent may apply to the Disciplinary Judge, the member of BPR exercising the powers of a Disciplinary Judge, or the district court in the judicial district where the person disobeying the subpoena resides for an order requiring such person to obey the subpoena. The Disciplinary Judge, member of BPR exercising the powers of a Disciplinary Judge, or the district court shall issue such order. Any failure to obey the order may be punished as civil contempt.
- (j) Subpoena fees, witness fees, and mileage costs, shall be the same as those for proceedings in the state district courts.
- (k) Disputes concerning discovery shall be determined by the Disciplinary Judge, if one has been assigned, or member of the BPR exercising the powers of a Disciplinary Judge. All discovery orders are interlocutory and may not be appealed prior to the entry of a final order.
- (l) Non-dispositive pre-hearing motions shall be determined by the Disciplinary Judge, if one has been appointed, or by a member of the BPR exercising the powers of a Disciplinary Judge.
- (m) If the respondent fails to answer the formal charge within twenty (20) days or other time period as stipulated with Bar Counsel or ordered by the BPR, Bar Counsel may file a motion for entry of an order of default. Bar Counsel shall serve copies of the motion on the respondent, together with a notice that default will be entered if the respondent fails to answer the complaint within twenty (20) days after service of the notice on the respondent. If the respondent fails to respond to the notice of default and answer the formal charge within the time allowed, the BPR shall enter default. The BPR shall then hold a hearing to inquire into the appropriate form of discipline. No order shall be entered or recommendation made to the Court without the BPR being satisfied that there is a factual basis for the violation and for imposition of the form of discipline. Respondent may only be heard by the BPR regarding the form of discipline to be imposed. The BPR may then order private discipline or it may make a recommendation to the Court for public discipline.
- (n) Rules 5, 6, 7, 8, 10, 11, 15, 16, 26, 29, 30, 32, 33, 34, 35, 36, 37, 42, 45, 46, 56, 58, 60, and 61 of the Wyoming Rules of Civil Procedure shall apply to disciplinary proceedings so far as the provisions in those rules are in their natures applicable and consistent with these rules.

Section 12. Probable Cause Determination.

- (a) Before Bar Counsel may file a formal charge or a petition regarding disability status in a matter arising under these rules, the Panel shall receive and review evidence to determine whether there is probable cause for the filing of a formal charge or a petition regarding disability status.
- (b) The test for determining the existence of probable cause is whether a factual situation is sufficient to warrant a reasonably prudent person to believe that a violation has been committed by respondent, justifying the filing of a formal charge, or that an attorney is incapacitated, justifying the filing of a petition regarding disability status.
- (c) Bar Counsel shall have the discretion to determine what evidence, including sworn testimony, is presented to the Panel.
- (d) Respondent has no right to present evidence or to attend any meeting of the Panel regarding probable cause.
- (e) If the Panel finds probable cause, Bar Counsel shall file a formal charge or a petition regarding disability status with the BPR and serve it on respondent as provided in Section 11.
- (f) If the Panel does not find probable cause for a formal charge or a petition regarding disability status to be filed, the file shall be closed.
- (g) No determination of the Panel concerning probable cause is appealable by any person.
- (h) No record of the probable cause hearing will be kept. All records, findings, and proceedings of the Peer Review Panel are confidential and privileged, and are not subject to discovery or introduction into evidence in any civil action. Persons in attendance at a meeting of the Peer Review Panel shall not be permitted or required to testify in any civil action as to any evidence or other matters presented during the Peer Review Panel proceedings or to any findings or other actions of the Panel. Information, documents and other records otherwise available from the original sources are not immune from discovery or use in a civil action merely because they were presented to the Panel. Persons who testified before the Panel are not prevented from testifying as to matters within their knowledge in any subsequent disciplinary proceedings or civil actions, but they cannot be asked about their testimony before the Panel.

Section 13. Related Litigation.

- (a) Any proceeding under these rules on a complaint or formal charge involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation may, at the discretion of the BPR, be stayed until the conclusion of such litigation.
- (b) The acquittal of the respondent on criminal charges or a verdict or judgment in respondent's favor in civil litigation involving substantially similar material allegations shall not, in and of itself, require dismissal of a complaint or formal charge.

