

**RULE V OF THE SUPREME COURT
 RULES FOR THE GOVERNMENT OF THE BAR OF OHIO
 Effective January 1, 2015**

RULE V—TABLE OF CONTENTS

		Page No.
<u>Section 1.</u>	Board of Professional Conduct of the Supreme Court	1
<u>Section 2.</u>	Jurisdiction and Powers of the Board	2
<u>Section 3.</u>	Director of the Board	3
<u>Section 4.</u>	Office of Disciplinary Counsel	4
<u>Section 5.</u>	Certified Grievance Committees	6
<u>Section 6.</u>	Bar Counsel	11
<u>Section 7.</u>	Funding; Reimbursements to Certified Grievance Committees	11
<u>Section 8.</u>	Public Access to Disciplinary Documents and Proceedings	14
<u>Section 9.</u>	Filing and Investigation of Grievances	16
<u>Section 10.</u>	Requirements for Filing a Complaint	18
<u>Section 11.</u>	Probable Cause Determinations; Certification and Service of Complaints	19
<u>Section 12.</u>	Proceedings Before the Board on Certified Complaints	21
<u>Section 13.</u>	Aggravating and Mitigating Factors	23
<u>Section 14.</u>	Default; Interim Default Suspension	24
<u>Section 15.</u>	Impairment Suspension; Termination of Suspension	27
<u>Section 16.</u>	Consent to Discipline	28
<u>Section 17.</u>	Supreme Court Review of Certified Report; Orders; Costs; Publication	30
<u>Section 18.</u>	Interim Suspension for a Felony Conviction or Default Under a Child Support Order	31
<u>Section 19.</u>	Interim Remedial Suspension	32
<u>Section 20.</u>	Reciprocal Discipline	34
<u>Section 21.</u>	Probation Procedures	35
<u>Section 22.</u>	Duties of a Disbarred or Suspended Attorney	38
<u>Section 23.</u>	Employment of a Disqualified or Suspended Attorney	39
<u>Section 24.</u>	Reinstatement Proceedings; Term or Interim Suspension	40
<u>Section 25.</u>	Reinstatement Proceedings; Indefinite Suspension	41
<u>Section 26.</u>	Appointed Attorney to Inventory Files	44
<u>Section 27.</u>	Applicability of Rules; Special Service; Construction of Rule	45
<u>Sections 28-34</u>	Reserved	
<u>Section 35.</u>	Definitions	46

PROCEDURAL REGULATIONS—TABLE OF CONTENTS

		Page No.
<u>Reg. 1.</u>	Pleadings and Motions	48
<u>Reg. 2.</u>	Miscellaneous Procedures	48
<u>Reg. 3.</u>	Filings; Required Number of Copies; Exhibits; Manner of Service	49
<u>Reg. 4.</u>	Quorum of Panel or Board	49
<u>Reg. 5.</u>	Manner of Service on Clerk; Record of Service a Public Record	49
<u>Reg. 6.</u>	Issuance of Subpoenas; Foreign Subpoenas	50
<u>Reg. 7.</u>	Board-Appointed Master	50
<u>Reg. 8.</u>	Time Guidelines for Pending Cases	51
<u>Reg. 9.</u>	Voluntary Dismissal	52
<u>Regs. 10-14.</u>	Reserved	
<u>Reg. 15.</u>	Advisory Opinions	53
<u>Reg. 20.</u>	Effective Date	55

RULE V. DISCIPLINARY PROCEDURE

Section 1. Board of Professional Conduct of the Supreme Court.

(A) **Composition.** There shall be a Board of Professional Conduct of the Supreme Court consisting of twenty-eight commissioners as follows: seventeen attorneys admitted to the practice of law in Ohio, seven active or voluntarily retired judges of the state of Ohio or judges retired pursuant to Article IV, Section 6 of the Ohio Constitution, and four nonattorney commissioners.

(B) **Distribution.** The attorney commissioners shall be appointed from Ohio appellate districts as follows: First District, two commissioners; Second District, one commissioner; Third District, one commissioner; Fourth District, one commissioner; Fifth District, one commissioner; Sixth District, two commissioners; Seventh District, one commissioner; Eighth District, three commissioners; Ninth District, one commissioner; Tenth District, two commissioners; Eleventh District, one commissioner; and Twelfth District, one commissioner. The active and retired judge commissioners shall be appointed at-large from separate appellate districts, and the nonattorney commissioners shall be appointed at-large from separate appellate districts.

(C) **Term of Office.** The term of office of each commissioner of the Board shall be three years, beginning on the first day of January next following the commissioner's appointment. Any commissioner whose term has expired and who has an uncompleted assignment as a member of a panel may continue to serve for the purpose of the assignment until it is concluded before the Board. The successor commissioner shall take no part in the proceedings of the Board concerning the assignment.

(D) **Appointments.** The Chief Justice and Justices of the Supreme Court each shall appoint commissioners. Appointments to terms commencing the first day of January of any year shall be made prior to the first day of December of the preceding year. Vacancies for any cause shall be filled for the unexpired term by the justice who appointed the person causing the vacancy or by the successor of that justice. A commissioner appointed to a term of fewer than three years may be reappointed to not more than three, three-year terms. No person may be appointed to more than three, three-year terms on the Board. Three-year terms served prior to April 1, 2008 shall be included when determining whether a person is eligible for appointment or reappointment to the Board.

