

Proposed Amendments to Bar Rules of Procedure

After a year in operation under amendments to the Bar Rules of Procedure, additional changes are being proposed that include the following categories: (1) enhancements to the role, jurisdiction and functioning of the Adjudicator; (2) clarifications pertaining to investigations and formal proceedings; (3) modifications to reinstatement rules, and to Form A and Form B resignations; and (4) housekeeping and error corrections. A table identifying all of the changes numerically by rule number and providing a brief explanation is attached. Below is a summary of the significant provisions.

The Board of Governors is seeking comments to the proposed 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 and may preside, when appointed by the Court, in proceedings seeking a member's involuntary inactive status.

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.

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.

Subpoenas issued during investigation may be enforced in a circuit court.

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.

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.

Members otherwise qualified to use informal reinstatement would 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).

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.

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).

Beginning January 1, 2020, 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 on or before December 31, 2019, will remain able to seek reinstatement.

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).

Proposed Changes to Bar Rules of Procedure

<u>Rule</u>	<u>Description of Change</u>
1.1(a)	Addition of cross-reference to BR 2.4(e)(14).
2.2(b)(2)	Addition of language clarifying that subpoenas can be enforced in circuit court, which shall determine the appropriate sanction, if any, for noncompliance.
2.4(e)(9)	Addition of language clarifying that Adjudicator can address questions that arise prior to the filing of a formal complaint.
2.4(e)(13)	New paragraph cross-referencing BR 3.2, authorizing Adjudicator to perform functions of Court in 3.2 proceedings in which Court delegates its duties to Adjudicator.
2.4(e)(14)	New paragraph addressing Adjudicator's unavailability and General Counsel's written request to a regional chairperson to undertake Adjudicator's responsibilities pending Adjudicator's or Court's order ceasing that authority.
2.4(f)(4)	New paragraph, adding regional chairperson's ability to exercise Adjudicator's duties and responsibilities upon written request of the General Counsel when Adjudicator is unavailable.
2.5(c)	Addition of sentence clarifying that General Counsel can affirm dismissals by Client Assistance Office (CAO) by adopting the CAO reasoning without further discussion.
3.2(a)(1)	Deletion of the word "court's" before the word "order."
3.2(i)	New paragraph indicating that the Court can direct the Adjudicator to fulfill its functions set forth in this rule and, in such instances, the Disciplinary Board Clerk will perform the duties performed by the State Court Administrator.
3.5(e)	Correction of cross-reference, changing "BR 3.5(e)" to "BR 3.5(f)."
4.4(a)	Correction of cross-reference, changing "BR 4.3(d)" to "BR 4.3(c)."
4.4(b)(1)	Addition of language, setting an answer date to an amended formal complaint to within 14 days of service and providing that, upon request by respondent for good cause shown, Adjudicator may give the respondent a reasonable time to prepare to meet the matters raised by the amended formal complaint.
4.7(a)	Deletion of language limiting time during which Adjudicator may schedule a prehearing conference.
5.8(a)	Correction of cross-reference, changing "BR 2.4(h)" to "BR 2.4(e)(8)", misspelling of Adjudicator, and misspelling of respondent.
7.1(a)	Deletion of reference to LPRC.

7.1(g)	Correct of usage of "Rule" instead of "BR," changing "Rule" 7.1 to "BR" 7.1.
8.1(a)(1)	Addition of language qualifying Form A resignations to those prior to December 31, 2019, coordinating with language added in new BR 9.5.
8.2(a)(1)	Addition of language qualifying Form A resignations to those prior to December 31, 2019, coordinating with language added in new BR 9.5.
8.2(a)(6)	New paragraph, permitting persons suspended for failure to pay various fees for more than 6 months who are seeking reinstatement to inactive or retired status to reinstate through BR 8.2.
8.2(a)(7)	New paragraph, permitting persons suspended for failure to make IOLTA disclosure for more than 6 months who are seeking reinstatement to inactive or retired status to reinstate through BR 8.2.
8.2(a)	Deletion of language beneath numbered paragraphs that proscribed reinstatements to inactive or retired status under BR 8.2 to those who were already inactive or retired and were suspended for a financial reason.
8.2(d)(1)	Addition of the categories of suspension, inactive, or retired status to a provision that disqualifies a member for seeking reinstatement through BR 8.2 when, during the member's resignation, the member was convicted of various categories of crimes that are mirrored in BR 3.4(a).
8.6(a)	Changes from \$50 to \$100 the fee charged for each year a reinstatement applicant was suspended or resigned and did not pay a membership fee.
9.1	New language narrowing the circumstances under which a Form A resignation is available by clarifying that the member cannot be suspended or disbarred or charged with various categories of crimes that are mirrored in BR 3.4(a), and clarifying that in all other instances the resignation must be.
9.5	New rule providing that a member resigning Form A after December 31, 2019, shall never be eligible for reinstatement under Title 8, but may be considered for admission under ORS 9.220 or any basis under the Rules for Admission.
10.1	Correction of cross-reference and usage of "Rule" instead of "BR", from "Rule 2.4(i)(4)" to "BR 2.4(h)(4)."
10.2	Correction of cross-reference, from "BR 2.4(i)(4)" to "BR 2.4(h)(4)."
12.4	Deletion of cross-reference to BR 9.4.
13.6	Various additions to the Form A resignation form relating to the declarant's qualification to resign Form A, alternative paragraphs relating to client files and records, and an agreement to perform the duties required by BR 9.3 and to be subject to contempt for a failure to perform those duties; and to the declaration made by the Chief Executive Officer.

13.7	Various additions to the Form B resignation form, providing alternative paragraphs relating to client files and records, and an agreement to perform the duties required by BR 9.3 and to be subject to contempt for a failure to perform those duties that mirror the changes made to the Form A resignation form.
13.9	Deletion of identification of a paragraph "2.a." with no subsequent lettered paragraphs, so that it is simply paragraph "2."
13.10	Deletion of identification of a paragraph "2.a." with no subsequent lettered paragraphs, so that it is simply paragraph "2."