Section 14. 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) The diversion program may be available at any stage of a matter arising under these rules. Bar Counsel and respondent may stipulate to a diversion program. A diversion program may include, but is not limited to, mediation, fee arbitration, law office management assistance, evaluation and treatment through a peer 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, the Multi-State Professional Responsibility Examination, or any other program authorized by the BPR.
- (c) The complainant, if any, shall be notified of the proposed decision to refer the respondent to diversion. The complainant shall have twenty (20) days from the date of the notice to submit to Bar Counsel a written comment thereon. The complainant also shall be notified when a complaint or formal charge is diverted. Decisions to divert are not appealable.
- (d) All stipulations relating to diversion programs shall be approved by the BPR. The stipulation shall specify the terms of the diversion program, the general purpose of the diversion, the manner in which compliance is to be monitored, any requirement for payment of restitution or costs, and consequences of material breach. A stipulation for a diversion program may be approved only in cases where there is little likelihood that the respondent will harm the public during the

period of diversion, where the respondent can be adequately supervised in regard to the conditions of the diversion, and where diversion is likely to benefit the attorney, serve the public interest, and accomplish the goals of the program. A matter generally shall not be diverted when:

- (i) The form of discipline in the matter is likely to be greater than public censure;
 - (ii) The misconduct involves misappropriation of funds or property of a client or third party;
 - (iii) The misconduct involves a serious crime;
 - (iv) The misconduct involves family violence;
 - (v) 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;
 - (vi) The misconduct is of the same or similar nature as misconduct for which the respondent has been disciplined within the past five (5) years; or
 - (vii) The misconduct involves dishonesty, deceit, fraud, or misrepresentation.
- (e) In appropriate cases, Bar Counsel may require a diversion stipulation to be supported by respondent's affidavit setting forth facts establishing the respondent's misconduct. In the event of termination of the diversion program due to a material breach of the diversion stipulation, the affidavit shall be admissible into evidence in any ensuing disciplinary proceeding. Unless admitted into evidence in a disciplinary proceeding, the affidavit shall remain confidential and shall not be provided to any person except Bar Counsel, respondent, the BPR or the Court.
- (f) A respondent may be required to pay costs incurred in connection with participation in any diversion program.
- (g) After approval by the BPR, respondent shall promptly enter into the diversion program and complete the requirements thereof. Information which identifies respondent shall be confidential unless otherwise stipulated. Upon respondent's entry into the diversion program, the underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.

- (h) When respondent has successfully completed all requirements of the diversion program, as determined by Bar Counsel, Bar Counsel shall close the file. Upon application of Bar Counsel, the underlying matter shall be dismissed with prejudice by the BPR.
- (i) The determination of a material breach of a diversion stipulation shall be as follows:
 - (i) If Bar Counsel reasonably believes that respondent has materially breached a diversion agreement, Bar Counsel shall serve written notification to respondent of the alleged material breach. Respondent shall have twenty (20) days from service of the notification to serve a written response upon Bar Counsel. Bar Counsel may then seek to modify the diversion stipulation or to terminate the diversion stipulation and proceed with the matter as provided by these rules.
 - (ii) Bar Counsel shall have the burden of proving a material breach to the BPR, by a preponderance of the evidence.
- (j) If, following a hearing, the BPR determines that the breach was material and without reasonable justification, the BPR may modify the diversion program, or it may terminate the diversion program and the disciplinary proceeding shall proceed as provided in these rules.

Section 15. Disability Inactive Status.