(E) **Chair and Vice-chair.** The Board shall each year elect a judge or attorney commissioner as chair and vice-chair. The chair and vice-chair shall serve in that capacity for a maximum of two years. The chair and vice-chair may execute entries on behalf of the Board and panels of the Board. In the absence or incapacity of the chair, the vice-chair shall perform the duties of the chair.

(F) **Meetings.** The Board shall meet in Columbus at least six times each year. The chair or vice-chair may call additional meetings of the Board when necessary.

(G) Campaign Contributions. Commissioners and employees of the Board, disciplinary counsel, or employees of the Office of Disciplinary Counsel shall not make any contribution to, or for the benefit of, or take part in the campaign of, or campaign for or against, any judicial candidate in this state. A commissioner who is a candidate for election or reelection to a judicial office may contribute to, may make a contribution for the benefit of, or take part in his or her own campaign.

(H) Confidentiality; Oath of Office. No commissioner, Board-appointed master, or employee of the Board shall disclose to any person any proceedings, documents, or deliberations of the Board or a Board committee. This rule shall not apply to an individual commissioner's personal opinion relating to matters of staffing or operational issues, which, at the commissioner's option, may be discussed with a justice upon the justice's request. Prior to taking office, each commissioner, Board-appointed master, and employee of the Board shall swear or affirm that he or she will abide by these rules.

Section 2. Jurisdiction and Powers of the Board.

(A) Exclusive Jurisdiction. Except as otherwise expressly provided in rules adopted by the Supreme Court, all grievances involving alleged misconduct by judicial officers or attorneys, proceedings with regard to the alleged mental illness, alcohol and other drug abuse, or disorder of a judicial officer or attorney, proceedings for the discipline of judicial officers, attorneys, persons under suspension or on probation, and proceedings for the reinstatement to the practice of law shall be brought, conducted, and disposed of in accordance with the provisions of this rule. The Board shall have authority to certify, recertify, and decertify grievance committees in accordance with Section 5 of this rule.

(B) Hearing Authority. The Board shall receive evidence, preserve the record, make findings, and submit recommendations to the Supreme Court as follows:

(1) Concerning complaints of misconduct that are alleged to have been committed by a judicial officer, an attorney, a person under suspension from the practice of law or a person on probation;

(2) Concerning the mental illness, alcohol and other drug abuse, or disorder of any judicial officer or attorney;

(3) Relating to petitions for reinstatement as an attorney;

(4) Upon reference by the Supreme Court of conduct by a judicial officer or an attorney affecting any proceeding under this rule, where the acts allegedly constitute a contempt of the Supreme Court or a breach of these rules but did not take place in the presence of the Supreme Court or a member of the Supreme Court, whether by willful disobedience of any order or judgment of the Supreme Court or the Board, by interference with any officer of the Supreme Court in the prosecution of any duty, or otherwise. This rule shall not limit or affect the plenary power of the Supreme Court to impose punishment for either contempt or breach of these rules

committed in its presence, or the plenary power of any other court for contempt committed in its presence.

(C) Subpoenas. Upon application of a special investigator, respondent, or authorized representative of the relator, the Board may issue subpoenas and cause testimony to be taken under oath before disciplinary counsel, a certified grievance committee, hearing panel, or the Board. Each subpoena shall be issued in the name and under the seal of the Supreme Court and shall be signed by the director, Board chair, Board vice-chair, or chair of a hearing panel and served as provided by the Rules of Civil Procedure. Witness fees and mileage shall be as provided in R.C. 2335.06. The refusal or neglect of a person subpoenaed as a witness to obey a subpoena, attend, be sworn or affirm, or to answer any proper question shall be considered a contempt of the Supreme Court and punishable accordingly.

(D) Advisory Opinions. The Board may issue nonbinding advisory opinions in response to prospective or hypothetical questions directed to the Board regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary of Ohio, the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, or the Attorney's Oath of Office.

(E) Regulations. The Board shall have authority to adopt regulations consistent with this rule. Proposed regulations and amendments to existing regulations shall be published for comment prior to adoption in a manner consistent with rule amendments proposed by the Supreme Court, and adopted regulations shall be published in the same manner as rules adopted by the Supreme Court. The regulations shall include the following provisions:

(1) Procedures for regularly reviewing the performance of certified grievance committees, identifying certified grievance committees that are not in compliance with the standards set forth in this rule, and for decertifying a certified grievance committee that fails to improve its performance after being notified of noncompliance;

(2) Time guidelines for the processing of disciplinary cases pending before the Board and panels of the Board;

(3) Procedures for the issuance of advisory opinions.

Section 3. Director of the Board.

(A) Director. The Board shall appoint a director of the Board. The director shall be an attorney admitted to the practice of law in Ohio, shall be appointed by a majority of the Board, and shall serve at the pleasure of the Board. The position of director shall be a fulltime position. Neither the director nor any other employee of the Board shall be employed by any trial or appellate court.

