

## Amendments to the Bar Rules of Procedure Effective September 1, 2019

On May 14, 2019, the Oregon Supreme Court approved amendments to the Bar Rules of Procedure (BRs). The amendments had been unanimously recommended by the Oregon State Bar's Board of Governors (BOG) on February 22, 2019, after information about the proposed changes was posted on the bar's website for 60 days. The revisions include the following categories of changes: (1) enhancements to the role, jurisdiction and functioning of the Adjudicator; (2) clarifications pertaining to investigations and formal proceedings; (3) modifications to the rules and forms pertaining to Form A and Form B resignations; and (4) housekeeping and error corrections.

### Summary of Changes

#### I. Changes Pertaining to the Adjudicator

The Adjudicator may rule on questions of procedure and discovery that arise prior to the filing of a formal complaint, may schedule prehearing conferences up to the date of the hearing (eliminating the current deadline of 56 days prior to the date of the disciplinary hearing), and may preside, when appointed by the Court, in proceedings seeking a member's involuntary inactive status. [BR 2.4(e)(9); BR 2.4(e)(13); BR 3.2(i); BR 4.7(a)]

In the event of the Adjudicator's unavailability for 14 days or more, or by reason of injury, illness or death, the General Counsel may request in writing a regional chairperson to perform the Adjudicator's responsibilities. A corresponding change permits the appointed chairperson to perform the Adjudicator's responsibilities. [BR 1.1(a); BR 2.4(e)(14); BR 2.4(f)(4)]

#### II. Clarifications

When the Client Assistance Office (CAO) dismisses an inquiry and the complainant requests a General Counsel review of the decision, the General Counsel can adopt the CAO reasoning in affirming a dismissal. [BR 2.5(c)]

Subpoenas issued during investigation may be enforced in a circuit court. [BR 2.2(b)(2)]

Answers to an amended petition are due 14 days after service, and a respondent may request, for good cause shown, additional time to gather evidence. [BR 4.4(b)(1)]

#### III. Reinstatements

Members suspended solely for several categories of administrative suspension may seek reinstatement to inactive or retired status through the informal reinstatement process.

Presently, members must seek reinstatement from administrative suspension to active status, no matter whether they plan to practice law. [BR 8.2(a)(6); BR 8.2(a)(7)]

Members otherwise qualified to use informal reinstatement will have to reinstate through the formal reinstatement process if, during a period of suspension, inactive or retired status, the member has been convicted of a crime that would subject them to discipline under BR 3.4 (dealing with convicted attorneys). [BR 8.2(d)(1)]

Language governing fees upon reinstatement makes uniform the fee charged per year that the member was suspended or resigned, whether formal or informal reinstatement pertains. Going forward, members seeking reinstatement under either rule will pay \$100 per year. [BR 8.6(a)]

### III. Form A and Form B Resignations

Form A resignation is available to members without pending disciplinary investigations or proceedings. New language clarifies that Form A resignation is not an option for members who are suspended, disbarred, or on probation pursuant to BR 6.1 or BR 6.2, or who are charged in any jurisdiction with an offense that, upon conviction, would subject them to discipline under BR 3.4 (pertaining to convicted attorneys). [BR 9.1]

Beginning December 1, 2019, members who resign under Form A are ineligible to reinstate and would have to submit a new bar application process to seek membership. The intended effect is that persons who do not intend a permanent departure to elect inactive status instead. Members who resign Form A prior to December 1, 2019, will remain able to seek reinstatement. [BR 8.1(a)(1); BR 9.5]

The current resignation forms require identification of a lawyer who will act as custodian in taking possession of the resigning lawyer's client files and client records. Two alternative paragraphs can be used when the PLF has agreed to take possession of active client files or when a lawyer has no active client files to be addressed. The signatory certifies having obtained agreement of whomever is identified to serve as custodian and acknowledges an obligation to comply with BR 9.3 and being subject to contempt for a failure to abide by BR 9.3 (which sets forth the requirements of a resigned lawyer). [BR 13.6; BR 13.7]

### IV. Housekeeping and Error Corrections

Rule references have been added, deleted or corrected. [BR 1.1(a); BR 3.5(e); BR 4.4(a); BR 5.8(a); BR 10.1; BR 10.2; BR 12.4]

Language referencing "BR" has been corrected to reference a "Rule." [BR 7.1(g); BR 10.1]

A misspelled word is corrected. [BR 5.8(a)] A redundant word is deleted. [BR 3.2(a)(2)]

A reference to the LPRC has been eliminated. [BR 7.1(a)]

An unnecessary subparagraph reference has been eliminated. [BR 13.9; BR 13.10]