

Rules of Procedure

(As approved by the Supreme Court by order dated February 9, 1984 and as amended by Supreme Court orders dated April 18, 1984, May 31, 1984, July 16, 1984, July 27, 1984, November 1, 1984, June 25, 1985, July 8, 1985, July 22, 1985, November 29, 1985, January 2, 1986, January 24, 1986, March 20, 1986, September 10, 1986, June 30, 1987, September 24, 1987, October 1, 1987, November 10, 1987, November 24, 1987, December 10, 1987, January 5, 1988, February 22, 1988, February 23, 1988, July 8, 1988, March 13, 1989, March 31, 1989, June 1, 1989, March 20, 1990, October 1, 1990, January 10, 1991, April 4, 1991, July 22, 1991, August 2, 1991, January 17, 1992, December 22, 1992, June 29, 1993, December 13, 1993, December 28, 1993, October 10, 1994, May 15, 1995, November 6, 1995, December 14, 1995, September 30, 1996, June 5, 1997; August 19, 1997, effective October 4, 1997; October 3, 1997; July 10, 1998; November 30, 1999; February 5, 2001; June 28, 2001; September 6, 2001; June 17, 2003, effective July 1, 2003; July 9, 2003, effective August 1, 2003; June 17, 2003, effective, January 1, 2004; December 8, 2003, effective January 1, 2004; December 9, 2004, effective January 1, 2005; January 21, 2005; April 26, 2007; August 29, 2007; January 17, 2008; March 20, 2008; October 19, 2009).

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Title 1 — General Provisions

Rule 1.1 Definitions.

In these rules, unless the context or subject matter requires otherwise:

- (a) “Accused” means an attorney charged with misconduct by the Bar in a formal complaint.
- (b) “Applicant” means an applicant for reinstatement to the practice of law in Oregon.
- (c) “Attorney” means a person who has been admitted to the practice of law in Oregon.
- (d) “Bar” means Oregon State Bar created by the Bar Act.
- (e) “Bar Act” means ORS Chapter 9.
- (f) “Bar Counsel” means counsel appointed by the SPRB or the Board to represent the Bar.
- (g) “BBX” means Board of Bar Examiners appointed by the Supreme Court.
- (h) “Board” means Board of Governors of the Bar.
- (i) “Contested Admission” means a proceeding in which the BBX is objecting to the admission of an applicant to the practice of law after a character review proceeding.
- (j) “Contested Reinstatement” means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney to the practice of law.
- (k) “Disciplinary Board” means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.
- (l) “Disciplinary Board Clerk” means the person or persons designated in General Counsel’s Office of the Bar to receive and maintain records of disciplinary and reinstatement proceedings on behalf of the Disciplinary Board.
- (m) “Disciplinary Counsel” means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.
- (n) “Disciplinary Proceeding” means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.
- (o) “Examiner” means a member of the BBX.
- (p) “Executive Director” means the chief administrative employee of the Bar.
- (q) “Formal Complaint” means the instrument used to charge an attorney with misconduct.
- (r) “LPRC” means a local professional responsibility committee appointed by the Board.
- (s) “Misconduct” means any conduct which may or does subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.
- (t) “State Court Administrator” means the person who holds the office created pursuant to ORS 8.110.
- (u) “Supreme Court” and “court” mean Supreme Court of Oregon.

(v) “SPRB” means State Professional Responsibility Board created by the Board.

(w) “Trial Panel” means a three-member panel of the Disciplinary Board.

(Rule 1.1 amended by Order dated November 10, 1987.)

(Rule 1.1(c) amended by Order dated February 23, 1988.)

(Rule 1.1(i) and (k) amended by Order dated July 22, 1991.)

(Rule 1.1(l) through (w) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.1(b) and (i) amended by Order dated October 19, 2009.)

Rule 1.2 Authority.

These “Rules of Procedure” are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the Supreme Court.

(Rule 1.2 amended by Order dated June 5, 1997, effective July 1, 1997.)

Rule 1.3 Nature Of Proceedings.

Disciplinary and contested reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant’s conduct should preclude the applicant from being reinstated to membership in the Bar.

(Rule 1.3 amended by Order dated October 19, 2009.)

Rule 1.4 Jurisdiction; Choice of Law.

(a) Jurisdiction. An attorney admitted to the practice of law in Oregon, and any attorney specially admitted by a court or agency in Oregon for a particular case, is subject to the Bar Act and these rules, regardless of where the attorney’s conduct occurs. The Supreme Court’s jurisdiction over matters involving the practice of law by an attorney shall continue whether or not the attorney retains the authority to practice law in Oregon, and regardless of the residence of the attorney. An attorney may be subject to the disciplinary authority of both Oregon and another jurisdiction in which the attorney is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(c) Application. The provisions of BR 1.4 shall apply to conduct occurring on or before December 31, 2004. Conduct occurring on or after January 1, 2005, shall be governed by Rule of Professional Conduct 8.5.

(Rule 1.4 amended by Order dated September 30, 1996.)

(New Rule 1.4(c) added by Order dated April 26, 2007.)

Rule 1.5 Effective Date.

(a) These rules shall apply to all disciplinary and contested reinstatement proceedings initiated by the service of a formal complaint or statement of objections on an accused or applicant on or after January 1, 1984.

(b) The provisions of BR 1.5(a) shall apply except to the extent that in the opinion of the court their application in a particular matter or proceeding would not be feasible or would work an injustice in which event the former or current rule most consistent with the fair and expeditious resolution of the matter or proceeding under consideration shall be applied.

(Rule 1.5(a) amended by Order dated July 22, 1991.)

(Rule 1.5(a) amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 1.6 Citation Of Rules.

These Rules of Procedure may be referred to as Bar Rules and cited, for example, as BR 1.1(a).

Rule 1.7 Bar Records.

(a) Property of Bar. The records of the Bar and of its officers, governors, employees and committees, in contested admission, disciplinary and reinstatement proceedings are the property of the Bar.

(b) Public Records Status. Except as exempt or protected by law from disclosure, the records of the Bar relating to contested admission, disciplinary, and reinstatement proceedings are available for public inspection.

Rule 1.8 Service Methods.

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on an accused or applicant shall be

(1) sent to the accused or applicant, or his or her attorney if the accused or applicant is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

(2) served on the accused or applicant by personal or office service as provided in ORCP 7D(2)(a)-(c).

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or served by personal or office service as provided in ORCP 7D(2)(a)-(c).

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or by personal or office service as provided in ORCP 7D(2)(a)-(c).

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

(Rule 1.8 amended by Order dated June 30, 1987.)

(Rule 1.8(a) amended by Order dated February 23, 1988.)

(Rule 1.8(a), (b) and (c) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.8(d) amended by Order dated April 26, 2007.)

Rule 1.9 Time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday or legal holiday. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

Rule 1.10 Filing.

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered in person to the Disciplinary Board Clerk, Oregon State Bar, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Disciplinary Board Clerk, Oregon State Bar, P. O. Box 231935, Tigard, Oregon 97281-1935. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563. Any pleading or document to

be filed with the State Chair of the Disciplinary Board, a regional chair or a trial panel chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.

(b) Filing by mail shall be complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsection (b) of this rule, the filing shall not be timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the accused or applicant, or his or her attorney if the accused or applicant is represented, Disciplinary Counsel, and Bar Counsel.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledgement of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

(f) Any pleading or document to be filed with the Supreme Court pursuant to these rules of procedure may be filed electronically, rather than conventionally by paper, provided the filing complies with ORAP 16.

(Rule 1.10 amended by Order dated June 30, 1987.)

(Rule 1.10(d) amended by Order dated February 23, 1988.)

(Rule 1.10(d) amended by Order dated February 5, 2001.)

(Rule 1.10(a), (b),(d) and (e) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 1.10(a) amended by Order dated April 26, 2007.)

(Rule 1.10(a) amended by Order dated March 20, 2008.)

(Rule 1.10(f) added by Order dated October 19, 2009.)

Rule 1.11 Address And Telephone Number Designation.

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her business address and telephone number, or residence address and telephone number, as the case may be. A new designation shall not become effective until actually received by the Oregon State Bar.

(Rule 1.11 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)

Rule 1.12 Service Of Bar Pleadings Or Documents on Out-of-State Attorney.

(a) If an attorney, pursuant to BR 1.11, has designated an address which is not located within the State of Oregon, a formal complaint filed under BR 4.1 or a statement of objections filed under BR 8.9 may be:

(1) personally served upon the attorney; or

(2) served on the attorney by certified mail, return receipt requested, to the attorney's last designated address on file with the Bar, in which case service shall be complete on the date on which the attorney signs a receipt for the mailing.

(b) If service under either BR 1.12(a)(1) or BR 1.12(a)(2) is attempted but cannot be completed, a formal complaint or a statement of objections may be served on the attorney by first class mail to the attorney's last designated address on file with the Bar, in which case service shall be complete seven days after such mailing. Proof of such service by mail shall be by certificate showing the date of deposit in the mail.

(c) Service of all other pleadings or documents on an attorney who has designated an address which is not located within the State of Oregon shall comply with BR 1.8(a).

*(Rule 1.12 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)
(Rule 1.12 amended by Order dated April 26, 2007.)*

Title 2 — Structure And Duties

Rule 2.1 Qualifications of Counsel.

(a) Definition of Accused. Notwithstanding BR 1.1(a), for the purposes of this rule, “accused” means an attorney who is the subject of an allegation of misconduct that is under investigation by the Bar, or who has been charged with misconduct by the Bar in a formal complaint.

(b) Bar Counsel. Any attorney admitted to practice law at least three years in Oregon may serve as Bar Counsel unless the attorney:

- (1) currently represents an accused or applicant;
- (2) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (3) served as a member of the Disciplinary Board at a time when the formal complaint against the accused was filed.

(c) Counsel for Accused. Any attorney admitted to practice law in Oregon may represent an accused unless the attorney:

- (1) is a current member of the Board or the SPRB;
- (2) served as a member of the Board or the SPRB at a time when the allegations about which the accused seeks representation were under investigation by the Bar or were authorized to be charged in a formal complaint;
- (3) is a current member of an LPRC that investigated allegations about which the accused seeks representation;
- (4) served as a member of an LPRC that investigated allegations about which the accused seeks representation, at a time when such investigation was undertaken;
- (5) currently is serving as Bar Counsel;
- (6) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (7) served as a member of the Disciplinary Board at a time when the formal complaint against the accused was filed.

(d) Counsel for Applicant. Any attorney admitted to practice law in Oregon may represent an applicant unless the attorney:

- (1) is a current member of the Board, the BBX, or the SPRB;
- (2) served as a member of the Board, the BBX, or the SPRB at a time when the investigation of the reinstatement application was conducted by the Bar;
- (3) currently is serving as Bar Counsel;
- (4) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (5) served as a member of the Disciplinary Board at a time when the statement of objections against the applicant was filed.

(e) Vicarious Disqualification. The disqualifications contained in BR 2.1(b), (c) and (d) shall also apply to firm members of the disqualified attorney's firm.

(f) Exceptions to Vicarious Disqualification.

(1) Notwithstanding BR 2.1(b), (c) and (d), an attorney may serve as Bar Counsel or represent an accused or applicant even though a firm member is currently serving on the Disciplinary Board, provided the firm member recuses himself or herself from participation as a trial panel member, regional chairperson or state chairperson in any matter in which a member of the firm is Bar Counsel or counsel for an accused or applicant.