(B) Responsibilities. The director shall have the following responsibilities:

(1) Serve as the chief legal, administrative, and fiscal officer of the Board;

- (2) Schedule all meetings of the Board and its committees and all hearings of Board panels;
- (3) Maintain a docket of each complaint and of all proceedings on each complaint, which shall be retained permanently as a part of the records of the Board;
- (4) Execute entries on behalf of the Board and its hearing panels and execute entries for extensions of time where appropriate;
- (5) Issue subpoenas pursuant to Section 2(C) of this rule;
- (6) Employ such personnel as are reasonably necessary to discharge the responsibilities set forth in this rule and shall establish the salaries of personnel, subject to approval by the Board;
- (7) Maintain the records for the receipt and expenditure of money, and prepare financial reports and budgets as required by the Supreme Court Rules for the Government of the Bar of Ohio and the Supreme Court Rules for the Government of the Judiciary of Ohio;
- (8) File with the Supreme Court annually a report of the activities and expenses of the Board;
- (9) Take all necessary steps to see that office facilities, furnishings, stationery, equipment, and office supplies are available as needed;
- (10) Assist the Board in preparing advisory opinions pursuant to Section 2(D) of this rule;
- (11) Take any other action consistent with the director's position as chief legal, administrative, and fiscal officer that is not otherwise inconsistent with the Supreme Court Rules for the Government of the Bar of Ohio and the Supreme Court Rules for the Government of the Judiciary of Ohio.

Section 4. Office of Disciplinary Counsel.

(A) Disciplinary Counsel. With the approval of the Supreme Court, the Board, by majority vote, shall appoint a disciplinary counsel who shall perform all of the following duties:

- (1) Investigate allegations of misconduct by judicial officers or attorneys and allegations of mental illness, alcohol and other drug abuse, or disorder affecting judicial officers or attorneys;
- (2) Initiate and prosecute complaints as a result of investigations under the provisions of this rule;

(3) Certify bar counsel designated by certified grievance committees pursuant to Section 6 of this rule;

(4) Comply with the record retention standards set forth in Section 5 of this rule;

(5) In consultation with the Board, representatives of the certified grievance committees, and others, develop and offer an education curriculum for bar counsel and certified grievance committee members, including an orientation program for newly appointed certified grievance committee members.

(B) Appointment; In-term Removal. Disciplinary counsel shall be appointed for a term of four years and may be removed in-term only for just cause. In-term removal for just cause shall be instituted by the filing, with the Chief Justice, of a written petition by the chair, acting by authority of a two-thirds vote of the Board. Upon receipt of the petition, the Chief Justice shall cause it to be served on disciplinary counsel for response. Thereafter, the Chief Justice shall schedule a hearing before the Supreme Court, which shall determine whether there is just cause for the removal of disciplinary counsel. Disciplinary counsel shall be removed upon the affirmative vote of five or more members of the Supreme Court.

(C) Assistants; Staff. Disciplinary counsel may appoint assistants as necessary who shall be attorneys admitted to the practice of law in Ohio and who shall not engage in the private practice of law while serving in that capacity. Disciplinary counsel shall appoint staff as required to satisfactorily fulfill the duties of the Office of Disciplinary Counsel. Disciplinary counsel shall retain one or more investigators who may be assigned by disciplinary counsel to assist certified grievance committees in the investigation of grievances. Employees of the Office of Disciplinary Counsel shall serve at the pleasure of disciplinary counsel.

(D) Compensation; Supplies; Annual Report. The compensation of disciplinary counsel shall be fixed by the Supreme Court. The compensation of personnel employed by the Office of Disciplinary Counsel, including any assistant disciplinary counsel, shall be fixed by disciplinary counsel with the approval of the Supreme Court. The Supreme Court shall provide office facilities, furnishings, stationery, equipment, and office supplies for the Office of Disciplinary Counsel. Disciplinary counsel shall file annually with the Supreme Court and the Board a report of the activities and expenses of the office.

(E) Quarterly Report. By the fifteenth day of January, April, July, and October of each year, disciplinary counsel shall file with the Supreme Court and the Board a report of the number of grievances made to the Office of Disciplinary Counsel during the preceding quarter. The report shall be on a form prescribed by the Board and shall specify the types of grievances filed and state the number of grievances filed, the number pending in each prescribed category and the number terminated by action of the Office of Disciplinary Counsel during the reporting period.

(F) Confidentiality; Oath of Office. No employee of the Office of Disciplinary Counsel shall disclose to any person any proceedings, documents, or deliberations of the Office

of Disciplinary Counsel. Prior to taking office, Disciplinary Counsel and each employee of the Office of Disciplinary Counsel shall swear or affirm that he or she will abide by these rules.

Section 5. Certified Grievance Committees.

(A) Certified Grievance Committees. A certified grievance committee shall be an organized committee of the Ohio State Bar Association or of one or more local bar associations in Ohio that permits the membership of any attorney practicing within the geographic area served by that association without reference to the attorney's area of practice, special interest, or other criteria. There shall be only one certified grievance committee in each county. Two or more bar associations may establish a joint certified grievance committee in accordance with the procedure outlined in division (C) of this section.

(B) Board Certification. Upon application by a bar association or bar associations and satisfaction of the standards set forth in division (D) of this section, the Board may certify a grievance committee to investigate allegations of misconduct by judicial officers or attorneys and mental illness, alcohol and other drug abuse, or disorder affecting judicial officers or attorneys and initiate and prosecute complaints as a result of investigations under the provisions of this rule. A certified grievance committee shall have authority to investigate a grievance filed against an attorney who resides or maintains an office in the geographic area served by the committee or where the misconduct alleged in the grievance occurred within the geographic area served by the committee. Except for a grievance that is referred by the director or Office of Disciplinary Counsel due to a conflict of interest, a certified grievance committee shall not have the authority to investigate allegations of misconduct against any of the following:

(1) An attorney who is an officer of the bar association that established the certified grievance committee or a member of the certified grievance committee;

(2) A judicial officer, except that the certified grievance committee of the Ohio State Bar Association may investigate allegations of misconduct against a judicial officer.

