

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2014

In the Matter of the Amendments to the)
Bylaws of the Wyoming State Bar)

**ORDER AMENDING ARTICLE I, SECTION 3 OF THE BYLAWS OF THE
WYOMING STATE BAR**

This matter came before the Court on its own motion following entry of this Court's order approving adoption of the Wyoming Rules of Disciplinary Procedure. Rule 20 of those rules governs disability inactive status, which replaces the "incapacitated status" found in the Bylaws of the Wyoming State Bar. Accordingly, this Court finds the provisions governing incapacitated status should be removed from the Bylaws. It is, therefore,

ORDERED that the amendments to the Bylaws of the Wyoming State Bar, attached hereto, be, and hereby are, adopted by the Court to be effective July 1, 2015; 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 shall thereafter be recorded in the journal of this Court.

DATED this 16th day of March, 2015.

BY THE COURT:

/s/

E. JAMES BURKE
Chief Justice

BYLAWS OF THE WYOMING STATE BAR

ARTICLE I. MEMBERSHIP

Section 3. Status of membership.

The members of the Wyoming State Bar shall hold one of the following eight (8) ~~nine (9)~~ statuses:

~~(i) Incapacitated:~~

- ~~(1) Has been determined to be incapacitated pursuant to subsections (5) or (6) below.~~
- ~~_____ (2) Pays the same license fee as inactive members.~~
- ~~_____ (3) Is not required to complete any CLE.~~
- ~~_____ (4) Must seek reinstatement to active status in the Wyoming State Bar pursuant to subsection (11) below within 36 months of being placed on incapacitated status, or said attorney's membership will be terminated by order of the Wyoming Supreme Court.~~
- ~~_____ (5) Any Wyoming State Bar member claiming that he or she should be transferred to incapacitated status shall file a petition so requesting with the Board of Professional Responsibility with a copy served on bar counsel. The petition should include all pertinent information, documentation and evidence which supports the member's request and a certification by the member that there are no disciplinary investigations or matters pending against him or her. Within fifteen (15) days of service of the petition, bar counsel shall file a response with the Board of Professional Responsibility, certifying that there are no disciplinary investigations or matters pending against the member and may file any other response to the petition. A copy of the response shall be served on the member. Thereafter, all proceedings and any hearing will be conducted in the same manner as disciplinary proceedings under the procedural rules of the Disciplinary Code.~~
- ~~_____ (6) Upon receipt of information from any source presenting prima facie evidence that an active member of the Wyoming State Bar is incapable of continuing the practice of law by reason of mental, physical or emotional infirmity or illness, including substance abuse and dementia, bar counsel may initiate an investigation of the matter. Such investigation may include requiring the member to furnish written authorizations for medical, psychological, or psychiatric records as may be relevant to the investigation and to submit to an examination by qualified medical experts. If the member refuses to furnish such authorizations, such refusal shall be grounds for bar counsel to file and the Wyoming Supreme Court to grant a petition for interim suspension pursuant to the Disciplinary Code.~~
- ~~_____ (i) If, after such investigation, bar counsel determines that there is clear and convincing evidence that the attorney is incapacitated as provided by this rule, then bar counsel shall prepare a petition seeking incapacitated status. Thereafter, all proceedings and any hearing will be conducted in the same manner as disciplinary proceedings under the procedural rules of the Disciplinary Code.~~
- ~~_____ (ii) Proceedings under this subsection are not disciplinary proceedings.~~
- ~~_____ (7) All attorneys and courts have an affirmative duty to notify bar counsel of his/her knowledge that an active member has been (i) judicially or medically declared to be incapable of~~

~~managing his or her affairs, (ii) committed involuntarily to a medical facility for drug dependency, mental illness, or substance abuse, (iii) found not guilty by reason of mental infirmity, illness or deficiency in a criminal proceeding, (iv) found incapable of assisting in his or her own defense in a criminal action, (v) has had a guardian (but not a limited guardian) appointed for his or her person or estate on a finding of incompetence, or (vi) found to be mentally incapable of conducting the practice of law in another jurisdiction.~~

~~—— (8) No pending disciplinary proceeding against an attorney shall be stayed when the attorney is placed on incapacitated status unless the Board of Professional Responsibility or the Wyoming Supreme Court, upon motion, additionally finds that attorney is incapable of assisting counsel in his or her own defense in such proceeding.~~

~~—— (9) If, during the course of a disciplinary proceeding, the respondent contends that he or she is incapacitated by reason of mental, physical or emotional infirmity or illness, including substance abuse or dementia, which makes it impossible for the respondent to adequately defend himself or herself, the Wyoming Supreme Court, upon petition from the Board of Professional Responsibility, shall enter an order immediately suspending respondent's license to practice law until a determination is made on the respondent's incapacitation.~~

~~—— (10) An attorney placed on incapacitated status shall not engage in the practice of law until reinstated to active status in accordance with the provisions of subsection (11) below. Such attorney must comply with the duties of disbarred or suspended attorneys as set forth in the Disciplinary Code.~~

~~—— (11) An attorney placed on incapacitated status under the provisions of this rule shall be entitled to apply for reinstatement to active status no more often than once in any twelve month period, or at such shorter intervals as the Wyoming Supreme Court may direct in the order placing the attorney on incapacitated status. A five hundred dollar (\$500.00) fee payable to the Wyoming State Bar shall accompany any reinstatement application. Said fee may be waived in the sole discretion of the executive director for good cause shown. Thereafter, all proceedings and any hearing will be conducted pursuant to the Disciplinary Code.~~

~~—— (i) The filing of an application for reinstatement by an attorney placed on incapacitated status shall be deemed to constitute a waiver of any privilege with respect to any health care treatment of the attorney during the period of incapacity. The attorney shall be required to disclose the name and address of every psychiatrist, psychologist, physician, or other health care professional, and any hospital or other health care facility or provider by whom or in which the attorney has been examined or treated since the transfer to incapacitated status. The attorney shall execute and deliver to bar counsel a written authorization waiving all applicable physical and mental health care privileges, and giving bar counsel unrestricted access to all psychiatric, psychological, medical, hospital, and other health care information concerning the attorney.~~

~~—— (ii) The burden of proof in any reinstatement proceeding shall be on the attorney to prove by clear and convincing evidence that the attorney's incapacitation has been removed and that the attorney is fit to resume the practice of law.~~

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