(2) Subject to the provisions of RPC 1.7, and notwithstanding the provisions of BR 2.1(b), (c) and (d), an attorney may serve as Bar Counsel or represent an accused or applicant even though a firm member is currently serving as Bar Counsel or representing an accused or applicant, provided firm members are not opposing counsel in the same proceeding.

(3) Notwithstanding BR 2.1(b), (c) and (d), an attorney in a Board member's firm may represent an accused provided the Board member is screened from any form of participation or representation in the matter. In order to ensure such screening:

(A) The Board member shall prepare and file an affidavit with the Executive Director attesting that, during the period his or her firm is representing an accused, the Board member will not participate in any manner in the matter or the representation and will not discuss the matter or representation with any other firm member;

(B) The Board member's firm shall also prepare and file an affidavit with the Executive Director attesting that all firm members are aware of the requirement that the Board member be screened from participation in or discussion of the matter or representation;

(C) The Board member and firm shall also prepare, at the request of the Executive Director, a compliance affidavit describing the Board member's and the firm's actual compliance with these undertakings;

(D) The affidavits required under subsections (A) and (B) of this rule shall be filed with the Executive Director no later than 14 days following the acceptance by a Board member's firm of an accused as a client, or the date the Board member becomes a member of the Board.

(Rule 2.1(b) amended by Order dated May 31, 1984, July 27, 1984, nunc pro tunc May 31, 1984.)

(Rule 2.1 amended by Order dated June 30, 1987.)

(Rule 2.1 amended by Order dated October 1, 1990.)

(Rule 2.1(d) amended by Order dated November 6, 1995.)

(Rule 2.1 deleted and new Rule 2.1 added by Order dated October 3, 1997.)

(Rule 2.1(f)(2) amended by Order dated April 26, 2007.)

(Rule 2.1(d)(2), 2.1(f)(3), 2.1(f)(3)(A), and 2.1(f)(3)(D) amended by Order dated October 19, 2009.)

Rule 2.2 Investigators.

Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

(Rule 2.2 amended by Order dated October 19, 2009.)

Rule 2.3 Local Professional Responsibility Committees And State Professional Responsibility Board.

(a) LPRCs.

(1) Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative

purposes. The size of each LPRC shall be as the Board determines and each LPRC may have a member of the public who is not an attorney. Members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed. The Board shall appoint a chairperson for each committee.

(2) Duties of LPRCs.

(A) Disciplinary Counsel shall refer complaints or allegations of misconduct to an LPRC, as necessary and appropriate, by assigning each matter to a specific LPRC member, with notice to the LPRC chairperson.

(B) Members of the LPRC serve as fact-finders, investigating those complaints or allegations of misconduct referred to them by the SPRB or Disciplinary Counsel. Upon the conclusion of an investigation by an LPRC member, the member shall submit a written report to Disciplinary Counsel with specific findings. The LPRC member also shall provide a copy of such report to the chairperson of the LPRC of which he or she is a member.

(C) LPRC members are to complete each investigation and submit a written report within 90 days of the receipt of the referral from Disciplinary Counsel. The SPRB may grant one extension of time for a maximum of 60 days for good cause shown. Thereafter, if the investigation is not complete, the LPRC shall refer the matter back to Disciplinary Counsel for completion.

(D) An LPRC chairperson shall monitor the progress of the investigations assigned to the members of his or her committee, and may assign additional committee members to an investigation if the principal investigator requests it or if the LPRC chairperson deems it appropriate.

(E) An LPRC member may request that the LPRC chairperson convene a meeting of the LPRC or otherwise solicit input from other LPRC members in those matters justifying such committee deliberation. However, an LPRC member need not obtain the approval of the LPRC as a whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel.

(F) LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.

(3) Authority.

(A) LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(B) A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(C) A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).

(b) SPRB.

(1) Appointment. The Board shall create for the state at large a state professional responsibility board and appoint its members. The SPRB shall be composed of seven resident attorneys and two members of the public who are not attorneys. Two attorney members shall be from Board Region 5 and one attorney member shall be from each of the remaining Board regions. The public members shall be at-large appointees. Members of the SPRB shall be appointed for terms of not more than four years and shall serve not more than four years. Each year the Board shall appoint one member of the SPRB as chairperson. The chairperson shall be an attorney. In the event the chairperson is unable to carry out any responsibility given to him or her by these rules, the chairperson may designate another member of the SPRB to do so.

(2) Duties of SPRB. The SPRB shall supervise the investigation of complaints, allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A complaint by a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(3) Authority.

(A) The SPRB shall have the authority to dismiss complaints, allegations or instances of alleged misconduct against attorneys, refer matters to Disciplinary Counsel or LPRCs for investigation, issue admonitions for misconduct, refer matters to the State Lawyers Assistance Committee, approve and supervise diversion agreements, institute disciplinary proceedings against any attorney, or take other action within the discretion granted to the SPRB by these rules.

(B) The SPRB shall have the authority to adopt rules dealing with the handling of its affairs, subject to approval by the Board.

(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(E) A member of the SPRB or Disciplinary Counsel may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(b)(3)(C).

(c) Resignation and Replacement. The Board may remove, at its discretion, or accept the resignation of, any officer or member of the SPRB or an LPRC and appoint a successor who shall serve the unexpired term of the member who is replaced.

(Rule 2.3(b)(3) amended by Order dated April 4, 1991, effective April 15, 1991.)

(Rule 2.3(b)(1) amended by Order dated April 4, 1991, effective October 7, 1991. Amended by Order dated June 5, 1997, effective July 1, 1997. Amended by Order dated February 5, 2001.)

(Rule 2.3(b)(1) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 2.3(b)(3) amended by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.3(a) amended by Order dated December 8, 2003, effective January 1, 2004.)

Rule 2.4 Disciplinary Board.

(a) Composition. A disciplinary board shall be appointed by the Supreme Court. The Disciplinary Board shall consist of a state chairperson, 6 regional chairpersons, and 6 additional members for each Board region except for Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board shall be resident attorneys admitted to practice in Oregon at least 3 years. Except for the state chairperson who shall be an at-large appointee, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of 2 attorneys and 1 public member, except as provided in BR 2.4(f)(3). The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.

(b) Term.

(1) Disciplinary Board members shall serve terms of 3 years and may be reappointed. State and regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the Supreme Court.

(2) Notwithstanding BR 2.4(a), the powers, jurisdiction and authority of Disciplinary Board members shall continue beyond the expiration of their appointment or after their relocation to another region for the time required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the Supreme Court. The state chairperson and the regional chairpersons shall serve until a replacement appointment has been made by the Supreme Court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor who shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct shall apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board, the SPRB, or an LPRC shall not serve on the Disciplinary Board during the member's term of office. This disqualification shall also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board, the SPRB or an LPRC.

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to subject matter considered by the Board, the SPRB or an LPRC while a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board, the SPRB or an LPRC.

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until the charges filed against the member have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B) which admonition is thereafter refused by the attorney, authorization by the SPRB to notify the Supreme Court of a criminal conviction pursuant to BR 3.4(a), and authorization by the SPRB to notify the Supreme Court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of State Chairperson.

(1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board, including the monitoring of timely preparation and filing of trial panel opinions.

(2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.

(3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings.

(4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(5) The state chairperson shall appoint a member of the Disciplinary Board to conduct pre-hearing conferences as provided in BR 4.6.

(6) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels or to conduct pre-hearing conferences as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.

(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(2) Except as provided in BR 2.4(e)(3), the regional chairperson shall rule on all challenges to the qualifications of members of the trial panels in his or her region under BR 2.4(g).

(3) Upon the stipulation of the Bar and an accused, the regional chairperson shall appoint one attorney member from the regional panel to serve as the sole adjudicator in a disciplinary proceeding. In such case, the member appointed shall have the same duties and authority under these rules as a three member trial panel.

(4) The regional chairperson may serve on trial panels during his or her term of office.

(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.

(g) Challenges. The Bar and an accused or applicant shall be entitled to one peremptory challenge and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules. Any such challenges shall be filed in writing within seven days of written notice of an appointment of a trial panel with the Disciplinary Board Clerk, with copies to the regional chairperson for disciplinary proceedings or to the state chairperson for contested reinstatement proceedings or for challenges to a regional chairperson. Challenges for cause shall state the reason for the challenge. The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, and the regional chairperson or the state chairperson, as the case may be, shall serve copies of the ruling on all parties. These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall have more than 1 peremptory challenge. The Bar and an accused or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson may convene the parties or their counsel prior to the hearing to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The trial panel chairperson may thereafter issue an order regarding agreements or rulings made at such pre-hearing meeting. The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.

(i) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2)

(A) Opinions. The trial panel shall render a written opinion signed by the concurring members of the trial panel. A dissenting member shall note the dissent and may file a dissenting opinion attached to the majority opinion of the trial panel. The majority opinion shall include specific findings of fact, conclusions and a disposition. The trial panel chairperson shall file the original opinion with the Disciplinary Board Clerk, and serve copies on the parties and the State Court Administrator. It shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the trial panel chairperson pursuant to BR 4.8, whichever is later.

(B) Extensions of Time to File Opinions. If additional time is required by the trial panel to render its opinion, the trial panel chairperson may file a request for an extension of time with the Disciplinary Board Clerk and serve a copy on the state chairperson prior to the expiration of the applicable 28 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request. The state chairperson shall file a written decision on the extension request with the Disciplinary Board Clerk and shall serve copies on all parties.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with the Disciplinary Board Clerk.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the opinion from the trial panel.

(j) Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. The reporter service shall be distributed to all state and county law libraries and members of the Disciplinary Board.

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court contested admission, contested reinstatement and disciplinary decisions and summaries of all Disciplinary Board decisions not reviewed by the Supreme Court.

(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, nun pro tunc.)

(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)

(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)

(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)

(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)

(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)

(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 2.4(i)(3) amended by Order dated March 20, 1990, effective April 2, 1990.)

(Rule 2.4(a) amended by Order dated January 10, 1991.)

(Rule 2.4(d), (e) and (i) amended by Order dated July 22, 1991.)

(Rule 2.4(b) amended by Order dated December 22, 1992.)

(Rule 2.4(a), (e) and (f) amended by Order dated December 13, 1993.)

(Rule 2.4(i)(3) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 2.4 (a) amended by Order dated July 10, 1998.)

(Rule 2.4(e), (f), (g), (h), (i) and (j) amended by Order dated February 5, 2001.)

(Rule 2.4(b)(2) and (i)(2)(a) and (b) amended by Order dated June 28, 2001.)

(Rule 2.4(b)(1) and (2);(e)(4); (f)(1); (g); (h); and (i)(2)(a) and (b), (3) and (4) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 2.4(d)(3) added by Order dated January 21, 2005.)

(Rule 2.4(b)(2) amended by Order dated April 26, 2007.)

(Rule 2.4(g) and 2.4(h) amended by Order dated October 19, 2009.)

Rule 2.5 Intake and Review of Inquiries and Complaints by Client Assistance Office.

(a) Client Assistance Office. The Bar will maintain a Client Assistance Office, separate from that of Disciplinary Counsel. The Client Assistance Office will, to the extent possible and resources permit, respond to all inquiries from the public concerning the conduct of attorneys and may refer inquirers to other resources. The Client Assistance Office will also receive and review all complaints about the conduct of attorneys. The Client Assistance Office will consider complaints submitted in person, by telephone or by e-mail, but may require the complainant to submit the matter in writing before taking any action. The Client Assistance Office will determine the manner and extent of review required for the appropriate disposition of any complaint.

(b) Disposition by Client Assistance Office.

(1) If the Client Assistance Office determines that, even if true, a complaint does not allege misconduct, it will dismiss the complaint with written notice to the complainant and to the attorney named in the complaint.