(C)(1) Joint Committees. A bar association seeking to establish a grievance committee or the bar associations seeking to establish a joint grievance committee shall file a petition with the Board seeking approval to establish a certified grievance committee or joint certified grievance committee. The petition shall include all of the following:

(a) The name of the bar association or bar associations seeking to form a grievance committee or joint grievance committee;

(b) The names of the chair and other members of the grievance committee, provided the membership of a joint grievance committee shall be in proportion to the number of attorneys employed in the geographic area served by each bar association establishing the joint committee;

(c) The name of the lawyer who will serve as bar counsel to the grievance committee;

(d) In the case of a petition to form a joint grievance committee, a copy of the written agreement between or among the sponsoring bar associations that establishes and governs the operation of the grievance committee;

(e) Any other information the Board considers necessary to evaluate the petition.

(2) Upon receipt of a completed petition, the Board promptly shall determine whether the proposed grievance committee satisfies the requirements to establish a grievance committee and the standards set forth in division (D) of this section. Upon determination that the grievance committee satisfies these requirements and standards and upon certification of bar counsel as required by Section 6 of this rule, the Board shall certify the grievance committee as eligible to accept and investigate grievances and file and prosecute formal complaints as set forth in this rule.

(D)(1) Standards for Certified Grievance Committees. To obtain and retain certification, each grievance committee shall satisfy all of the following standards:

(a) *Membership and term limits.* Consist of no fewer than fifteen persons, including a chair who shall not serve as chair for more than two consecutive years. A majority of the members of the certified grievance committee shall consist of attorneys admitted to the practice of law in Ohio, and at least three members or ten percent of the certified grievance committee, whichever is greater, shall consist of persons who are not admitted to the practice of law in Ohio or any other state. Not more than twenty percent of the committee or five members, whichever is less, shall consist of attorneys who practice in the same firm, as defined in Prof. Cond. R. 1.0, or governmental office.

(i) Each bar association responsible for appointing members to its certified grievance committee shall adopt and implement procedures that provide for the appointment of certified grievance committee members to specific terms of office, with the length of such terms to be determined by the appointing authority and subject to the ten-year limitation on consecutive service set forth in division (D)(1)(a)(ii) of this section. The expiration dates of the initial terms of office shall be established to ensure that the terms of members expire in different years.

(ii) Beginning January 1, 2016, no member of a certified grievance committee shall serve or have served on the committee for more than ten consecutive years. A member's tenure on a certified grievance committee prior to January 1, 2016 shall be considered for purposes of determining the member's consecutive service on the certified grievance committee. A member who served on the committee for ten consecutive years may be reappointed to the committee if two or more years have elapsed since the conclusion of the member's prior service.

(b) *Meetings.* Meet at least once every third month.

(c) *Office.* Maintain a fulltime, permanent office that is open during regular business hours, has a listed telephone number, and is staffed by a minimum of one fulltime employee to process grievances received by the certified grievance committee and assist with other work of the certified grievance committee. A joint certified grievance committee shall designate a single

office within the geographical region served by the joint committee, and the fulltime employee designated to assist the committee may be employed jointly by the bar associations that have established the joint committee.

(d) *Bar counsel.* Designate bar counsel, who shall be certified by disciplinary counsel pursuant to Section 6 of this rule, to supervise the receipt and investigation of grievances, the prosecution of formal complaints, and perform such other duties required by this rule. Bar counsel may be a volunteer or be paid for services related to disciplinary activities by or through the certified grievance committee. Bar counsel shall devote the time necessary to performing the duties set forth in this rule, including but not limited to assisting in the intake and investigation of grievances, prosecuting formal complaints, advising the certified grievance committee on matters of professional conduct and disciplinary procedures, and participating in educational activities related to professional conduct and disciplinary procedures. Annually, bar counsel shall be required to complete a minimum of three hours of training offered or approved by disciplinary counsel in one or more of the following subject-matter areas:

- (i) Legal ethics;
- (ii) Judicial ethics;
- (iii) Execution of the responsibilities outlined in this rule for the review and investigation of grievances and the preparation and prosecution of formal complaints.

(e) *Training for volunteer lawyers and bar counsel.* On or after January 1, 2016, any bar counsel or volunteer grievance committee member who is designated trial counsel of record in a case prosecuted before the Board shall attend and complete a training program that is offered or approved by disciplinary counsel and that relates to the preparation and prosecution of formal complaints. Bar counsel and volunteer grievance committee members shall be required to satisfy this training requirement a minimum of once every two calendar years. Any hours of training completed by bar counsel to satisfy this requirement may be applied to satisfying the three-hour annual training requirement set forth in division (D)(1)(d) of this section.

(f) *Files and records.* Maintain files and records of proceedings, in paper or electronic format and in accordance with the following schedule:

- (i) Records of the proceedings of the certified grievance committee and files related to any matter in which the committee filed a formal complaint shall be retained permanently;
- (ii) Files related to any matter in which the committee initiated an investigation shall be retained for ten years;
- (iii) Files related to any matter that the committee dismissed without investigation shall be retained for two years.

(g) *Funding.* Be sufficiently funded by the sponsoring bar association or associations to perform the duties imposed by these rules.

