Proposed Amendments to Bar Rules of Procedure

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

(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.

(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 direct Disciplinary Counsel to secure additional information concerning the applicant’s conduct and defer consideration of the application for reinstatement.

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 Chief Executive Officer to Active Pro Bono status. The Chief Executive Officer may deny the application of such an applicant for reinstatement for the reasons set forth in BR 8.2(d), in which case 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 who desires to be eligible to practice law without restriction may be transferred to regular active status by the Chief Executive Officer 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 5 years may be transferred to regular active status only upon formal application pursuant to BR 8.1 in the manner provided in and subject to the requirements of BR 8.1 or BR 8.2.