(2) If the Client Assistance Office determines, after reviewing the complaint and any other information deemed relevant, that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the complaint will be referred to Disciplinary Counsel. Otherwise, the complaint will be dismissed with written notice to the complainant and the attorney.

(3) The Client Assistance Office may, at the request of the complainant, contact the attorney and attempt to assist the parties in resolving the complainant's concerns, but the provision of such assistance does not preclude a referral to Disciplinary Counsel of any matter brought to the attention of the Client Assistance Office.

(c) Review by General Counsel. Any complaint dismissed by the Client Assistance Office may be reviewed by General Counsel upon written request of the complainant. General Counsel may request additional information from the complainant or the attorney, and after review will either affirm the CAO dismissal or refer the complaint to Disciplinary Counsel's Office. The decision of General Counsel is final.

(Rule 2.5 amended by Order dated January 17, 1992.)

(Rule 2.5(g) amended by Order dated October 10, 1994.)

(Rule 2.5(c), (f), (g), and (h) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 2.5(a), (b), (c), (d), (f), (h) and (i) amended by Order dated February 5, 2001.)

(Rule 2.5(a) and (b) added and former Rule 2.5(b) through (i) renumbered 2.6 by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.5(a) and (b) amended and 2.5(c) added by Order dated August 29, 2007.)

Rule 2.6 Investigations

(a) Review by Disciplinary Counsel.

(1) For disciplinary complaints referred to Disciplinary Counsel by the client assistance office pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the complaint, mail a copy of said complaint to the attorney, if the client assistance office has not already done so, and notify the attorney that he or she must respond to the complaint in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the complaint if he or she provided a response to the client assistance office and is notified by Disciplinary Counsel that further information from the attorney is not necessary.

(2) If the attorney fails to respond within the time allowed, Disciplinary Counsel may refer the complaint to an appropriate LPRC within 14 days of the time set for the response. The procedure set forth in BR 2.3(a) shall be followed. Disciplinary Counsel shall inform the complainant and the attorney in writing of this action.

(b) Dismissal by Disciplinary Counsel. If, after considering a disciplinary complaint, the response of the attorney, and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed. The complainant and the

attorney shall be notified in writing by Disciplinary Counsel of the dismissal. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her complaint, in which case Disciplinary Counsel shall submit a report on the complaint to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on such complaint.

(c) Review by SPRB.

(1) If Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.3(a) shall be followed. Otherwise, the SPRB shall evaluate the complaint based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, refer it to an LPRC, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint by the Bar against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such procedure shall be initiated within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation or submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(d) Review of LPRC Reports by SPRB.

(1) Disciplinary Counsel shall submit an LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.6(c)(1)(B). If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall conduct the investigation or, within 14 days of the SPRB's meeting, refer the matter to the appropriate LPRC member who shall conduct a further investigation in accordance with BR 2.3(a). The further investigation by an LPRC shall be completed and a report shall be filed with Disciplinary Counsel within 30 days after the date of the referral. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.6(d)(1).

(e) Reconsideration; Discretion to Rescind.

(1) A decision by the SPRB to dismiss a complaint or allegation of misconduct against an attorney shall not preclude reconsideration or further proceedings on such complaint or allegation if evidence not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) A decision by the SPRB to file a formal complaint against an attorney for misconduct may be rescinded by the SPRB only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence which would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, which establishes that the SPRB's decision to file a formal complaint was incorrect.

(f) Approval of Charges.

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. The attorney and the complainant shall be notified in writing by Disciplinary Counsel of such action.

(2) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that no further action on a complaint or allegation of misconduct be taken by the Bar if one or more of the following circumstances exist: the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon; other disciplinary proceedings are pending that are likely to result in the attorney's disbarment; other disciplinary charges are authorized or pending and the anticipated sanction, should the Bar prevail on those charges, is not likely to be affected by a guilty finding in the new matter or on an additional charge; or formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings. An exercise of discretion under this rule to take no further action on a complaint or allegation of misconduct shall not preclude further consideration or proceedings by the SPRB on such complaint or allegation in the future.

(3) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a complaint or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising its discretion under this rule include, but are not limited to: the attorney's mental state; whether the misconduct is an isolated event or part of a pattern of misconduct; the potential or actual injury caused by the attorney's misconduct; whether the attorney fully cooperated in the investigation of the misconduct; and whether the attorney previously was admonished or disciplined for misconduct. Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

(g) Investigation of Complaints Against Disciplinary Counsel, General Counsel or other Bar agents. Complaints of misconduct concerning disciplinary counsel or general counsel of the Oregon State Bar, or complaints that Bar Counsel or members of an LPRC have engaged in misconduct while acting on the Bar's behalf, shall be referred to the chairperson of the State Professional Responsibility Board within seven days of their receipt by the bar.

(1) If the SPRB chairperson determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the parties shall be notified of the dismissal in writing by the SPRB chairperson. A complainant may contest in writing the dismissal, in which case the matter shall be submitted to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on the complaint.

(2) If the SPRB chairperson determines the complaint should be investigated, the SPRB chairperson may appoint a local professional responsibility committee or an investigator of his or her choice to investigate the matter and to report on the matter directly to the SPRB. The same procedure shall, as far as practicable, apply to the investigation of such complaints as apply to members of the Oregon State Bar generally.

(Rule 2.6 amended and 2.6(g)(3) added by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.6 amended by Order dated December 8, 2003, effective January 1, 2004.)

(Rule 2.6(g)(1) amended by Order dated March 20, 2008.)

(Rule 2.6(f)(2) amended by Order dated October 19, 2009.)

Rule 2.7 Investigations Of Alleged Misconduct Other Than By Complaint.

Allegations or instances of alleged misconduct that are brought or come to the attention of the Bar other than through the receipt of a written complaint shall be evaluated using the procedure specified in BR 2.6 except as that rule may be inapplicable due to the lack of a written complaint or a complainant with which to communicate.

(Rule amended and renumbered by Order dated July 9, 2003, effective August 1, 2003.)

Rule 2.8 Proceedings Not To Stop On Compromise.

Neither unwillingness nor neglect of the complainant to sign or to pursue a complaint, nor settlement, compromise or restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a disciplinary or contested reinstatement matter or proceeding.

(Rule 2.7 amended by Order dated July 22, 1991.)

(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)

Rule 2.9 Requests For Information And Assistance.

The Bar may request a person complaining against an attorney or applicant to supply and disclose to the investigating authorities of the Bar all documentary and other evidence in his or her possession, and the names and addresses of witnesses relating to his or her complaint, and may otherwise request the complainant to assist such investigating authorities in obtaining evidence in support of the facts surrounding his or her complaint.

(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)

Rule 2.10 Diversion.

(a) Diversion by SPRB. As an alternative to issuing an admonition or approving the filing of a formal complaint against an attorney, or prosecuting a formal complaint that has been filed, the SPRB may authorize Disciplinary Counsel to enter into a diversion agreement in which the attorney agrees to participate in a remedial program as set forth in the agreement. Subject to the provisions of this rule, the SPRB has the discretion to determine whether to authorize diversion of a complaint or allegation of misconduct. An attorney does not have a right to have a complaint or allegation of misconduct diverted under this rule.

(b) Diversion Eligibility. The SPRB may consider diversion of a complaint or allegation of misconduct if:

(1) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law;

(2) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence, or a lack of training, education or other similar circumstance; and

(3) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(c) Offer of Diversion.

(1) If, after investigation by Disciplinary Counsel or an LPRC, the SPRB determines that an attorney may have committed misconduct and that the matter is appropriate for diversion under this rule, the SPRB,

through Disciplinary Counsel, may offer a diversion agreement to the attorney. The attorney shall have 30 days from the date diversion is offered to accept and enter into the diversion agreement. Disciplinary Counsel may grant an extension of time to the attorney for good cause shown.

(2) An attorney may decline to enter into a diversion agreement, in which case the complaint or allegation of misconduct shall be referred back to the SPRB for review pursuant to Rule 2.6 or, if a formal complaint has been filed, proceed to hearing.

(d) Diversion Agreement.

(1) A diversion agreement shall require the attorney to participate in a specified remedial program to address the apparent cause of the misconduct. Such a remedial program may include, but is not limited to: appointment of a diversion supervisor; assistance or training in law office management; chemical dependency treatment; counseling or peer support meetings; oversight by an experienced practicing attorney; voluntary limitation of areas of practice for the period of the diversion agreement; restitution; or a prescribed course of continuing legal education. The attorney shall bear the costs of a remedial program.

(2) A diversion agreement further shall require the attorney to stipulate to a set of facts concerning the complaint or allegation of misconduct being diverted, and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the stipulated facts shall be deemed true in any subsequent disciplinary proceeding.

(3) A diversion agreement may be amended at any time with the consent of the SPRB and the attorney. The SPRB is not obligated to amend a diversion agreement to incorporate additional complaints or allegations of misconduct made against the attorney subsequent to the date of the original agreement.

(4) The term of a diversion agreement shall be no more than 24 months following the date of the last amendment to the agreement.

(5) In a diversion agreement, the attorney shall agree that a diversion supervisor, treatment provider or any other person to whom the attorney has been referred pursuant to the remedial program specified in the agreement shall report to Disciplinary Counsel any failure by the attorney to comply with the terms of the agreement.

(6) A diversion agreement prepared by Disciplinary Counsel and signed by an attorney is not effective until approved by the SPRB. If approved by the SPRB, Disciplinary Counsel shall notify the complainant and the attorney in writing.

(e) Compliance and Disposition.

(1) If it appears to Disciplinary Counsel that an attorney has failed to comply with the terms of a diversion agreement, Disciplinary Counsel shall inform the SPRB. If the SPRB determines that the allegation of noncompliance, if true, warrants the termination of the diversion agreement, the SPRB shall provide the attorney an opportunity to be heard, through written submission, concerning the alleged noncompliance. Thereafter, the SPRB shall determine whether to terminate the diversion agreement and, if so, take action deemed appropriate under BR 2.6.

(2) If an attorney fulfills the terms of a diversion agreement, Disciplinary Counsel thereafter shall dismiss the complaint or allegation of misconduct with written notice to the complainant and the attorney. The dismissal of a complaint or allegation of misconduct after diversion shall not be considered a prior disciplinary offense in any subsequent proceeding against the attorney.

(f) Public Records Status. The Bar will treat records relating to a complaint or allegation of misconduct diverted under this rule, a diversion agreement, or a remedial program as official records of the Bar, subject to the Oregon Public Records Law, and any applicable exemption thereunder.

(Rule 2.10 added by Order dated July 9, 2003, effective August 1, 2003.)

(Rule 2.10(a), 2.10(c)(2), and 2.10(d)(4) amended by Order dated October 19, 2009.)

Title 3 — Special Proceedings

Rule 3.1 Temporary Suspension During Pendency Of Disciplinary Proceedings.

(a) **Petition for Temporary Suspension.** If it appears to the SPRB, upon the affirmative vote of two-thirds of its membership, that the continuation of the practice of law by an attorney during the pendency of disciplinary proceedings will, or is likely to, result in substantial harm to any person or the public at large, Disciplinary Counsel shall directly, or through Bar Counsel, petition the Supreme Court on behalf of the Bar for an order suspending the attorney from practice until further order of the court. A petition under this rule may be filed by the Bar at any time after the SPRB has approved the filing of a formal complaint by the Bar against the attorney.