(h) *Written procedures.* Establish and file with the Board written procedures for the processing of grievances. The written procedures shall provide a method for notifying potential grievants that they have the option to file a grievance with the Office of Disciplinary Counsel rather than with the certified grievance committee.

(i) *Quarterly reports.* File quarterly reports with the Board on the form and by the dates prescribed in Section 4 of this rule. Each certified grievance committee shall include in the report the results of cases referred to the Board-approved alternative dispute resolution methods along with recommendations for further action, including discontinuance or amendment of alternative dispute resolution procedures.

(2) Continuing education. A certified grievance committee shall encourage each committee member, in the member's first full calendar year of service and each calendar year thereafter, to complete a minimum of one continuing education program or activity offered or approved by disciplinary counsel in one or more of the following subject-matter areas:

(a) Legal ethics;

(b) Judicial ethics;

(c) Execution of the responsibilities outlined in this rule for the review and investigation of grievances and the preparation and prosecution of formal complaints.

(3) Web Site. A certified grievance committee shall maintain an Internet site that includes the address and telephone number of its office and a description of its duties and responsibilities.

(E)(1) Annual Report and Biennial Recertification. On or before the first day of March, each certified grievance committee shall file with the Board a report of its activity in the preceding calendar year. The annual report shall be submitted on behalf of the certified grievance committee by the committee chair and bar counsel, and shall include all of the following:

(a) A current roster of all members of the certified grievance committee that identifies the committee chair, the nonattorney members of the committee, the tenure of each member's service on the committee, and the expiration date of each committee member's term;

(b) Information indicating compliance by bar counsel and volunteer grievance committee members with the education requirements set forth in division (D)(1)(d) and (D)(1)(e) of this section.

(c) Other information considered necessary by the Board to ascertain the certified grievance committee's compliance with the standards set forth in division (D) of this section.

(2) Based on the content of the annual reports for the two preceding years and other relevant information that may be available to the Board, the Board, on or before May 1, 2014 and every two years thereafter, shall do one of the following:

(a) Recertify the grievance committee;

(b) Notify the certified grievance committee of its noncompliance with specific minimum standards applicable to the operation of a certified grievance committee, the steps the certified grievance committee is required to take to remedy noncompliance, and the time in which the certified grievance committee must remedy noncompliance;

(c) Initiate decertification proceedings pursuant to division (F) of this section.

(F)(1) Decertification. The Board may decertify a certified grievance committee at the request of one or more of its sponsoring local bar associations or *sua sponte*. If the committee fails to adhere to the standards set forth in division (D) and (E) of this section and regulations adopted by the Board, if bar counsel fails to comply with the education requirements set forth in division (D)(1)(d) of this section, or if the committee substantially fails to perform the obligations set forth in these rules, the director may issue to the chair of the certified grievance committee and president of the sponsoring bar association an order to show cause why the grievance committee should not be decertified by the Board for the reasons set forth in the order. The Board shall hold a hearing before three commissioners, chosen by lot, who do not reside in the same appellate district where the certified grievance committee is located. If the panel of commissioners recommends decertification, it shall issue findings setting forth all of the following:

(a) The reasons for decertification;

(b) All of the certified grievance committee's pending matters;

(c) Any special circumstances by reason of which the committee should not be required to discharge its remaining responsibilities in any or all pending matters.

(2) The Board shall review the report and findings of the panel recommending decertification and, by majority vote, may decertify the committee. In the absence of special circumstances, the Board shall not decertify a certified grievance committee, either at the request of a sponsoring bar association or *sua sponte*, before the committee has discharged to the Board's satisfaction the committee's remaining responsibilities in its then-pending matters.

(G) Alternative Dispute Resolution. A certified grievance committee may adopt and utilize written procedures for handling allegations of client dissatisfaction that do not constitute disciplinary violations, to include mediation, office practice monitoring, and other alternative dispute resolution methods. Only alternative dispute resolution procedures developed by the Board shall be used by certified grievance committees. The procedures shall provide that mediators and facilitators shall not be members of or subject to the jurisdiction of the certified grievance committee.

(H) Confidentiality; Oath of Office. No employee, appointee, or member of a certified grievance committee shall disclose to any person any proceedings, documents, or deliberations of the committee. Prior to taking office, bar counsel and each employee, appointee, or member of a certified grievance committee shall swear or affirm that he or she will abide by these rules.

Section 6. Bar Counsel.

(A)(1) Certification of Bar Counsel. Disciplinary counsel shall certify bar counsel. With the prior approval of the Board, disciplinary counsel shall promulgate and make available to the certified grievance committees and bar counsel the criteria that will be used in certifying. The criteria for certification shall include, but not be limited to, all of the following:

- (a) Legal experience, including substantive areas of practice and trial experience;
- (b) Any experience as a member of a certified grievance committee;
- (c) Experience in reviewing and investigating grievances or prosecuting formal complaints, or both, including but not limited to the approximate number of grievances reviewed and investigated, the number of cases presented to hearing panels of the Board, and the number of disciplinary hearings before the Supreme Court;
- (d) References from at least three persons in the legal community who attest to the applicant's high ethical standards, professionalism, and integrity.