- (a) Upon proper proof that an attorney has been judicially declared mentally incompetent, the Court shall enter an order placing the attorney on disability inactive status for an indefinite period until further order of the Court. A copy of the Court's order shall be served upon the Wyoming State Bar, the attorney, the attorney's guardian, if any, and, if the attorney is a patient in a mental health facility, on the director of the mental health facility.
- (b) All attorneys and courts have an affirmative duty to notify Bar Counsel that mental competency or guardianship or conservatorship proceedings have been filed regarding an attorney licensed in the State of Wyoming or that such attorney has been judicially declared mentally incompetent or that a guardian or conservator has been appointed for such attorney.
- (c) Bar Counsel may initiate an investigation into whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity, illness or substance abuse.
 - (i) If, after such investigation, Bar Counsel determines that a prima facie case has been made that the attorney is incapacitated as provided by this rule, then Bar Counsel shall prepare a petition to the BPR seeking disability inactive status and present evidence in support thereof to the Peer Review Panel for a probable cause determination pursuant to Section 12.
 - (ii) If the Peer Review Panel finds probable cause, the BPR shall then schedule a hearing at which Bar Counsel shall have the burden of proving by clear and convincing evidence that the attorney is so incapacitated.
 - (iii) At the conclusion of the hearing, the BPR shall issue a report with findings of fact, conclusions of law, and its recommendation on the petition to transfer the attorney to disability inactive status and shall file such report with the clerk of the Court. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings.
 - (iv) If the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order placing the attorney on disability inactive status for an indefinite period. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings.
- (d) If, during the course of a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental infirmity, illness, or substance abuse, which makes it impossible for the respondent to adequately defend himself or herself, the Court, upon petition from the BPR, shall enter an

order immediately suspending respondent's license to practice law and staying the pending disciplinary proceeding until a determination is made of the respondent's mental competence.

- (e) An attorney who is placed on disability inactive status shall not engage in the practice of law until reinstated to active status in accordance with the provisions of subdivision (f).
- (f) An attorney placed on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement no more often than once in any twelve month period, or at such shorter intervals as the Court may direct in the order placing the attorney on disability inactive status.
 - (i) A proceeding shall be commenced upon such application, and a hearing held in accordance with the provisions of subdivision (c) to determine the attorney's capacity to practice law, except that the burden of proof in any reinstatement proceeding shall be on the attorney to prove by clear and convincing evidence that the attorney's disability has been removed and that the attorney is fit to resume the practice of law.
 - (ii) At the conclusion of the hearing, the BPR shall issue a report with findings of fact, conclusions of law, and its recommendation on the petition for reinstatement and shall file such report with the clerk of the Court. A copy of such report shall be served on Bar Counsel, respondent, and any counsel who represented respondent in the proceedings. If the Court concludes that the attorney should be allowed to return to the active practice of law, it shall enter an order to that effect, including any conditions upon the attorney's practice as it deems just and proper. If the Court concludes that the respondent should not be allowed to return to the active practice of law, it shall enter an order stating that respondent shall remain on disability inactive status.
 - (iii) In its discretion, the Court may direct that the attorney shall pay the expense of any examination, investigation or hearing, together with costs.
- (g) The filing of an application for reinstatement by an attorney placed on disability inactive status shall be deemed to constitute a waiver of any privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name and address of every psychiatrist, psychologist, physician, or other mental health care professional, and any hospital or other health care facility by whom or in which the attorney has been examined or treated since the transfer to disability inactive status. The attorney shall execute and deliver to the Bar Counsel a written authorization, waiving all applicable physical and mental health care privileges and giving Bar Counsel unrestricted access to all psychiatric, psychological, medical, hospital, and other health care information concerning the attorney.

Section 16. Stipulated Discipline.

- (a) At any time after a file is opened, Bar Counsel and respondent may stipulate to a form of discipline by submitting to the BPR a written stipulation and affidavit of respondent which provides a detailed description of the factual basis for the violation and for imposition of the specified discipline, and a detailed description of the discipline to be imposed. The stipulation and affidavit shall state that respondent willingly and knowingly consents to the imposition of the specified discipline, and that the stipulation is voluntarily entered into.
- (b) Any stipulation for the imposition of private discipline shall be approved or disapproved by the BPR. If the stipulation is approved, the BPR shall issue its order imposing the stipulated discipline. If the BPR does not approve the stipulation, the matter shall be remanded to Bar Counsel for further proceedings under these rules.
- (c) Any stipulation for the imposition of public discipline shall be approved by the BPR and recommended by the BPR to the Court. If approved by the BPR, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue its order imposing the stipulated discipline. If the BPR does not approve the stipulation, the matter shall be remanded to Bar Counsel for further proceedings under these rules. If the Court does not accept the recommendation of the BPR, the matter shall be remanded to Bar Counsel for further proceedings under these rules.

