

# Policy & Governance Committee Memo

---

**To:** Policy & Governance Committee  
**From:** Amber Hollister, General Counsel  
**Date:** November 20, 2020  
**Re:** Amendments to Bar Rules of Procedure, Related to Restructure of Regulatory Counsel

---

## Action Recommended

Recommend that the Oregon Supreme Court adopt changes to the Bar Rules of Procedure, to reflect the recent creation of the Regulatory Counsel position, to be effective upon Supreme Court approval.

## Background

Effective November 23, 2020, the bar's Regulatory Counsel will be charged with managing the Admissions Department as well as processing routing status changes and reinstatements. These changes allow the bar to reap operational efficiencies, and pool staff with similar skill sets into a single team. Previously, this work was supervised entirely by the Disciplinary Counsel & Director of Regulatory Services.

The proposed amendments add a definition for the position of Regulatory Counsel, and outline the position's responsibilities in Title 8 and Title 9. Amendments to Title 8 and Title 9 are necessary to effectuate the recent infrastructure change, because Regulatory Counsel will take primary responsibility for processing informal reinstatements and Form A resignations, in lieu of Disciplinary Counsel. Disciplinary Counsel will continue to provide recommendations on formal reinstatements, and reinstatements involving applicants who were disciplined, as well as Form B resignations.

The proposed amendments do not alter or expand the bar's overall authority, but reassign obligations in light of the new infrastructure.

## Options

1. **Make No Change.** Leave current Bar Rules of Procedure in place. Declining to adopt bylaw amendments may complicate infrastructure change implementation.
2. **Recommend that the Oregon Supreme Court adopt amendments to the Bar Rules of Procedure.** Staff recommends the Board adopt this approach to fully effectuate recent infrastructure changes, which are effective November 23, 2020.

**Rule 1.1 Definitions.**

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

- (a) "Adjudicator" means the Disciplinary Board statewide adjudicator, one or more of whom is appointed by the Supreme Court to chair all trial panels and any attorney appointed to serve in the Adjudicator's role in a particular proceeding pursuant to BR 2.4(e)(14) or BR 2.4(f)(2).
- (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) "Chief Executive Officer" means the chief administrative employee of the Bar.
- (j) "Client Assistance Office" means a department of the Bar that reviews and responds to inquiries from the public about the conduct of attorneys.
- (k) "Complainant" means the person who inquires about the conduct of an attorney through the Client Assistance Office.
- (l) "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.
- (m) "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.
- (n) "Disciplinary Board" means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.
- (o) "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.
- (p) "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.
- (q) "Disciplinary proceeding" means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.
- (r) "Examiner" means a member of the BBX.
- (s) "Formal complaint" means the document that initiates a formal lawyer discipline proceeding alleging misconduct and violations of disciplinary rules or statutory provisions.
- (t) "General Counsel" means the General Counsel of the Bar.

(u) "Grievance" means an instance of alleged misconduct by an attorney that may be investigated by Disciplinary Counsel.

(v) "Inquiry" means a communication received by the Client Assistance Office pertaining to an attorney that may or may not allege professional misconduct.

(w) "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.

(x) "Regulatory Counsel" means regulatory 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 regulatory counsel.

(y) "Respondent" means an attorney who is charged with misconduct by the Bar in a formal complaint or who is the subject of proceedings initiated pursuant to BR 3.1, BR 3.2, BR 3.3, BR 3.4, or BR 3.5.

(z) "State Court Administrator" means the person who holds the office created pursuant to ORS 8.110.

(aa) "Supreme Court" and "court" mean the Oregon Supreme Court.

(bb) "SPRB" means State Professional Responsibility Board appointed by the Supreme Court.

(cc) "Trial Panel" means a three-member panel of the Disciplinary Board.

(dd) "Unlawful Practice of Law Committee" means the committee appointed by the Supreme Court to carry out the committee's functions on behalf of the Bar pursuant to ORS 9.164.

Deleted: x

Deleted: y

Deleted: z

Deleted: aa

Deleted: bb

Deleted: cc

#### **Rule 8.1 Reinstatement — Formal Application Required.**

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

- (1) resigned under Form A of these rules prior to December 1, 2019, 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
- (2) resigned under Form B of these rules prior to January 1, 1996; or
- (3) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (4) been suspended for misconduct for a period of more than 6 months; or
- (5) been suspended for misconduct for a period of 6 months or less but has remained in a suspended status for a period of more than 6 months prior to the date of application for reinstatement; or
- (6) been enrolled voluntarily as an inactive or retired member for more than 5 years; or
- (7) been involuntarily transferred to an inactive membership status; or
- (8) been suspended for any reason and has remained in that status more than 5 years; or
- (9) been in any status other than active, including active pro bono, inactive, resigned, retired, administratively suspended, suspended, or disbarred, for a combined total of more than 5 years prior to the date of application for reinstatement;

and who desires to be reinstated as an active member or to resume the practice of law in Oregon 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 that 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 or retired status, suspension, disbarment, or resignation. A reinstatement to inactive status is not allowed under this rule. An applicant who has been suspended for a period exceeding 6 months may not apply for reinstatement any earlier than 3 months before the earliest possible expiration of the period specified in the opinion or order imposing suspension.

Deleted: that

(b) Required Showing; Effect of Noncooperation.