(2) Decertification. Disciplinary counsel may decertify bar counsel for failing to competently and diligently perform the duties set forth in Gov. Bar R. V, failing to comply with the education requirements set forth in Section 5 of this rule, or for other good cause shown. Before decertifying bar counsel, disciplinary counsel shall provide to bar counsel and the chair of the certified grievance committee that employs or retains bar counsel written notice proposing the decertification of bar counsel and shall afford bar counsel a reasonable opportunity to respond to the proposed decertification.

Section 7. Funding; Reimbursements to Certified Grievance Committees.

(A) Funding and Budgets. The Supreme Court shall allocate funds for the operation of the Board and the Office of Disciplinary Counsel and development and distribution of materials describing the disciplinary process from the Attorney Services Fund.

(B) Budget. At the request of the administrative director of the Supreme Court, the Board and the Office of Disciplinary Counsel shall prepare and submit a proposed annual or biennial budget for approval by the Supreme Court.

(C) Reimbursement for Expenses. The Board may reimburse certified grievance committees for expenses incurred by the committees in performing the obligations imposed on

them by these rules. Any reimbursements authorized by the Board shall be paid from moneys allocated by the Court for that purpose from the Attorney Services Fund. Reimbursement is not permitted for costs associated with compliance with the standards contained in Section 5(D) of this rule, except for the costs listed in division (C)(2) of this section.

(1) Reimbursement of Direct Expenses. A certified grievance committee may be reimbursed for direct expenses incurred in performing the obligations imposed by this rule. Reimbursement shall be limited to costs for depositions, transcripts, copies of documents, necessary travel expenses for witnesses and volunteer attorneys, witness fees, costs of subpoenas and the service of subpoenas, and compensation of investigators and expert witnesses authorized in advance by the Board. There shall be no reimbursement for the costs of the time of other bar association personnel or attorneys in discharging these obligations. Reimbursement shall be made upon submission to the director of the Board of proof of expenditures. Upon approval by the Board, reimbursement shall be made from the Attorney Services Fund.

(2) Annual Reimbursement of Indirect Expenses. A certified grievance committee may apply to the Board prior to the first day of February each year for partial reimbursement of other expenses necessarily and reasonably incurred during the preceding calendar year in performing its obligations under these rules. The Board shall establish criteria for determining whether expenses under divisions (C)(2) and (3) of this section are necessary and reasonable. The Board shall deny reimbursement for any expense for which a certified grievance committee seeks reimbursement on or after the first day of March of the year immediately following the calendar year in which the expense was incurred. Expenses eligible for reimbursement are those specifically relating to professional conduct enforcement and include all of the following:

- (a) The personnel costs for the portion of an employee's work that is dedicated to this area;
- (b) The costs of bar counsel who is retained pursuant to written agreement with or employed by the certified grievance committee;
- (c) Postal and delivery charges;
- (d) Long distance telephone charges;
- (e) Local telephone charges and other appropriate line charges including, but not limited to, per call charges;
- (f) The cost of dedicated telephone lines;
- (g) Subscriptions to professional journals, law books, and other legal research services and materials related to professional conduct;
- (h) Organizational dues and educational expenses relating to professional conduct enforcement;

(i) All costs of defending grievance and disciplinary-related law suits and that portion of professional liability insurance premiums directly attributable to the operation of the committees in performing their obligations under this rule;

(j) The percentage of rent, insurance premiums not reimbursed pursuant to division (C)(2)(i) of this section, supplies and equipment, accounting costs, occupancy, utilities, office expenses, repair and maintenance, and other overhead expenses directly attributable to the operation of the committees in performing their obligations under this rule, as determined by the Board and provided that no certified grievance committee shall be reimbursed in excess of thirty thousand dollars per calendar year for such expenses. Reimbursement shall not be made for the costs of the time of other bar association personnel, volunteer attorneys, depreciation, or amortization. No expense reimbursed under division (C)(1) of this section is eligible for reimbursement under division (C)(2) of this section.

(3) Quarterly Reimbursement of Certain Indirect Expenses. In addition to applying annually for reimbursement pursuant to division (C)(2) of this section, a certified grievance committee may apply quarterly to the Board for reimbursement of the expenses set forth in divisions (C)(2)(a) and (b) of this section that were necessarily and reasonably incurred during the preceding calendar quarter. Quarterly reimbursement shall be submitted in accordance with the following schedule:

Reimbursement for the months of:	Due by:
January, February, and March	May 1
April, May, and June	August 1
July, August, and September	November 1
October, November, and December	February 1 (with annual reimbursement request)

Any expense that is eligible for quarterly reimbursement, but that is not submitted on a quarterly reimbursement application, shall be submitted no later than the appropriate annual reimbursement application pursuant to division (C)(2) of this section and shall be denied by the Board if not timely submitted. The application for quarterly reimbursement shall include an affidavit with documentation demonstrating that the certified grievance committee incurred the expenses set forth in divisions (C)(2)(a) and (b) of this section.

(D) Audit. Expenses incurred by certified grievance committees and reimbursed under division (C) of this section may be audited at the discretion of the Board or the Supreme Court. The costs of any audit shall be paid from the Attorney Services Fund.

(E) Availability of Funds. Reimbursement under division (C) of this section is subject to the availability of moneys in the Attorney Services Fund.

Section 8. Public Access to Disciplinary Documents and Proceedings.

(A)(1) Proceedings Prior to Probable Cause. Prior to a determination of probable cause by the Board, all proceedings, documents, and deliberations relating to review, investigation, and consideration of grievances shall be confidential except as follows:

(a) Where the respondent expressly and voluntarily waives confidentiality of the proceedings. A waiver of confidentiality does not entitle the respondent or any other person access to documents or deliberations expressly designated as confidential under this section.