(b) **Contents of Petition; Service; Answer by Attorney.** A petition to the Supreme Court for the suspension of an attorney under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar as grounds for the attorney's suspension. The petition shall have attached as an exhibit a copy of the Bar's formal complaint against the attorney, if one has been filed by the Bar. The petition may be supported by documents or affidavits. A copy of the petition, along with a notice to answer, shall be served on the attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons. The attorney shall file an answer to the Bar's petition with the Supreme Court within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and Bar Counsel, if any, and file proof of mailing with the court.

(c) **Hearing, answer filed.** Upon the filing of the attorney's answer, the court shall hold a hearing on the Bar's petition. The hearing date shall be set by the court and notice thereof shall be mailed to Disciplinary Counsel, Bar Counsel and the attorney by the State Court Administrator.

(d) **Hearing, default.** The failure of the attorney to answer the Bar's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the Bar's petition. The court shall then enter the order provided in BR 3.1(e) either upon the record before it, or at the discretion of the court, after a hearing ordered by the court.

(e) **Order of Court.** The court, after the hearing provided in BR 3.1(c) or upon the record or after the hearing provided in 3.1(d), shall enter an appropriate order. If the court grants the Bar's petition, an effective date for the attorney's suspension shall be stated therein. The suspension shall remain in effect until further order of the court.

(f) **Duties upon Suspension.** An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(g) **Immediate Suspension; Restrictions on Trust Account; Other Orders.** The court may enter such other orders as it deems appropriate to protect the interests of the suspended attorney, the suspended attorney's clients and the public including, but not limited to:

(1) an order for the immediate suspension of the attorney prior to the hearing required by BR 3.1(c), in which event the hearing on the Bar's petition shall be held no later than 60 days following the attorney's suspension and the order of the court contemplated by BR 3.1(e) shall be entered no later than 30 days after the hearing. The time limitations in this subsection of the rule shall not apply if the attorney is in default;

(2) an order which, when served upon a financial institution, shall serve as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the court's order.

(3) an order appointing an attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(h) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as far as practicable.

(i) Accelerated Proceedings Following Temporary Suspension. When an attorney has been temporarily suspended by order of the court under BR 3.1(e), the complaint by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. Unless extended by stipulation of the Bar and the attorney, and approved by the court, the further order of the court contemplated by BR 3.1(e) shall be entered not later than 270 days following the entry of the order of temporary suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney, and granted by the Supreme Court.

(j) Termination of Temporary Suspension. In the event the further order of the court contemplated by BR 3.1(e) is not entered within the time provided by BR 3.1(h), the order of temporary suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

(Rule 3.1(h) amended by letter dated December 10, 1987.)

(Rule 3.1 amended by Order dated February 23, 1988.)

(Rule 3.1(f) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 3.1(a) and (g) amended by Order dated May 15, 1995.)

(Rule 3.1(g)(3) added and 3.1(h)-3.1(j) amended by Order dated October 19, 2009.)

**Rule 3.2 Mental Incompetency Or Addiction—
Involuntary Transfer To Inactive Membership Status.**

(a) Summary Transfer to Inactive Status.

(1) The Supreme Court may summarily order, upon ex parte application by the Bar, that an attorney be placed on inactive membership status until reinstated by the court if the attorney has been adjudged by a court of competent jurisdiction to be mentally ill or incapacitated.

(2) A copy of the court's order shall be personally served on such attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons and mailed to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(b) Petition by Bar.

(1) The Bar may petition the court to determine whether an attorney is disabled from continuing to practice law due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) senility; or
- (iv) addiction to drugs, narcotics or intoxicants.

The Bar's petition shall be mailed to the attorney and to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(2)

(A) On the filing of such a petition, the court may take or direct such action as it deems necessary or proper to determine whether such attorney is disabled. Such action may include, but is not limited to, examination of such attorney by such qualified experts as the court shall designate.

(B) A copy of an order requiring an attorney to appear, for examination or otherwise, shall be mailed by the State Court Administrator to the attorney and to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(C) In the event of a failure by the attorney to appear at the appointed time and place for examination, the court may place the attorney on inactive membership status until further order of the court.

(D) If, upon consideration of the reports of the designated experts or otherwise, the court finds that probable cause exists that the attorney is disabled under the criteria set forth in BR 3.2(b)(1) from continuing to practice law, the court may order the attorney to appear before the court or its designee to show cause why the attorney should not be placed by the court on inactive membership status until reinstated by the court. A copy of such show cause order shall be mailed by the State Court Administrator to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(E) After such show cause hearing as the court deems appropriate, if the court finds that such attorney is disabled from continuing to practice law, the court may order the attorney placed on inactive membership status. A copy of an order placing the attorney on inactive membership status shall be mailed by the State Court Administrator to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(3) Any disciplinary proceeding pending against an attorney placed by the court on inactive membership status under this rule shall thereupon be suspended and held in abeyance until further order of the court.

(c) Disability During Disciplinary Proceedings.

(1) The court may order that an attorney be placed on inactive membership status until reinstated by the court if, during the course of a disciplinary investigation or disciplinary proceeding, the accused files a petition with the court, with notice to Disciplinary Counsel and Bar Counsel, alleging that he or she is disabled from understanding the nature of the proceeding against the accused, assisting and cooperating with his or her attorney, or from participating in his or her defense due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) senility; or
- (iv) addiction to drugs, narcotics or intoxicants.

(2) The court shall take or direct such action as it deems necessary or proper as provided in BR 3.2(b) to determine if such attorney is disabled.

(3) A copy of the court's order in the matter shall be mailed by the State Court Administrator to Disciplinary Counsel, Bar Counsel, and the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and attorney of record in the Bar's disciplinary proceeding.

(4) If the court determines that the attorney is not disabled under the criteria set forth in BR 3.2(c)(1), it may take such action as it deems necessary or proper, including the issuance of an order that any disciplinary investigation or proceeding against the attorney which is pending or held in abeyance be continued or resumed.

(d) Appointment of Attorney. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to represent the attorney if he or she is without representation.

(e) Custodians. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to inventory the files of the attorney and to take such action as seems necessary to protect the interests of his or her clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(f) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be paid by the attorney or his or her estate, including compensation fixed by the court to be paid to any attorney or medical expert appointed under this rule. The court may order such hearings as it deems necessary or proper to determine the costs and expenses to be paid under this rule.

(g) Waiver of Privilege.

(1) Under this rule, a claim of disability by an accused in a disciplinary investigation or disciplinary proceeding, or the filing of an application for reinstatement as an active member by an attorney placed on inactive membership status under this rule for disability, shall be deemed a waiver of any privilege existing between such accused or attorney and any doctor or hospital treating him or her during the period of the alleged disability.

(2) Such accused or attorney shall, in his or her claim of disability or in his or her application for reinstatement, disclose the name of every doctor or hospital by whom he or she has been treated during his or her disability or since his or her placement on inactive membership status and shall furnish written consent to divulge all such information and all such doctor and hospital records as may be requested by the Bar or the court.

(h) Application of Other Rules.

(1) The Rules of Procedure that apply to the resolution of a formal complaint or statement of objections do not apply to transfers from active to inactive membership status under BR 3.2. Nor does the placement of an attorney on inactive membership status under BR 3.2 preclude the Bar from filing a formal complaint against the attorney. An attorney placed on inactive membership status under BR 3.2 must comply with the applicable provisions of Title 8 of these rules to obtain reinstatement to active membership status.

(2)

(i) An attorney transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude such an attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(ii) It shall also be the duty of an attorney transferred to inactive status under this rule to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(iii) Disciplinary Counsel may petition the Supreme Court to hold an attorney transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i) and (ii). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 3.2(h) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

Rule 3.3 Allegations Of Criminal Conduct Involving Attorneys.

(a) In the event the SPRB causes disciplinary charges to be filed against an attorney which charges involve the possible commission of a crime, the SPRB shall direct Disciplinary Counsel to report the possible crime to the appropriate district attorney.

(b) On the filing of an accusatory instrument against an attorney for the commission of a misdemeanor which may involve moral turpitude or of a felony, the SPRB shall forthwith direct an investigation by Disciplinary Counsel or an LPRC to determine whether a disciplinary proceeding should be instituted against such attorney.
(Rule 3.3 amended by Order dated March 31, 1989.)

Rule 3.4 Conviction Of Attorneys.

(a) Referral of Convictions to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been convicted in any jurisdiction of an

offense that is a misdemeanor which may involve moral turpitude or is a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States. Disciplinary Counsel shall file a copy of the documents which show the conviction and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney. A "conviction" for the purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty.

(b) Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.

(c) Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.

(d) Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel shall file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.

(f) Independent Charges; Consolidated Proceedings. The SPRB may cause disciplinary charges to be filed against the attorney independent of the fact of the attorney's conviction. In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.

(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).

(i) Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal has become a final order not subject to further appeal or review, or the attorney has been granted a new trial which order has become final, a suspension or discipline previously ordered shall be vacated upon the court's receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

(Rule 3.4(d) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.4(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 3.4(e) amended by Order dated October 19, 2009.)

Rule 3.5 Reciprocal Discipline.

(a) Notice to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been disciplined for misconduct in another jurisdiction. Disciplinary Counsel shall file a copy of the judgment, order or determination of discipline with the court, with written notice to the attorney. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending shall be considered a judgment or order of discipline for the purposes of this rule. The judgment or order or determination of discipline shall be accompanied by a recommendation of the SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.

(b) Judgment Sufficient Evidence of Misconduct. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct described therein.

(c) Answer of Attorney. The attorney shall have 21 days from the filing of the judgment, order, or determination of discipline with the court to file with the court an answer discussing the following issues:

(1) Was the procedure in the jurisdiction which disciplined the attorney lacking in notice or opportunity to be heard?

(2) Should the attorney be disciplined by the court? The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the court.

(d) Reply of Bar. The Bar shall have 14 days from the expiration of the time specified in BR 3.5(c) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.

(e) Review by Court; Referral for Hearing. Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall determine whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner. The court, in its discretion, may refer the matter to the Disciplinary Board for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). The referral shall be made in writing to the Disciplinary Board Clerk with copies to Disciplinary Counsel and the attorney. Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.

(f) Burden of Proof. The attorney shall have the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) Hearing; Review by Court. A trial panel appointed by the state chairperson shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Suspension. The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court. An attorney suspended under this rule shall comply with the requirements of BR 6.3(a) and (b).

(i) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f) and (g).

(j) Independent Charges. Nothing in this rule shall preclude the filing of disciplinary charges by the Bar against an attorney for misconduct in any jurisdiction.

(Rule 3.5 amended by Order dated July 16, 1984, effective August 1, 1984.)

(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 3.6 Discipline By Consent.

(a) Application. Any allegation of misconduct may be disposed of by a no contest plea, or by a stipulation for discipline, entered into at any time after the SPRB finds probable cause that misconduct has occurred.

(b) No Contest Plea. A plea of no contest to all causes or any cause of a formal complaint, or to allegations of misconduct if a formal complaint has not been filed, shall be verified by the accused and shall include:

(i) A statement that the plea has been freely and voluntarily made by the accused;

(ii) A statement that the accused does not desire to defend against the formal complaint or any designated cause thereof, or against an allegation of misconduct not yet pled;

(iii) A statement that the accused agrees to accept a designated form of discipline in exchange for the no contest plea;

(iv) A statement of the accused's prior record of reprimand, suspension or disbarment, or absence of such record.

(c) Stipulation for Discipline. A stipulation for discipline shall be verified by the accused and shall include:

(i) A statement that the stipulation has been freely and voluntarily made by the accused;

(ii) A statement that explains the particular facts and violations to which the Bar and the accused are stipulating;

(iii) A statement that the accused agrees to accept a designated form of discipline in exchange for the stipulation;

(iv) A statement of the accused's prior record of reprimand, suspension or disbarment, or absence of such record.