Section 17. Interim Suspension.

- (a) Bar Counsel may petition the Court for interim suspension of an attorney/ respondent if there is probable cause to believe that the respondent poses an imminent threat of substantial harm to the public. The petition shall be supported by an affidavit of Bar Counsel setting forth the factual basis for the petition. A copy of the petition shall be served upon the respondent. Respondent shall have fifteen (15) days to respond to the petition.
- (b) Upon review of the petition, affidavit, and response by the respondent, if the Court finds probable cause to believe 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.
- (c) Within fifteen (15) days of the entry of an order of interim suspension, Bar Counsel shall file a formal charge. The matter shall then proceed pursuant to these rules.
- (d) Respondent may file a petition with the Court for dissolution or modification of an order of interim suspension at any time following its entry. A copy of the petition shall be served upon Bar Counsel by respondent. Respondent shall bear the burden of proof by clear and convincing evidence that respondent does not pose an imminent threat of substantial harm to the public and that the interim suspension should be dissolved or modified.
- (e) An order of interim 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.

Section 18. Suspension Upon Conviction of Crimes.

- (a) Upon the filing with the Court by Bar Counsel of a certified copy of a judgment of conviction of a serious crime, the Court shall enter an order immediately suspending the attorney, pending final disposition in a disciplinary proceeding.
- (b) After suspension of the attorney, a disciplinary proceeding shall be conducted pursuant to these rules. The sole issue to be determined shall be the nature and extent of the discipline to be imposed.
- (c) The disciplinary proceeding shall not be brought to hearing until all appeals from the conviction are concluded, unless the attorney files a petition with the BPR to lift a suspension. A hearing on the petition shall be held within thirty (30) days. At a hearing on such a petition, the attorney shall have the burden of proving by clear and convincing evidence that the attorney's resumption of the practice of law, under conditions set by the BPR, shall not be detrimental to the administration of justice or to the public interest.
 - (i) Sections 19(a), 19(b), and 19(f) shall apply to this hearing.
 - (ii) If the BPR determines that the suspension should be lifted, with or without conditions, it shall issue a report with its findings of fact, conclusions of law, and recommendations 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.
- (d) A certified copy of the judgment of conviction of a serious crime as defined in Section 3(h) shall be conclusive evidence of the commission of that crime in any disciplinary proceeding.
- (e) The Court shall issue an order lifting the suspension upon the filing of a certified copy of an order vacating the judgment of conviction. Lifting the suspension shall not terminate any disciplinary proceeding and shall not preclude an interim suspension pursuant to Section 17.
- (f) The clerk of any court of record within the state in which an attorney is convicted of any serious crime shall within thirty (30) days of said conviction transmit to Bar Counsel a certified copy of the judgment demonstrating the conviction.

Section 19. Disciplinary Hearings.

- (a) The BPR shall arrange for a complete record, either by stenographic or electronic means, to be made of all disciplinary proceedings. Respondent may obtain a transcript of such record at respondent's expense. At the time of ordering the transcript, respondent shall make arrangements, satisfactory to the reporter, for payment of costs of the transcript.
- (b) All hearings shall be before the BPR and shall be conducted in accordance with the Wyoming Rules of Evidence. All statements by Bar Counsel shall be inadmissible at such hearings.
- (c) At the hearing, the BPR shall first receive evidence regarding whether a violation of the 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.
 - (i) 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 respondent shall not be admissible except in the second phase of the hearing regarding the appropriate discipline to be ordered or recommended.
 - (ii) 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.
- (d) If the BPR finds the charges have been proved by clear and convincing evidence, and that private discipline is warranted, it shall issue an order 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.
- (e) If the BPR finds the charges have been proved by clear and convincing evidence, and that public discipline is warranted, it shall issue a report 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.

- (f) Proposed findings of fact and conclusions of law shall be prepared and served in accordance with Rule 58(a) of the Wyoming Rules of Civil Procedure.

Section 20. Reciprocal Discipline.