(b) Where the proceedings reveal reasonable cause to believe that respondent is or may be addicted to alcohol or other chemicals, is abusing the use of alcohol or other chemicals, or may be experiencing a disorder that is substantially impairing the respondent's ability to practice law, the information giving rise to this belief shall be communicated to a committee or subcommittee of a bar association, or to an executive officer or employee of a nonprofit corporation established by a bar association, designed to assist lawyers with disorders.

(c) Where, in the course of an investigation by the Office of Disciplinary Counsel or a certified grievance committee, it is found that a person involved in the investigation may have violated federal or state criminal statutes, the entity conducting the investigation shall notify the appropriate law enforcement agency, prosecutorial authority, or regulatory agency of the alleged criminal violation and may provide the agency or authority with information concerning the criminal violation.

(2) The Office of Disciplinary Counsel and a certified grievance committee may share information with each other or with the disciplinary authority of another state or federal jurisdiction regarding the review, investigation and consideration of a grievance.

(3) Except as otherwise provided in division (A) of this section, all investigatory materials prepared in connection with an investigation conducted pursuant to Section 9 of this rule or submitted with a complaint filed pursuant to Section 10 of this rule shall be confidential prior to certification of a formal complaint pursuant to Section 11 of this rule. The materials shall remain confidential if the complaint is dismissed pursuant to Section 11.

(B) Proceedings Subsequent to Probable Cause. From the time a complaint has been certified to the Board by a probable cause panel, the complaint and all subsequent proceedings conducted and documents filed in connection with the complaint shall be public except as follows:

(1) Deliberations by the Board or a hearing panel of the Board shall be confidential.

(2) The report and recommendations of a hearing panel of the Board shall be confidential until the report of the full Board is filed with the Supreme Court. If the case is dismissed either by the hearing panel or the Board pursuant to Section 12(G) or (H) of this rule, any report of the hearing panel shall be public upon the filing of an order of dismissal. The

report and recommendation of the Board shall be confidential until the report is filed with the Supreme Court.

(3) The summary of investigation prepared by the relator shall be confidential as work-product of the relator. All other investigatory materials and any attachments prepared in connection with an investigation conducted pursuant to Section 9 of this rule or submitted with a complaint filed pursuant to Section 10 of this rule shall be discoverable as provided in the Ohio Rules of Civil Procedure.

(4) The Board-approved ADR process shall be confidential, and any knowledge obtained by a mediator or facilitator shall be privileged for all purposes under Rule 8.3 of the Ohio Rules of Professional Conduct, provided the knowledge was obtained while the mediator or facilitator was acting as a mediator or facilitator.

(C) Restricted Access to Case Documents. A party to a matter pending before the Board may file a motion requesting that the Board restrict public access to all or a portion of a document filed with the Board. Additionally, the chair of a hearing panel or a master may request that the Board restrict public access to all or a portion of a document filed with the Board. In considering the motion or request, the Board chair shall apply the standards set forth in Sup. R. 45(E). If the Board chair finds that public access to a document should be restricted, the order shall direct the use of the least restrictive means available, including but not limited to redaction of the information rather than limiting access to the entire document.

(D) Personal Identifiers. A party to a matter pending before the Board shall be responsible for omitting personal identifiers from a case document filed with the Board, consistent with Sup. R. 45(D). As used in this rule, “personal identifiers” and “case document” shall have the same meaning as in Sup. R. 44.

(E) Response to Grievance. Notwithstanding the other provisions of this rule, the respondent’s reply to the grievance, made during the course of an investigation by the Office of Disciplinary Counsel or a certified grievance committee, shall be furnished to the grievant without waiving any other right to confidentiality provided by this rule. If the respondent specifically requests, in writing, to the Office of Disciplinary Counsel or certified grievance committee that the reply not be furnished to the grievant, the Office of Disciplinary Counsel or certified grievance committee shall not furnish the reply to the grievant. Release to the grievant of the respondent’s reply is, nevertheless, encouraged and consistent with the liberal construction of this rule for the protection of the public.

(F) Administrative and Financial Records. Except as otherwise provided in this section or in rules adopted by the Supreme Court, documents and records pertaining to the administration and finances of the Board and the Office of Disciplinary Counsel, including budgets, reports, and records of income and expenditures, shall be made available, upon request, as provided in Sup. R. 45.

Section 9. Filing and Investigation of Grievances.

(A) Referral by Board. The Board may refer to a certified grievance committee or the Office of Disciplinary Counsel any matter filed with it for investigation as provided in this section.

(B) Referral by Certified Grievance Committee. If a certified grievance committee determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Office of Disciplinary Counsel, the chair of the certified grievance committee may direct a written request for assistance to the Disciplinary Counsel. The Office of Disciplinary Counsel shall review and may investigate all matters contained in the request and report the results of the investigation to the committee that requested it.

(C) Power and Duty to Investigate; Dismissal without Investigation.