(d) Approval of SPRB. Pleas of no contest and stipulations shall be approved as to form by Disciplinary Counsel and approved in substance by the chairperson of the SPRB or a member of the SPRB designated by the chairperson. If the plea or stipulation, is acceptable to the SPRB and the accused, Disciplinary Counsel shall file it with the Disciplinary Board Clerk and provide copies to the state chairperson and the appropriate regional chairperson of the Disciplinary Board if the full term of the discipline agreed upon does not exceed a 6-month suspension; otherwise it shall be filed with the State Court Administrator for review by the court.

(e) Review by Disciplinary Board or Court. The Disciplinary Board or the court, as the case may be, shall review the plea or stipulation. If the matter is submitted to the Disciplinary Board, it shall be reviewed by the state chairperson and the regional chairperson in the region the accused maintains his or her principal place of business. If the accused does not maintain a place of business in Oregon, the plea or stipulation shall be reviewed by the regional chair for Region 5. The state chairperson and regional chairperson shall have the authority to act on the matter for the Disciplinary Board. If the Disciplinary Board or the court approves the plea or stipulation a decision shall be issued so stating. The written decision of the Disciplinary Board shall be filed by the state chairperson with the Disciplinary Board Clerk and copies shall be provided to Disciplinary Counsel and the accused. If the plea or stipulation is rejected by the Disciplinary Board or the court it may not be used as evidence of misconduct against the accused in the pending or in any subsequent disciplinary proceeding.

(f) Costs. In matters submitted under this rule that are resolved by a decision of the Disciplinary Board, the Bar may file a cost bill with the Disciplinary Board Clerk within 21 days of the filing of the decision of the Disciplinary Board, accompanied by proof of service on the state chairperson and the accused. The accused, if he or she desires to contest the Bar's statement of costs, must file verified objections with the Disciplinary Board Clerk within 7 days from the date of the filing of the Bar's cost bill, accompanied by proof of service on the state chairperson and Disciplinary Counsel. If the matter is resolved by a decision of the court, the Bar's cost bill and the accused's objections must be filed with the court within the same time period, accompanied by proof of service on the other party. The state chairperson of the Disciplinary Board or the court, as the case may be, may fix the amount of the Bar's actual and necessary costs and disbursements incurred in the proceeding to be paid by the accused.

(g) Supplementing Record. If the Disciplinary Board or the court concludes that facts are not set forth in sufficient detail to enable it to form an opinion as to the propriety of the discipline agreed upon, the Disciplinary Board or court may request that additional stipulated facts be submitted or it may disapprove the plea or stipulation.

(h) Confidentiality. A plea or stipulation prepared for the Disciplinary Board or the court's consideration shall not be subject to public disclosure prior to Disciplinary Board or court approval of the plea or stipulation or if rejected by the Disciplinary Board or court.

(Rule 3.6(d) and (e) amended by Order dated February 23, 1988.)

(Rule 3.6(d) amended by Order dated December 13, 1993. Amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 3.6(a), (b), (d) and (e) amended by Order dated February 5, 2001.)

(Rule 3.6(d), (e) and (f) amended by Order dated June 17, 2003, effective July 1, 2003.)

Title 4 — Prehearing Procedure

Rule 4.1 Formal Complaint.

(a) Designation of Counsel and Region. If it shall appear to the SPRB that probable cause exists to believe an attorney has engaged in misconduct and that formal proceedings are warranted, it shall refer the matter to Disciplinary Counsel with instructions to file specified charges against the attorney. Disciplinary Counsel, being so advised, may appoint Bar Counsel and, upon the service of a formal complaint upon an accused, request that the Disciplinary Board appoint a trial panel in the appropriate region selected pursuant to BR 5.3(a).

(b) Filing. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk a formal complaint against the attorney on behalf of the Bar. Proceedings thereon shall then be had as herein provided. The formal complaint shall be in substantially the form set forth in BR 12.1.

(c) Substance of Formal Complaint. A formal complaint shall be signed by Disciplinary Counsel, or his or her designee, and shall set forth succinctly the acts or omissions of the accused, including the specific statutes or disciplinary rules violated, so as to enable the accused to know the nature of the charge or charges against the accused. When more than one act or transaction is relied upon, the allegations shall be separately stated and numbered. The formal complaint need not be verified.

(d) Consolidation of Charges and Proceedings. The Bar, at the direction of the SPRB, may consolidate in a formal complaint two or more causes of complaint against the same attorney or attorneys, but shall file a separate formal complaint against each accused. The findings and conclusions thereon may be either joint or separate, as the trial panel, in its discretion, may determine. The Bar, at the discretion of the SPRB, may also consolidate formal complaints against two or more attorneys for hearing before one trial panel.

(Rule 4.1(a) amended by Order dated January 5, 1988. Amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 4.1(b) amended by Order dated February 23, 1988.)

(Rule 4.1(a) and (c) amended by Order dated February 5, 2001.)

(Rule 4.1(b) amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.2 Service Of Formal Complaint.

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to answer it within 14 days, may be personally served on the accused or as otherwise permitted by Bar Rule 1.12. The notice to answer shall be substantially the form set forth in BR 12.2.

(b) Alternative Service of Formal Complaint. The Bar may request the Supreme Court to authorize the service of a formal complaint and notice to answer on the Accused pursuant to ORCP 7.D(6).

(c) Proof of Service of Complaint. Proof of personal service shall be made in the same manner as in a case pending in a circuit court.

(d) Service of Amended Formal Complaint. An amended formal complaint may be served by mail, provided the original formal complaint was served upon the accused in the manner provided by BR 4.2(a) or (b).

(e) Disregard of Error. Failure to comply with any provision of this rule or BR 1.12 shall not affect the validity of service if the Accused received actual notice of the substance and pendency of the disciplinary proceedings.

(Rule 4.2 amended by Order dated June 30, 1987.)

(Rule 4.2(d) added by Order dated February 5, 2001.)

(Rule 4.2(a) amended by Order dated April 26, 2007.)

Rule 4.3 Answer.

(a) Time to Answer. The accused shall answer the formal complaint within 14 days of service of the formal complaint.

(b) Extensions. The accused may, in writing, request an extension of time to file his or her answer from Disciplinary Counsel. The request for extension must be received by Disciplinary Counsel within the time the accused is required to file an answer. Disciplinary Counsel shall respond to the request in writing and shall file a copy of the response with the Disciplinary Board Clerk.

(c) Trial Panel Authority. Upon application of either the Bar or the accused, the trial panel chairperson to which the matter is assigned, or the regional chairperson if a trial panel chairperson has not been appointed, may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.

(d) Form of Answer. The accused's answer shall be responsive to the formal complaint filed. General denials shall not be allowed. The answer shall be substantially in the form set forth in BR 12.3 and shall be verified by the accused. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel, if one has been appointed.

(Rule 4.3(b) and (c) amended by Order dated February 5, 2001.)

(Rule 4.3(b) and (d) amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.4 Pleadings And Amendments.

(a) Pleadings. The only permissible pleadings shall be a formal complaint and an answer, and amendments thereto, except for a motion to require a formal complaint to comply with BR 4.1(c) and an answer to comply with BR 4.3(d).

(b) Amendments.

(1) A formal complaint can be amended at any time after filing, in amplification of the original charges, to add new charges, or to withdraw charges. In case of amendment, however, the accused shall be given a reasonable time, set by the trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed, to answer the amended formal complaint, to procure evidence and to prepare to meet the matters raised by the amended formal complaint.

(2) An answer can be amended at any time after filing. In the case of amendment, however, the Bar shall be given a reasonable time, set by the trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed, to procure evidence and to prepare to meet the matters raised by the amended answer.

(Rule 4.4(b) amended by Order dated February 5, 2001.)

Rule 4.5 Discovery.

(a) General. Discovery in disciplinary proceedings is intended to promote identification of issues and a prompt and fair hearing on the charges. Discovery shall be conducted expeditiously by the Bar and the accused, and shall be completed within 14 days prior to the date of hearing unless extended for good cause by the trial panel chairperson.

(b) Permitted Discovery.

(1) Requests for admission, requests for production of documents, and depositions may be utilized in disciplinary proceedings.

(2) The manner of taking depositions shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Subpoenas may be issued when necessary by the trial panel chairperson, Bar Counsel, Disciplinary Counsel, the accused or his or her attorney of record. Depositions may be taken any time after service of the formal complaint.

(3) Transcripts of depositions in disciplinary proceedings shall comply with the Rules of Appellate Procedure of the Supreme Court as to form. A person who is deposed may request at the time of deposition to examine the person's transcribed testimony. In such case, the procedure set forth in the Oregon Rules of Civil Procedure shall be followed as far as practicable.

(4) The manner of making requests for the production of documents shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for production may be served any time after service of the formal complaint with responses due within 21 days.

(5) The manner of making requests for admission shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for admission may be served any time after service of the formal complaint with responses due within 21 days.

(c) Discovery Procedure. All discovery questions shall be resolved by the trial panel chairperson on motion, or by the regional chairperson if a trial panel chairperson has not been appointed. Discovery motions, including motions for limitation of discovery, shall be in writing. All such motions shall be filed with the Disciplinary Board Clerk with proof of service on the trial panel chairperson and on the other parties. The Bar or the accused shall have 7 days from filing of a motion in which to file a response, unless the time is shortened by the trial panel chairperson for good cause. The response shall be filed with the Disciplinary Board Clerk with proof of service on the trial panel chairperson and the other parties. Upon expiration of the time for response, the trial panel chairperson shall promptly rule on the motion, with or without argument at the discretion of the trial panel chairperson. Argument on any motion may be heard by conference telephone call. Rulings on discovery motions shall be filed with the Disciplinary Board Clerk with copies mailed to the parties.

(d) Limitations on Discovery. In the exercise of his or her discretion, the trial panel chairperson shall impose such terms or limitations on the exercise of discovery as may appear necessary to prevent undue delay or expense in bringing the matter to hearing and to promote the interests of justice.

(e) Discovery Sanctions. For failure to provide discovery as required under BR 4.5, the trial panel chairperson may make such rulings as are just, including, but not limited to, the following:

(1) A ruling that the matters regarding which the ruling was made or any other designated fact shall be taken to be established for the purposes of the proceeding in accordance with the claim of the litigant obtaining the ruling; or

(2) A ruling refusing to allow the disobedient litigant to support or oppose designated claims or defenses, or prohibiting the disobedient litigant from introducing designated matters in evidence.

In addition, any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(f) Rulings Interlocutory. Discovery rulings are interlocutory.

(Rule 4.5(c) amended by Order dated February 23, 1988. Rule 4.5(b) amended by Order April 4, 1991, effective April 15, 1991.)

(Rule 4.5(a) and (c) amended by Order dated February 5, 2001.)

(Rule 4.5(c) amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.6 Pre-hearing Conferences.

Within seven days of written notice that the pleadings were mailed to the trial panel under BR 2.4(h), either the Bar or the accused may file with the Disciplinary Board Clerk a request for a pre-hearing conference. A copy of the request shall be served on the state chairperson, who shall appoint a member of the Disciplinary Board to conduct a pre-hearing conference. A conference shall be held no later than 21 days before the scheduled hearing date in a disciplinary proceeding. The Bar and the accused, and counsel for the accused, must attend. The purpose of the conference shall be to narrow factual and legal issues in dispute for trial and to facilitate

discussion regarding discipline by consent under BR 3.6, if appropriate. Except for those facts admitted and denied in the pre-hearing order, under BR 4.7, no oral or written statements or admissions made at or in connection with the pre-hearing conference shall be admitted as evidence in this or any subsequent bar disciplinary proceeding. No member of the trial panel appointed in the proceeding shall conduct or participate in the pre-hearing conference.