(1) Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law; that the applicant has reformed since engaging in earlier misconduct, if any; and that the resumption of the practice of law in Oregon by the applicant will not be detrimental to the administration of justice or the public interest. Reformation may be established by evidence, such as: (i) character evidence from people who know and have had the opportunity to observe the applicant; (ii) evidence of the applicant's participation in activities for the public good; (iii) evidence of the applicant's forthrightness in acknowledging earlier wrongdoing; (iv) evidence of the applicant's adequate resolution of any previous substance abuse problem; and (v) evidence of the applicant's willingness to pay restitution to those people harmed by the applicant's earlier conduct. In determining whether the evidence is sufficient to establish reformation, the Supreme Court must be satisfied that the applicant has reformed in light of the earlier misconduct.

(2) Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application.

(3) The Chief Executive Officer may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in Oregon 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 3 years or has been enrolled voluntarily or involuntarily as an inactive or retired member for more than 5 years must show that the applicant has the requisite learning and ability to practice law in Oregon. The Bar 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 BBX, 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, inactive, or retired status in Oregon; and whether the applicant has participated in continuing legal education activities during the period of suspension, inactive, or retired status in Oregon.

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

(e) Review by Chief Executive Officer; Referral of Application to Board. Notice of and requests for comment on applications filed under BR 8.1 shall be published on the Bar's website for a period of 30 days. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Chief Executive Officer determines that the applicant has made the showing required by BR 8.1(b), the Chief Executive Officer shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Chief Executive Officer is unable to determine from a review of

an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Chief Executive Officer 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 Chief Executive Officer, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the court that the application be denied.

(g) If either the Chief Executive Officer or the Board recommend to the Supreme Court, under paragraph (e) or (f) of this rule, that the application be granted conditionally or unconditionally, then the court must determine whether the applicant has satisfied the burden of proof set out in BR 8.12. If the court determines that the applicant has not satisfied the burden of proof, the court may deny the application or it may remand to the Chief Executive Officer or the Board, or take any other action that it deems appropriate.

#### **Rule 8.2 Reinstatement — Informal Application Required.**

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

(1) resigned under Form A of these rules prior to December 1, 2019, and 5 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

(2) been enrolled voluntarily as an inactive or retired member for 5 years or less prior to the date of application for reinstatement; or

(3) 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 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(4) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(5) been suspended under BR 7.1 and has remained in that status more than 6 months but not in excess of 5 years prior to the date of application for reinstatement; or

(6) has been suspended solely 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 6 months prior to the date of application for reinstatement and seeks reinstatement to inactive or retired status; or

(7) has been suspended solely for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 months prior to the date of application for reinstatement and seeks reinstatement to inactive or retired status; and

(8) has only been enrolled in any status other than active, including active pro bono, inactive, resigned, retired, administratively suspended, suspended, or disbarred, for a combined total of 5 years or less prior to the date of application for reinstatement;

may be reinstated by the Chief Executive Officer 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 or retired status, suspension, or resignation. No applicant shall resume the

practice of law in Oregon, or active, inactive, or retired 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 applicant's resumption of the practice of law in Oregon will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Chief Executive Officer may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in Oregon 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 an application fee of \$250 at the time the application for reinstatement is filed.

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

(1) during the period of the member's suspension, resignation, active pro bono, inactive, or retired status has been convicted in any jurisdiction of an offense that 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

(2) during the period of the member's suspension, resignation, active pro bono, inactive, or retired 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

(3) has engaged in conduct that raises issues of possible violation of the Bar Act, former 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 Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer, 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 Chief Executive Officer 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, inactive, or retired status, the Chief Executive Officer or the Board, as the case may be, may

require additional information concerning the applicant's conduct and defer consideration of the application for reinstatement until the required information is obtained.

**Deleted:** direct Disciplinary Counsel to secure

#### 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 in which the applicant seeks reinstatement for reasons other than previously imposed discipline, Regulatory Counsel shall conduct such investigation as it deems proper and report to the Chief Executive Officer or the Board, as the case may be. For all applications filed pursuant to BR 8.1 or BR 8.2(d) in which applicants seek reinstatement as a result of imposed discipline or as otherwise provided in BR 8.2(d), Disciplinary Counsel shall conduct such investigations as it deems proper and report to the Chief Executive Officer or the Board, as necessary. For applications filed under BR 8.1, the Chief Executive Officer or the Board, as the case may be, shall recommend to the Supreme 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.

**Deleted:** Disciplinary

**Deleted:** make

**Deleted:** the cause may be

(b) Temporary Reinstatements. Except as provided herein, upon making a determination that the applicant is of good moral character and generally fit to practice law, the Chief Executive Officer or the Board may temporarily reinstate an applicant pending receipt of all investigatory materials. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. An applicant who seeks reinstatement following a suspension or disbarment for professional misconduct, or an involuntary transfer to inactive status, shall not be temporarily reinstated pursuant to this rule.

### Title 9 — Resignation

#### Rule 9.1 Resignation.

An attorney may resign membership in the Bar by filing a resignation that shall be effective only on acceptance by the Supreme Court. If no inquiries or grievances involving the attorney are under investigation by the Bar, no disciplinary proceedings are pending against the attorney, the attorney is not suspended, disbarred, or on probation pursuant to BR 6.1 or BR 6.2, and the attorney is not charged in any jurisdiction with an offense that is a misdemeanor that may involve moral turpitude, a felony under the laws of this state, or a crime punishable by death or imprisonment under the laws of the United States, the resignation must be on the form set forth in BR 13.6 and shall be filed with Regulatory Counsel. In all other circumstances, the resignation must be on the form set forth in BR 13.7 and shall be filed with Disciplinary Counsel.

**Deleted:** with Disciplinary Counsel

#### Rule 9.2 Acceptance Of Resignation.

Disciplinary or Regulatory Counsel, as the case may be, shall promptly forward the resignation to the State Court Administrator for submission to the Supreme 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.