- (a) Upon notification that an attorney admitted to practice in this state has been disciplined in another jurisdiction, Bar Counsel shall investigate and make a recommendation to the BPR as to whether it should recommend to the Court that it enter an order imposing the identical discipline or take some other action. Bar Counsel's recommendation shall be served upon such attorney.
- (b) Upon receipt of Bar Counsel's recommendation, the BPR shall issue an order requiring such attorney to show cause as to why the recommendation of Bar Counsel should not be adopted by the BPR. Any show cause hearing shall be conducted in accordance with Section 19. Such attorney shall have the burden of proof by a preponderance of the evidence. A copy of the report to the Court shall be served on Bar Counsel, such attorney, and any counsel who represented such attorney in the proceedings.
- (c) The procedure for a response to the report from respondent and the procedure thereafter shall be pursuant to Section 21 (f). The Court shall then issue an order imposing the identical discipline or some other disposition.
- (d) Except as otherwise stated above, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish that misconduct conclusively for purposes of any disciplinary proceeding in this state.

Section 21. Judicial Review.

- (a) For purposes of appeals and reviews under this section, the Wyoming Rules of Appellate Procedure apply insofar as the provisions in those rules are in their natures applicable and consistent with these rules.
- (b) Respondent may petition the Court from a final order by the BPR of private discipline within thirty (30) days of the date of the order by filing an original and six (6) copies of the petition with the clerk of the Court and serving a copy on Bar Counsel. A response by Bar Counsel may be filed within twenty (20) days of the date of service of the petition.
- (c) Respondent may file a response with the Court to a report by the BPR which recommends public discipline within thirty (30) days of service of that report on respondent pursuant to Section 19(e). Respondent shall serve a copy of such response on Bar Counsel.
 - (i) A response shall state explicit reasons for the exceptions to the report together with a brief prepared in accordance with Rule 7.01, W.R.A.P.
 - (ii) Respondent may file a statement that respondent does not wish to file exceptions to the report.
 - (iii) If respondent files a statement that respondent does not wish to file exceptions to the report or if respondent fails to respond, the Court shall proceed with such discipline as it may determine to be appropriate.
 - (iv) If respondent files proper exceptions, the Court shall calendar the matter for such briefs or argument as it may deem appropriate and shall thereafter enter its judgment. The Court shall not receive or consider any evidence that was not presented to the BPR.
- (d) Respondent may file a response with the Court to a report by the BPR which recommends that a suspended or disbarred attorney not be reinstated within thirty (30) days of service of that report on respondent pursuant to Section 24(g). The procedures of Section 21(c)(i) through (iv) shall apply. Respondent shall serve a copy of such response on Bar Counsel.
- (e) Respondent may file a response with the Court to a report by the BPR which recommends that respondent be placed on disability inactive status or that respondent remain on disability inactive status within thirty (30) days of service of that report on respondent pursuant to Section 15(c)(iii) or 15(f)(ii). The procedures of Section 21(c)(i) through (iv) shall apply. Respondent shall serve a copy of such response on Bar Counsel.

- (f) An attorney may file a response with the Court to a report by the BPR which recommends that the attorney be subject to reciprocal discipline within thirty (30) days of service of that report on the attorney pursuant to Section 20(b). The procedures of Section 21(c)(i) through (iv) shall apply. Respondent shall serve a copy of such response on Bar Counsel.
- (g) Complainant may, at complainant's own expense, seek review by the Court of any disposition of a formal charge without a hearing or of a stipulated discipline, except for diversion, within thirty (30) days of the date of the order by filing the original and six (6) copies of the petition for review with the clerk of the Court. A copy shall be served on Bar Counsel, respondent, and any counsel who represented respondent. Complainant shall specify the particular facts which should have led the BPR to a different conclusion; however, no fact which was not presented to the BPR may be presented to the Court. A response by Bar Counsel, respondent, or any counsel who represented respondent may be filed within twenty (20) days of the date of service of the petition.
- (h) Any costs of preparing the record shall be paid by the party seeking review. The record shall be requested from the BPR simultaneously with the filing of the petition. At the time of requesting that the record be prepared, arrangements shall be made which are satisfactory to the reporter or the Wyoming State Bar for payment of costs. If no arrangements are made for preparation of the record, the review shall not proceed. After all responses are filed, the clerk of Court shall request from the BPR the record on review.
- (i) If a report of the BPR recommends suspension or disbarment, the Court may, upon application by the BPR, suspend the attorney from the practice of law pending entry of a final order by the Court. An attorney suspended pursuant to this section is not required to comply with the requirements of Section 22 during this suspension.