(Rule 4.6 added by Order dated December 13, 1993.)

(Rule 4.6 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.7 Pre-hearing Orders.

At the conclusion of a pre-hearing conference, the presiding member shall enter an order setting forth agreed and disputed facts and elements of the violations alleged. The original order shall be filed with the Disciplinary Board Clerk with copies served on the parties. Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.

(Rule 4.7 added by Order dated December 13, 1993.)

(Rule 4.7 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.8 Briefs.

Briefs, if any, shall be filed with the Disciplinary Board Clerk with copies served on the trial panel no later than 7 days prior to the hearing, provided that the trial panel chairperson may, in his or her discretion, where new or additional issues have arisen, grant 7 days additional time for the filing of briefs on those issues.

(Rule 4.8 (former Rule 2.4(i)(2)) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 4.9 Mediation

(a) Mediation. An accused and the Bar may employ the services of a mediator, other than a member of the Disciplinary Board, to determine the potential for, and assist the parties in negotiating, a settlement of issues in dispute. Mediation is voluntary; both parties must agree to participate in the mediation. The SPRB shall decide for the Bar whether to mediate.

(b) Time of Mediation. Mediation may occur at any time after the filing of the formal complaint, provided that the mediation shall not delay a hearing before a trial panel scheduled in accordance with BR 5.4. After a trial panel renders a written opinion in the proceeding pursuant to BR 2.4(i)(2), mediation may occur only if authorized by the State Chairperson of the Disciplinary Board.

(c) Discipline by Consent. A stipulation for discipline or no contest plea negotiated through mediation is subject to approval by the SPRB, and the Disciplinary Board or the Supreme Court, as the case may be, as set forth in BR 3.6, before it is effective.

(d) Costs. The expense of mediation shall be shared equally by an accused and the Bar unless the parties agree otherwise.

(e) Confidentiality. Mediation communications, as defined in ORS 36.110, are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, except as provided by ORS 36.226.

(Rule 4.9 added by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 4.9(a) and (e) amended by Order dated April 26, 2007.)

Title 5 — Disciplinary Hearing Procedure

Rule 5.1 Evidence And Procedure.

(a) Rules of Evidence. Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the accused has occurred.
(Rule 5.1(a) amended by Order dated February 23, 1988.)

Rule 5.2 Burden Of Proof.

The Bar shall have the burden of establishing misconduct by clear and convincing evidence.

Rule 5.3 Location Of Hearing; Subpoenas; Testimony.

(a) Location. In the trial of any disciplinary proceeding, the hearing shall be held either in the county in which the person charged maintains his or her office for the practice of law or other business, in which he or she resides, or in which the offense is alleged to have been committed, in the discretion of the trial panel chairperson. With the consent of the accused, the hearing may be held elsewhere. In the trial of a disciplinary proceeding involving an accused who does not maintain an office or residence in Oregon and the alleged misconduct either did not occur in Oregon or occurred in more than one county in Oregon, or in the trial of any contested reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.

(b) Subpoenas. The Executive Director, the state chairperson or regional chairpersons of the Disciplinary Board, trial panel chairpersons, Bar Counsel, Disciplinary Counsel and the attorney of record for the accused or the accused, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or an accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the accused of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the trial panel chairperson. Within 14 days after the transcript is filed, the Bar or the accused may move the trial panel chairperson for an order to correct any errors appearing in the transcript. A copy of such motion shall be filed with the Disciplinary Board Clerk and served on the trial panel chairperson and the other parties. Within 7 days the Bar or the accused, as the case may be, may file a response to the motion with the Disciplinary Board Clerk and serve copies on the trial panel chairperson and the other parties. The trial panel chairperson shall thereafter direct the making of such corrections as may be appropriate. Upon the denial of a motion to correct the transcript or upon the making of such corrections as may be directed by the trial panel chairperson, the trial panel chairperson shall file with the Disciplinary Board Clerk an order settling the transcript and shall serve copies on the parties.

(Rule 5.3(b) amended by Order dated April 4, 1991, effective April 15, 1991.)

(Rule 5.3(a) amended by Order dated July 22, 1991.)

(Rule 5.3 (c), (d), and (e) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 5.3(a) and (e) amended by Order dated February 5, 2001.)

(Rule 5.3(e) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 5.3(a) amended by Order dated April 26, 2007.)

Rule 5.4 Hearing Date; Continuances.

The hearing date shall be established by the trial panel chairperson and shall not be less than 63 days nor more than 182 days from the date the pleadings are received by the trial panel chairperson pursuant to BR 2.4(h). Continuances of the hearing date may be granted by the trial panel chairperson at any time prior to the hearing, or by the trial panel, at the time of the hearing, only upon a showing of compelling necessity therefor; but in no event shall continuances granted the Bar or the accused exceed 56 days in the aggregate.

(Rule 5.4 amended by Order dated October 10, 1994.)

(Rule 5.4 amended by Order dated February 5, 2001.)

Rule 5.5 Prior Record.

(a) Defined. "Prior record" means any contested admission, disciplinary or reinstatement decision of the Disciplinary Board or the Supreme Court which has become final.

(b) Restrictions on Admissibility. At the fact finding hearing in a disciplinary proceeding, an accused's prior record or lack thereof shall not be admissible to prove the character of an accused or to impeach his or her credibility.

Rule 5.6 Evidence Of Prior Acts Of Misconduct.

Evidence of prior acts of misconduct on the part of an accused is admissible in a disciplinary proceeding for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

Rule 5.7 Consideration Of Sanctions.

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the accused is in violation of a disciplinary rule or statute. Only when the trial panel chairperson considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred.

(Rule 5.7 amended by Order dated February 23, 1988.)

Rule 5.8 Default.

(a) Failure to Answer or Appear. If an accused lawyer fails to resign or file an answer to a formal complaint within the time allowed by these rules, or if an accused lawyer fails to appear at a hearing set pursuant to BR 2.4(h), the trial panel chairperson, or the regional chairperson if a trial panel has not been appointed, may file with the Disciplinary Board Clerk an order finding the accused in default under this rule. Copies of the order shall be served on the parties. The trial panel shall thereafter deem the allegations in the formal complaint to be true. The trial panel shall thereafter proceed to render its written opinion based on the formal complaint, or at the discretion of the trial panel, after considering evidence or legal authority limited to the issue of sanction. Following entry of an order of default, the accused shall not be entitled to further notice in the disciplinary proceeding under consideration, except as may be required by these rules or by statute. The trial panel shall not, absent good cause, continue or delay proceedings due to an accused's failure to answer or appear.

(b) Setting Aside Default. At any time prior to a trial panel rendering its written opinion, the trial panel may set aside an order of default upon a showing by the accused that the accused's failure to resign, answer or appear timely was the result of mistake, inadvertence, surprise or excusable neglect. After a trial panel opinion is rendered, a motion to set aside an order of default must be filed with the Supreme Court.

(Rule 5.8 amended by Order dated June 29, 1993.)

(Rule 5.8(a) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 5.8(a) amended by Order dated October 19, 2009.)

Rule 5.9 Attorney Assistance Evidence.

(a) Definition. For the purposes of this rule, an "attorney assistance program" is any treatment, counseling, training or remedial service, created under ORS 9.568 or otherwise, designed to provide assistance to attorneys who are suffering from impairment or other circumstances which may adversely affect their professional competence or conduct, or to provide advice and training to attorneys in practice management.

(b) Use of Evidence by Accused. Subject to the provisions of BR 5.1(a) and this rule, the accused may offer evidence at a disciplinary hearing concerning the accused's participation in or communication with an attorney assistance program. If the accused fails to provide timely notice to Disciplinary Counsel as required under BR 5.9(c), the accused may not offer evidence of the accused's participation in or communication with an attorney assistance program at the hearing.

(c) Prior Notice. If the accused intends to offer evidence at a hearing concerning the accused's participation in or communication with an attorney assistance program, the accused shall file with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel, written notice of such intent, not less than 63 days prior to the date the hearing is scheduled to commence. For good cause shown, the trial panel chairperson may permit the accused to give the notice within a shorter period of time. The notice shall specify the identity of the attorney assistance program, the nature of the evidence that will be offered, the names of the service providers with whom the accused dealt, and the names and addresses of witnesses the accused intends to call to present the evidence. The notice shall also include the consent or waiver required by BR 5.9(d). The accused shall provide a copy of the notice to the attorney assistance program.

(d) Discovery. In the event the accused provides a notice to Disciplinary Counsel under BR 5.9(c), Disciplinary Counsel may conduct discovery concerning the accused's participation in or communication with the attorney assistance program. The accused shall provide any consent or waiver necessary to permit Disciplinary Counsel to obtain discovery from the attorney assistance program or its service providers at the time the accused provides the notice required by BR 5.9(c). Questions regarding the permissible scope of discovery under this rule shall be resolved by the trial panel chairperson on motion pursuant to BR 4.5(c).

(e) Discovery not Public. Records and information obtained by Disciplinary Counsel through discovery under this rule shall not be subject to public disclosure, and shall be disclosed by the parties only in the disciplinary proceeding.

(f) Use of Evidence by Bar. The Bar shall have the right to introduce evidence obtained through discovery under this rule only if the accused introduces evidence of participation in or communication with an attorney assistance program.

(g) Enforcement. The trial panel chairperson may issue a protective order and impose sanctions to enforce this rule pursuant to BR 4.5(d) and (e).

(Rule 5.9 added by Order dated November 30, 1999.)

(Rule 5.9(a) amended by Order dated February 5, 2001.)

(Rule 5.9(c) amended by Order dated June 17, 2000, effective July 1, 2003.)

Title 6 — Sanctions And Other Remedies**Rule 6.1 Sanctions.**

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings are

- (i) dismissal of any charge or all charges;
- (ii) public reprimand;
- (iii) suspension for periods from 30 days to five years;
- (iv) a suspension for any period designated in BR 6.1(a)(iii) which may be stayed in whole or in part on the condition that designated probationary terms are met; or

(v) disbarment.

In conjunction with a disposition or sanction referred to in this rule, an accused may be required to make restitution of some or all of the money, property or fees received by the accused in the representation of a client, or reimbursement to the Client Security Fund.

(b) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (i) denied reinstatement;
- (ii) reinstated conditionally, subject to probationary terms; or
- (iii) reinstated unconditionally.

(c) Time Period Before Application and Reapplication. The court may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(d) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years has elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

(Rule 6.1(a) amended by Order dated May 31, 1984, effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.)

(Rule 6.1(a) amended by Order dated February 5, 2001.)

(Rule 6.1(a)(iii) – 6.1(a)(v) and 6.1(b) – 6.1(d) amended by Order dated October 19, 2009.)

Rule 6.2 Probation.

(a) Authority in Disciplinary Proceedings. Upon determining that an accused should be suspended, the trial panel may decide that the execution of the suspension shall be stayed, in whole or in part, and that the accused shall be placed on probation for a period no longer than three years. The imposition of a probationary term shall not affect the criteria established by statute and these rules for the review of decisions of trial panels by the Supreme Court. Probation, if ordered, may be under such conditions as the trial panel or the Supreme Court considers appropriate. Such conditions may include, but are not limited to, requiring alcohol or drug treatment; requiring medical care; requiring psychological or psychiatric care; requiring professional office practice or management counseling; and requiring periodic audits or reports. In any case where an attorney is placed on probation pursuant to this rule, the state chairperson of the Disciplinary Board or the Supreme Court may appoint a suitable person or persons to supervise the probation. Cooperation with a person or persons so appointed shall be a condition of the probation.

