

OREGON STATE BAR

Policy and Governance Agenda

Meeting Date: September 27, 2024
From: Ankur Doshi, General Counsel
Re: Rule of Procedure Amendment

Action Recommended

Submit the proposed changes amending the Bar Rules of Procedure (BR) as noted in Exhibit 1 for public comment.

Background

In reviewing the currently pending changes for the BRs that are open for public comment, and in light of a recent BR 3.2 action taken to involuntarily transfer an attorney to inactive status, Court staff noted an omission in BR 3.2 and recommends the following amendment.

Options

1. Recommend the proposed changes to the BRs be posted for public comment.
2. Decline to recommend the changes be posted for public comment, and submit back to staff for review.

Discussion

BR 3.2 allows the Oregon Supreme Court to order, on ex parte application of the bar, for an attorney or LP to be placed on inactive membership status if the attorney has been adjusted to be mentally ill or incapacitated. BR 3.2 was recently amended to add subsection (i), which allowed the Oregon Supreme Court to delegate the duties within BR 3.2 to the Adjudicator. Recently, the Oregon Supreme Court executed such a delegation, and noted that there was no mechanism for the Respondent in such a case to seek review with the Oregon Supreme Court. The Oregon Supreme Court included such an indication within its order within the case, but would request that such review be placed in the Bar Rules as well.

As this change is a substantive change and is outside the scope of the prior changes submitted to the PGC, staff deemed it appropriate to submit the requested change for review and public comment.

Rule 3.2 Mental Incompetency or Addiction— Involuntary Transfer to Inactive Membership Status.

(a) Summary Transfer to Inactive Status.

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(i) Submission to Adjudicator

- (1) At the direction of the court, the duties of the court set forth in this rule may be fulfilled by the Adjudicator. In such instances the duties of the State Court Administrator shall be performed by the Disciplinary Board Clerk.
- (2) Following entry of an order by the Adjudicator granting or denying the Bar’s petition, Disciplinary Counsel or the attorney or LP who is the subject of the Adjudicator’s order may request the court to review that order. The court may conduct a *de novo* review on the record, on an expedited basis. Such a request must be filed with the court no later than fourteen (14) days after the entry of the Adjudicator’s order. Unless otherwise ordered by the court, the Adjudicator’s order shall remain in effect until the court issues its decision.