Section 22. Duties of Disbarred or Suspended Attorneys.

- (a) Within fifteen (15) days of the date of a final order imposing discipline, a disbarred or suspended attorney shall notify the following persons by registered or certified mail, return receipt requested, of the attorney's disbarment or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment or suspension:
 - (i) All clients in pending matters. The attorney shall advise clients to seek legal advice elsewhere and to obtain another attorney for litigated matters or administrative proceedings.
 - (ii) Any co-counsel who is involved in litigated matters or administrative proceedings.
 - (iii) The attorney for each adverse party or, in the absence of such counsel, the adverse party or parties in litigated matters or administrative proceedings. The notice to parties shall state the place of residence of the client of the disbarred or suspended attorney.
 - (iv) All courts or administrative bodies in which the attorney has matters pending.
- (b) A disbarred attorney or an attorney suspended for greater than six (6) months shall within fifteen (15) days deliver to all present and former clients all client files.
- (c) A disbarred or suspended attorney shall notify the client of all deadlines and scheduled court dates.
- (d) A disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new legal matters. During the period from the entry date of the order to its effective date, the attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.
- (e) A disbarred or suspended attorney shall return any unearned fees.

- (f) Within thirty (30) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with the Court and BPR an affidavit showing that the attorney has fully complied with the provisions of the order and with this rule and stating the address where communications may thereafter be directed to the attorney.
- (g) A disbarred or suspended attorney shall maintain records of the steps taken to comply with this rule.
- (h) The provisions of this section are deemed to be incorporated into all orders of suspension and disbarment. Failure to comply with any requirement of this section is punishable as contempt.

Section 23. Protection of Client Interests.

- (a) Whenever an attorney is suspended for disability, cannot be found, or dies, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the district court in the judicial district where the attorney had an office may appoint an attorney or attorneys to inventory the files of the suspended, disappearing, or deceased attorney and to take such action as is required to protect the interests of the clients.
- (b) Any attorney so appointed shall not be permitted to disclose any information contained in the inventoried files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney.

Section 24. Reinstatement after Suspension or Disbarment.

- (a) 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, that the attorney has complied with all applicable conditions for reinstatement.
- (b) An attorney who has been suspended for a specific period of greater than six (6) months may petition the BPR 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.
- (c) An attorney who has been disbarred may not petition for reinstatement for at least five (5) years from the effective date of the disbarment unless another period is specified in the order.
- (d) An attorney who has petitioned for reinstatement after disbarment and such application has been denied may not again petition for reinstatement for at least three (3) years from the date of the order denying the attorney's last petition for reinstatement unless another period is specified in the order.
- (e) A fee of five hundred dollars (\$500.00) shall accompany the filing of a petition for reinstatement by a suspended attorney. A fee of one thousand dollars (\$1000.00) shall accompany the filing of a petition for reinstatement by a disbarred attorney. In addition, the BPR may recommend to the Court that the necessary expenses incurred in the investigation and processing of a motion for reinstatement be paid by the respondent, and the Court in its discretion may so order.
- (f) Following receipt of a petition for reinstatement, 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 elements detailed below in subsection (g). 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.
- (g) If Bar Counsel does not stipulate to reinstatement or if the BPR or Court does not approve a stipulation for reinstatement, a hearing shall be held by the BPR. At the hearing, the suspended or disbarred attorney shall have the burden of proving by clear and convincing evidence the following:
 - (i) The respondent has been rehabilitated;

- (ii) The respondent has substantially complied with all requirements imposed by the Court;
 - (iii) The respondent has the character and fitness qualifications to practice law in this state as outlined in Section IV of the Wyoming Rules and Procedures Governing Admission to the Practice of Law;
 - (iv) The respondent is competent to practice law in this state;
 - (v) The respondent's resumption of the practice of law shall not be detrimental to the administration of justice and the public interest.
- (h) After a hearing, the BPR shall issue a report of its findings of fact and conclusions of law and the full record of the matter to the Court, together with its recommendation on the petition for reinstatement. The Court shall then enter a final order deciding the petition.
- (i) If an attorney who has been disbarred or suspended does not seek reinstatement within three (3) years from the date that attorney first 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 admissions requirements set forth in Sections II and IV of the Wyoming Rules and Procedures Governing Admission to the Practice of Law.
- (j) The procedure for reinstatement from suspensions due to acts or omissions other than misconduct as defined in Section 3 herein is provided in the By-Laws of the Wyoming State Bar; however, subsection (i) herein applies to any suspension regardless of the basis for that suspension.