(b) Authority in Contested Reinstatement Proceedings. Upon determining that an applicant should be readmitted to membership in the Oregon State Bar, the trial panel may decide to place the applicant on probation for a period no longer than three years. The probationary terms may include, but are not limited to, those provided in BR 6.2(a). The Supreme Court may adopt, in whole or in part, the decision of the trial panel regarding probation and enter an appropriate order upon a review of the proceeding. The court may appoint a suitable person or persons to supervise the probation. Cooperation with a person or persons so appointed shall be a condition of the probation. An attorney placed on probation pursuant to this rule may have his or her probation revoked for a violation of any probationary term by petition of Disciplinary Counsel in accordance with the procedures set forth in BR 6.2(d). An attorney whose probation is revoked shall be suspended from the practice of law until further order of the court.

(c) Disciplinary Board. In all cases where the trial panel determines that the accused should be suspended and the determination is not reviewed by the Supreme Court, thereby resulting in such determination becoming

final, the decision that the accused be placed on probation under the conditions specified in the trial panel's opinion shall be deemed adopted and made a part of the determination.

(d) Revocation. Disciplinary Counsel may petition the state chairperson of the Disciplinary Board or the Supreme Court, as the case may be, to revoke the probation of any attorney for violation of any probationary term imposed by a trial panel or the Supreme Court. The state chairperson or court may order the attorney to appear and show cause, if he or she has any, why the attorney's probation should not be revoked and the original sanctions imposed. The state chairperson or the court, as the case may be, may appoint a trial panel of the Disciplinary Board to conduct the show cause hearing and report back to the state chairperson or the court. The state chairperson or the court, as the case may be, shall thereafter rule on the petition. If the revocation matter is within the jurisdiction of the Disciplinary Board, the petition, the order to appear and show cause, the order appointing a trial panel and the decision of the trial panel shall be filed with the Disciplinary Board Clerk and copies shall be served on the other parties. A petition for revocation of an attorney's probation shall not preclude the Bar from filing independent disciplinary charges based on the same conduct as alleged in the petition.

(Rule 6.2(b) amended by Order dated July 22, 1991.)

(Rule 6.2(d) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 6.3 Duties Upon Disbarment Or Suspension.

(a) Attorney to Discontinue Practice. A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 6.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

Title 7 — [Reserved for expansion]

(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987. Rule 7.1 amended by Order dated October 1, 1990. Title 7 amended by Order dated July 22, 1991.)

(Rule 7.1 deleted by Order dated October 19, 2009.)

Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or

(ii) resigned under Form B of these rules prior to January 1, 1996; or

(iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or

(iv) been suspended for misconduct for a period of more than six months; or

- (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
- (vi) been enrolled voluntarily as an inactive member for more than five years; or
- (vii) been involuntarily enrolled as an inactive member; or
- (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) **Required Showing.** Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) **Learning and Ability.** In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Board may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) **Fees.** In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$500.

(Rule 8.1(c) and (f) amended by Order dated May 31, 1984, effective July 1, 1984.)

(Rule 8.1(c) amended by Order dated July 27, 1984 nun pro tunc May 31, 1984.)

(Rule 8.1 amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

(Rule 8.1(a) and (c) amended by Order dated March 20, 1990, effective April 2, 1990.)

(Rule 8.1(a), (c), and (d) amended by Order dated December 14, 1995.)

(Rule 8.1(a) amended by Order dated February 5, 2001.)

(Rule 8.1(d) amended by Order dated October 19, 2009.)

Rule 8.2 Reinstatement — Informal Application Required.

(a) **Applicants.** Any person who has been a member of the Bar, but who has

- (i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or
- (ii) been enrolled voluntarily as an inactive member for five years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of \$250.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

(Rule 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)
(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)
(Rule 8.2 (a) and (b) amended by Order dated March 20, 1990, effective April 2, 1990.)
(Rule 8.2(a) amended by Order dated December 28, 1993.)
(Rule 8.2(a) amended by Order dated December 14, 1995.)
(Rule 8.2 amended by Order dated December 9, 2004, effective January 1, 2005.)
(Rule 8.2(d)(iii) amended by Order dated April 26, 2007.)
(Rule 8.2(c) and 8.2(d) amended by Order dated October 19, 2009.)

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250.

(Rule 8.3 established by Order dated March 13, 1989, effective April 1, 1989.)
(Rule 8.3(a) amended by Order dated December 28, 1993.)
(Rule 8.3(b) amended by Order dated October 19, 2009.)

Rule 8.4 Reinstatement — Financial Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon payment of the following sums to the Bar:

- (i) all applicable assessments, fees and penalties owed by the member to the Bar, and
- (ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, a reinstatement fee of \$100; or
- (iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, a reinstatement fee of \$100; or
- (iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, a reinstatement fee of \$200.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(Rule 8.4 (former BR 8.3) amended by Order dated March 13, 1989, effective April 1, 1989.)
(Rule 8.4(a)(ii) – 8.4(a)(iv) and 8.4(b) amended by Order dated October 19, 2009.)

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education Requirement.

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

- (i) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and MCLE Rule 8.2. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.
- (ii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

(Rule 8.4 established by Order dated November 24, 1987, effective January 1, 1988.)

(Rule 8.5 (former BR 8.4) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.5(a) amended by Order dated December 14, 1995.)

(Rule 8.5(a) amended by Order dated October 19, 2009.)

Rule 8.6 Other Obligations Upon Application.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i), BR 8.1(a)(viii), BR 8.2(a)(i) or BR 8.2(a)(iii) shall also pay to the Bar, at the time of application, an amount equal to the inactive membership fee for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

- (i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and
- (ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

(Rule 8.6(a) and (b) amended by Order dated December 14, 1995.)

(Rule 8.6(a), (b) and (c) amended by Order dated February 5, 2001.)

Rule 8.7 Board Investigation And Recommendation.

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Board shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, the Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. In no event shall the Board temporarily reinstate an applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status.

(Rule 8.7 amended by Order dated December 28, 1993.)

(Rule 8.7(a) amended by Order dated December 9, 2004, effective January 1, 2005.)

Rule 8.8 Petition To Review Adverse Recommendation.

Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an applicant who desires to contest the Board's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to the Disciplinary Board Clerk, Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive membership status shall remain in effect until final disposition of the petition by the court.

(Rule 8.8 amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 8.9 Procedure On Referral By Court.

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

(Rule 8.9 amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 8.10 Answer To Statement Of Objections.

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel and Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

(Rule 8.10 amended by Order dated July 17, 2003, effective July 1, 2003.)

Rule 8.11 Hearing Procedure.

Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

Rule 8.12 Burden Of Proof.

An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice

law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

Rule 8.13 Burden Of Producing Evidence.

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

Rule 8.14 Reinstatement and Transfer--Active Pro Bono.

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(d) may be reinstated by the Executive Director to Active Pro Bono status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

(Rules 8.5 - 8.11 amended by Order dated November 24, 1987, effective January 1, 1988.)

(Rules 8.6 - 8.13 amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 8.14 added by Order dated September 6, 2001, effective September 6, 2001.)

(Rule 8.14(a) and 8.14(b) amended by Order dated October 19, 2009.)

Title 9 — Resignation

Rule 9.1 Resignation.

An attorney may resign by filing with Disciplinary Counsel a resignation in writing which shall be effective only on acceptance by the court. If no charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, and no disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.6. If charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, or if disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.7.

(Rule 9.1 amended by Order dated February 5, 2001.)

Rule 9.2 Acceptance Of Resignation.

Disciplinary Counsel shall promptly forward the resignation to the State Court Administrator for submission to the court. Upon acceptance of the resignation by the court, the name of the resigning attorney shall be stricken from the roll of attorneys; and he or she shall no longer be entitled to the rights or privileges of an attorney, but shall remain subject to the jurisdiction of the court with respect to matters occurring while he or she was an attorney. Unless otherwise ordered by the court, any pending investigation of charges, allegations or instances of alleged misconduct by the resigning attorney shall, on the acceptance by the court of his or her resignation, be closed, as shall any pending disciplinary proceeding against the attorney.

(Rule 9.2 amended by Order dated February 5, 2001.)

Rule 9.3 Duties Upon Resignation.

(a) Attorney to Discontinue Practice. An attorney who has resigned membership in the Oregon State Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney who has resigned from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of an attorney who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Contempt. Disciplinary Counsel may petition the Supreme Court to hold an attorney who has resigned in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 9.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

Rule 9.4 Effect of Form B Resignation.

An attorney who has resigned membership in the Bar under Form B of these rules after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

(Rule 9.4 added by Order dated December 14, 1995.)

Rule 9.5 [Reserved for expansion]

(Rule 9.5 repealed by Order dated January 17, 2008.)

Title 10 — Review By Supreme Court

Rule 10.1 Disciplinary Proceedings.

Upon the conclusion of a disciplinary hearing, the trial panel, pursuant to BR 1.8, shall file its written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, Bar Counsel and the accused. The trial panel shall file a copy of its opinion with the State Court Administrator. The Bar or the accused may seek review of the matter by the Supreme Court; otherwise, the decision of the trial panel shall be final on the 61st day following the notice of receipt of the trial panel opinion by the Disciplinary Board Clerk pursuant to Rule 2.4(i)(4).

(Rule 10.1 amended by Order dated July 8, 1988.)

(Rule 10.1 amended by Order dated August 2, 1991.)

(Rule 10.1 amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.1 amended by Order dated February 5, 2001.)

(Rule 10.1 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.1 amended by Order dated June 17, 2003, effective January 1, 2004.)

Rule 10.2 Contested Reinstatement Proceeding.

Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, the applicant and the State Court Administrator. Each such reinstatement matter shall be reviewed by the Supreme Court.

(Rule 10.2 amended by Order dated July 22, 1991.)

(Rule 10.2 amended by Order dated February 5, 2001.)

(Rule 10.2 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.2 amended by Order dated October 19, 2009.)

Rule 10.3 Request For Review.

Within 60 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(i)(4), receipt of a trial panel opinion, the Bar or the accused may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 12.8. A copy of the request for review shall be served on all parties.

(Rule 10.3 amended by Order dated July 8, 1988.)

(Rule 10.3 amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.3 amended by Order dated February 5, 2001.)

(Rule 10.3 corrected by Order dated June 28, 2001.)

(Rule 10.3 amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.3 amended by Order dated June 17, 2003, effective January 1, 2004.)

Rule 10.4 Filing In Supreme Court.

(a) Record. Disciplinary Counsel shall file the record of a proceeding with the State Court Administrator upon the receipt by Disciplinary Counsel of:

- (i) a trial panel opinion in any contested reinstatement proceeding;
- (ii) a request for review timely filed pursuant to BR 10.3.

Upon receipt of the record, the matter shall be reviewed by the court as provided in BR 10.5.

(Rule 10.4(a)(i) amended by Order dated July 22, 1991.)

(Rule 10.4 amended by Order dated June 29, 1993.)

(Rule 10.4(a)(ii) and (b) amended by Order dated August 19, 1997, effective October 4, 1997.)

(Rule 10.4 amended by Order dated June 17, 2003, effective January 1, 2004.)

Rule 10.5 Procedure In Supreme Court.