Section 25. Advisory Opinions.

- (a) Formal written advisory opinions.
 - (i) Within Bar Counsel's discretion, Bar Counsel may accept or decline a written request of a member of the Wyoming State Bar for a formal, written advisory opinion with regard to a specific set of circumstances involving issues arising under the Wyoming Rules of Professional Conduct.
 - (ii) If such a request is accepted, any advisory opinion shall be approved by the BPR prior to its release.
 - (iii) If requested by the BPR, an advisory opinion shall be published in the *Wyoming Lawyer* or other periodical published by the Wyoming State Bar.
 - (iv) It shall be a complete defense to any complaint that, with regard to the material allegations of the complaint, respondent acted in accordance with and in reasonable reliance upon a formal advisory opinion given to respondent.
 - (v) Reasonable reliance by respondent upon a formal advisory opinion given to another attorney, which involves the same or similar factual situation, shall be persuasive authority to the BPR in determining whether there has been misconduct.
- (b) Reliance on an American Bar Association Formal Opinion by the Standing Committee on Ethics and Professional Responsibility interpreting a rule, which is the same or substantially similar to a Wyoming rule, shall be of persuasive authority to the BPR in determining whether there has been misconduct.

Section 26. Expenses and Costs.

- (a) The expenses of members of the BPR and the Panel, 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) When an attorney is privately disciplined, the BPR may assess against the attorney the costs incurred in connection with the investigation and disciplinary proceeding.
- (c) 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 fees and, if the Court imposes discipline, the Court may assess all or any part of the certified costs and fees against respondent.
- (d) In any case where costs and fees are assessed, they shall be paid to the Wyoming State Bar.
- (e) In addition to any costs or fees assessed by the BPR or the Court, an administrative fee of five hundred dollars (\$500.00) shall be imposed by the BPR in all cases where private discipline, diversion, or public discipline is ordered.

Section 27. Disqualifications.

Notwithstanding any other rule:

- (a) No attorney shall act as a member of the Panel or BPR or as a Disciplinary Judge in any matter in which the attorney acted as Bar Counsel with regard to a prior matter involving the same respondent.
- (b) It shall not be grounds for disqualification of Bar Counsel that such attorney acted as a member of the Panel or BPR or as a Disciplinary Judge with regard to a prior matter involving the same respondent.
- (c) It shall not be grounds for disqualification of a member of the Panel or BPR or Disciplinary Judge that such attorney previously acted as a member of the Panel or BPR or as a Disciplinary Judge with regard to a prior matter involving the same respondent.

Section 28. Statute of Limitations

- (a) Complaints against respondents shall be commenced within four (4) years from the time the matter giving rise to the complaint is discovered or, with due diligence, should have been discovered.
- (b) This four (4) year limitation shall not apply in complaints:
 - (i) involving theft, misappropriation, conviction of a serious crime, or a knowing act of concealment.
 - (ii) which are part of a continuing course of misconduct if at least one of the acts of misconduct occurred within four (4) years of the commencing of the complaint.
- (c) This four (4) year limitation shall be tolled during any period when:
 - (i) there has been litigation pending that has resulted in a finding of misconduct; however, the complaint must be commenced within one (1) year of the final order making such finding.
 - (ii) complainant is under the age of majority, insane, or otherwise unable to file a complaint due to mental or physical incapacitation; however, the complaint must be commenced within one (1) year after the disability is removed.

Section 29. Effective Date of Rules.

These rules shall become effective on November 1, 2003, and apply to any complaint submitted or matter commenced thereafter, unless otherwise agreed by the parties.