(a) Petition. No later than 28 days after the court's written notice to Disciplinary Counsel, Bar Counsel and the accused or applicant of receipt of the record, a petition asking the court to adopt, modify or reject, in whole or in part, the decision of the trial panel shall be filed with the court.

(b) Moving Party. The petition shall be filed by the accused or applicant if the trial panel made a finding of misconduct against the accused or recommended that an applicant be denied reinstatement or be conditionally reinstated; otherwise, the Bar shall file the petition.

(c) Briefs. A petition filed under this rule shall be accompanied by a brief. The format of the opening brief and the timing and format of answering briefs and reply briefs shall be governed by the applicable Rules of Appellate Procedure of the Supreme Court. The failure of the Bar or an accused or applicant to file a petition or brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification or rejection in whole or in part of any decision of the trial panel.

(d) Oral Argument. The Rules of Appellate Procedure of the Supreme Court relative to oral argument shall apply in disciplinary and contested reinstatement proceedings. The moving party under BR 10.5(b) shall be considered the appellant.

(Rule 10.5(b) and (c) amended by Order dated July 22, 1991.)

(Rule 10.5(b), 10.5(c), and 10.5(d) amended by Order dated October 19, 2009.)

Rule 10.6 Nature Of Review.

The court shall consider each matter de novo upon the record and may adopt, modify or reject the decision of the trial panel in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel without opinion, the opinion of the trial panel shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

(Rule 10.6 amended by Order dated July 22, 1991.)

(Rule 10.6 amended by Order dated October 19, 2009.)

Rule 10.7 Costs And Disbursements.

(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the cost of a copy of the transcript if a copy has been provided by the Bar to an accused without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05. Lawyer fees are not recoverable costs and disbursements either at the hearing or on appeal nor are prevailing party fees recoverable by any party.

(b) Allowance of Costs and Disbursements. In any discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the court or Disciplinary

Board. An accused or applicant prevails when the charges against the accused are dismissed in their entirety or the applicant is unconditionally reinstated to the practice of law in Oregon. The bar shall be considered to have prevailed in all other cases.

(c) Recovery After Offer of Settlement. An accused may, at any time up to 14 days prior to hearing, serve upon Bar Counsel and Disciplinary Counsel an offer by the accused to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the written offer by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB, and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or of the court imposing a sanction no greater than that to which the accused was willing to plea no contest or stipulate based on the charges the accused was willing to concede or admit, the Bar shall not recover and the accused shall recover actual and necessary costs and disbursements incurred after the date the accused's offer was rejected by the SPRB.

(d) Procedure for Recovery and Collection. The procedure set forth in the Rules of Appellate Procedure of the Supreme Court regarding the filing of cost bills and objections thereto shall be followed except that in matters involving final decisions of the Disciplinary Board cost bills and objections thereto shall be resolved by the state chairperson of the Disciplinary Board. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk with proof of service on the state chairperson of the Disciplinary Board and the other party and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536.

(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989. Rule 10.7 (a) amended by Order dated October 1, 1990; amended by Order dated June 28, 2001.)

(Rule 10.7(d) amended by Order dated June 17, 2003, effective July 1, 2003.)

(Rule 10.7(a) and (d) amended by Order dated April 26, 2007.)

(Rule 10.7(b) amended by Order dated October 19, 2009.)

Title 11 — Time Requirements

Rule 11.1 Failure To Meet Time Requirements.

The failure of any person or body to meet any time limitation or requirement in these rules shall not be grounds for the dismissal of any charge or objection unless a showing is made that the delay substantially prejudiced the ability of the accused or applicant to receive a fair hearing.

Title 12 — Forms

Rule 12.1 Formal Complaint.

A formal complaint in a disciplinary proceeding shall be in substantially the following form:

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re:)	No. _____
_____)	
Complaint as to the conduct of)	FORMAL
_____, Accused)	COMPLAINT

For its first cause of complaint, the Oregon State Bar alleges:

1.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to discipline of attorneys.

2.

The Accused, _____, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his [her] office and place of business in the County of _____, State of _____.

3. et seq.

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

4. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its second cause of complaint against said Accused, the Oregon State Bar alleges:

5. (or next number)

Incorporates by reference as fully set forth herein Paragraphs _____, _____, _____, and _____ of its first cause of complaint.

6. (or next number)

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

7. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its third cause of complaint against said Accused, the Oregon State Bar alleges:

8. (or next number)

Incorporates by reference as fully set forth herein Paragraphs _____, _____, _____, _____, and _____ of its first cause of complaint and Paragraphs _____, _____, _____, and _____ of its second cause of complaint.

9. (or next number)

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

10. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

WHEREFORE, the Oregon State Bar demands that the Accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

DATED this ___ day of ___, 20__.

OREGON STATE BAR

By:

Disciplinary Counsel

(Rule 12.1 amended by Order dated February 5, 2001.)

Rule 12.2 Notice to Answer.

A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the accused (applicant). Such notice shall be in substantially the following form:

(Heading as in complaint/statement of objections)

NOTICE TO ANSWER

You are hereby notified that a formal complaint against you (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with the Disciplinary Board Clerk, with a service copy to Disciplinary Counsel, your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that an attorney accused of misconduct may, in lieu of filing an answer, elect to file with Disciplinary Counsel of the Oregon State Bar, a written resignation from membership in the Oregon State Bar. Such a resignation must comply with BR 9.1 and be in the form set forth in BR 12.7. You should consult an attorney of your choice for further information about resignation.

The address of the Oregon State Bar is 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail at P. O. Box 231935, Tigard, Oregon 97281-1935.

DATED this ___ day of ___, 20__.

OREGON STATE BAR
By:
Disciplinary Counsel

(Rule 12.2 amended by Order dated February 5, 2001.)
(Rule 12.2 amended by Order dated April 26, 2007.)
(Rule 12.2 amended by Order dated March 20, 2008.)
(Rule 12.2 amended by Order dated October 19, 2009.)

Rule 12.3 Answer.

The answer of the accused (applicant) shall be in substantially the following form:

(Heading as in complaint/statement of objections)

ANSWER

_____, (name of accused applicant), whose residence address is _____, in the County of _____, State of Oregon, and who maintains his [her] principal office for the practice of law or other business at _____, in the County of _____, State of Oregon, answers the formal complaint (statement of objections) in the above-entitled matter as follows:

1.

Admits the following matters charged in the formal complaint (statement of objections) as follows:

2.

Denies the following matters charged in the formal complaint (statement of objections) as follows:

3.

Explains or justifies the following matters charged in the formal complaint (statement of objections).

4.

Sets forth new matter and other defenses not previously stated, as follows:

5.

WHEREFORE, the accused (applicant) prays that the formal complaint (statement of objections) be dismissed.

DATED this ___ day of ___, 20__.

ACCUSED (APPLICANT)
Attorney for Accused (Applicant)

Rule 12.4 [Reserved for expansion]
(Rule 12.4 repealed by Order dated July 22, 1991.)

Rule 12.5 Statement Of Objections To Reinstatement.

In a contested reinstatement proceeding, the statement of objections shall be in substantially the following form:

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In The Matter Of The)	
Application of)	STATEMENT
_____)	OF
For Reinstatement as)	OBJECTIONS
an Active Member)	TO
of the Oregon State Bar)	REINSTATEMENT

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, _____ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this ___ day of ___, 20__.

OREGON STATE BAR
By:
Disciplinary Counsel

*(Rule 12.5 amended by Order dated February 5, 2001.)
(Rule 12.5 amended by Order dated October 19, 2009.)*

Rule 12.6 Form A Resignation.

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re:) FORM A
(Name)) RESIGNATION

State of)
County of) ss

I, _____, being duly sworn on oath, depose and say that my residence address is _____ (No. and Street), _____ (City), _____ (State), _____ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and respectfully request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of _____, a resident Oregon attorney, whose principal office address is _____, and that all such clients have been or will be promptly notified accordingly.

DATED at __, this ___ day of ___, 20__.

(Signature of Member)

Subscribed and sworn to before me this ___ day of ___, 20__.

Notary Public for Oregon
My Commission Expires:

I, _____, Executive Director of the Oregon State Bar, do hereby certify that there are not now pending against the above-named attorney any formal disciplinary charges and no complaints, allegations or instances of alleged misconduct involving said attorney are under investigation by the Oregon State Bar.

DATED this ___ day of ___, 20__.

OREGON STATE BAR
By:
Executive Director

Rule 12.7 Form B Resignation.

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re:) FORM B
(Name)) RESIGNATION

State of)
County of) ss

I, _____, being duly sworn on oath, depose and say that my principal office for the practice of law or other business is located at _____ (Building No. and Name, if any, or Box No.), _____ (Street address, if any), _____ (City), _____ (State), _____ (Zip Code); that my residence address is _____ (No. and Street), _____ (City), _____ (State), _____ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations or instances of alleged misconduct by me are under investigation by the Oregon State Bar and that such complaints, allegations and/or instances include:

(List of formal complaints, proceedings or investigations pending.)

I do not desire to contest or defend against the above-described complaints, allegations or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the Oregon State Bar with respect to admission, discipline, resignation and reinstatement of members of the Oregon State Bar. I understand that any future application by me for reinstatement as a member of the Oregon State Bar is currently barred by BR 9.4, but that should such an application ever be permitted in the future, it will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or instances of alleged misconduct upon which this resignation is predicated. I understand that, on its filing in this court, this resignation and any supporting documents, including those containing the complaints, allegations or instances of alleged misconduct, will become public records of this court, open for inspection by anyone requesting to see them.

This resignation is freely and voluntarily made; and I am not being, and have not been, subjected to coercion or duress. I am fully aware of all the foregoing and any other implications of my resignation.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of _____, a resident Oregon attorney, whose principal office address is _____, and that all such clients have been or will be promptly notified accordingly.

DATED at __, this __ day of __, 20__.

(Signature of Attorney)

Subscribed and sworn to before me this __ day of __, 20__.

Notary Public for Oregon
My Commission Expires:

*(Rule 12.7 amended by Order dated June 5, 1997, effective July 1, 1997).
(Rule 12.7 amended by Order dated February 5, 2001.)*

Rule 12.8 Request For Review.

A request for review pursuant to BR 10.3 shall be in substantially the following form.

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In Re:)
) No. _____
Complaint as to the)
Conduct of _____) REQUEST FOR
Accused) REVIEW

[The Accused/The Oregon State Bar] hereby requests the Supreme Court to review the decision of the Disciplinary Board trial panel rendered on [date] in the above matter.

DATED this ___ day of ___, 20__.

[signature of accused or counsel]

Rule 12.9 Compliance Affidavit.

A compliance affidavit filed under BR 8.3 shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Application of

(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name _____ Date of Birth _____

2.a. Residence address _____ Telephone _____

3. I hereby attest that during my period of suspension from the practice of law from _____ to _____, (insert dates) I did not at any time engage in the practice of law except where authorized to do so.

4. I also hereby attest that I complied as directed with the following terms of probation: (circle applicable items)

a. abstinence from consumption of alcohol and mind-altering chemicals/drugs, except as prescribed by a physician

b. attendance at Alcoholics Anonymous meetings

c. cooperation with Chemical Dependency Program

d. cooperation with State Lawyers Assistance Committee

e. psychiatric/psychological counseling

f. passed Multi-State Professional Responsibility exam

g. attended law office management counseling and/or programs

h. other - (please specify) _____

i. none required

I, _____, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.

(Name)

Subscribed and sworn to before me this ___ day of ___, 20__.

Notary Public in and for
the State of Oregon

My Commission Expires:

(Rule 12.9 established by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 12.9 amended by Order dated February 5, 2001.)