(1) The Office of Disciplinary Counsel or a certified grievance committee shall review and may investigate a grievance that alleges facts that, if substantiated, would constitute misconduct by a judicial officer or attorney or that alleges facts that, if substantiated, would indicate that a judicial officer or attorney is mentally ill, is suffering from alcohol and other drug abuse, or is suffering from a disorder. The Office of Disciplinary Counsel and a certified grievance committee shall review and may investigate any matter filed with it or that comes to its attention and may file a complaint pursuant to this rule in cases where it finds probable cause to believe that misconduct has occurred or that a condition of mental illness, alcohol and other drug abuse, or disorder exists.

(2) A grievance may be dismissed without investigation if the grievance and any supporting material do not contain an allegation of misconduct, mental illness, alcohol and other drug abuse, or disorder on the part of a judicial officer or attorney. A certified grievance committee shall not dismiss a grievance without investigation unless bar counsel has reviewed the grievance.

(D) Time for Investigation. The investigation of grievances by Office of Disciplinary Counsel or a certified grievance committee shall be concluded within sixty days from the date of the receipt of the grievance. A decision as to the disposition of the grievance shall be made within thirty days after conclusion of the investigation.

(1) Extensions of Time. Extensions of time for completion of the investigation may be granted by the director of the Board. The Office of Disciplinary Counsel or a certified grievance committee shall submit a written request for an extension. Investigations for which an extension is granted shall be completed within one hundred fifty days from the date of receipt of the grievance. Time may be extended when all parties voluntarily enter into an alternative dispute resolution method for resolving fee disputes sponsored by the Ohio State Bar Association or a local bar association.

(2) Extension Limits. The director of the Board may extend time limits beyond one hundred fifty days from the date of filing in the event of pending litigation, appeals, unusually complex investigations, including the investigation of multiple grievances, time delays in obtaining evidence or testimony of witnesses, or for other good cause shown. A request for an extension of time beyond one hundred fifty days shall be in writing and include the reason for the extension request. If an investigation is not completed within one hundred fifty days from the date of filing the grievance or a good cause extension of that time, the director may refer the matter either to a geographically appropriate certified grievance committee or the Office of Disciplinary Counsel. The investigation shall be completed within sixty days after referral. No investigation shall be extended beyond one year from the date of the filing of the grievance.

(3) Time Limits not Jurisdictional. Time limits set forth in this rule are not jurisdictional. No grievance filed shall be dismissed unless it appears that there has been an unreasonable delay and that the rights of the respondent to have a fair hearing have been violated. Investigations that extend beyond one year from the date of filing are prima facie evidence of unreasonable delay.

(E) Retaining Outside Experts. If a particular investigation may benefit from the services of an independent investigator, auditor, examiner, assessor, or other expert, a certified grievance committee may submit a written request to the director for permission to retain the services of the outside expert. The written request shall include a general statement of the purpose for which the request is being made and an estimate of the fees and costs expected to be incurred. The outside expert may be retained upon receipt of written approval of the director.

(F) Cooperation with Lawyers' Fund for Client Protection. Upon the receipt of any grievance presenting facts that may be the basis for an award from the Lawyers' Fund for Client Protection under Gov. Bar R. VIII, the Office of Disciplinary Counsel or a certified grievance committee shall notify the grievant of the potential right to an award from the fund and provide the grievant with the forms necessary to initiate a claim with the fund. The Office of Disciplinary Counsel, a certified grievance committee, and the Board shall provide the Board of Commissioners of the Lawyers' Fund for Client Protection with findings from investigations, grievances, or any other records it requests in connection with an investigation under Gov. Bar R. VIII. The transmittal of confidential information may be delayed pending the termination of the disciplinary investigation or proceedings.

(G) Duty to Cooperate. The Board, Disciplinary Counsel, and president, secretary, or chair of a certified grievance committee may call upon any judicial officer or attorney to assist in an investigation or testify in a hearing before the Board or a panel for which provision is made in this rule, including mediation and alternative dispute resolution procedures, as to any matter that he or she would not be bound to claim privilege as an attorney at law. No attorney, and no judicial officer, except as provided in Rule 3.3 of the Code of Judicial Conduct, shall neglect or refuse to assist or testify in an investigation or hearing.

(H) Referral of Procedural Questions to Board. In the course of an investigation, the chair of a certified grievance committee, bar counsel, or Disciplinary Counsel may direct a

written inquiry regarding a procedural question to the director of the Board. Upon receipt of a written inquiry, the director shall consult with the chair of the Board and respond to the inquiry.

Section 10. Requirements for Filing a Complaint.

(A) Notice of Intent to File. No investigation conducted by the Office of Disciplinary Counsel or a certified grievance committee shall be completed, and no complaint shall be filed with the Board, without first giving the judicial officer or attorney who is the subject of the grievance or investigation notice of each allegation and the opportunity to respond to each allegation. The Office of Disciplinary Counsel or a certified grievance committee shall provide the judicial officer or attorney with a minimum of fourteen days to respond to the allegations.

(B) Majority Vote Required. No complaint shall be filed by a certified grievance committee with the Board unless a majority of a quorum of that committee determines the complaint is warranted.

(C) Notice of Intent not to File. If, upon review or investigation of a grievance, a certified grievance committee or the Office of Disciplinary Counsel determines that the filing of a complaint with the Board is not warranted, the grievant and the judicial officer or attorney shall be notified in writing of that determination, with a statement of the reasons that a complaint was not filed with the Board. The written notice provided by a certified grievance committee shall advise the grievant of the right to have the committee's determination reviewed pursuant to division (D) of this section and the steps to obtain such review. Upon request, a certified grievance committee or the Office of Disciplinary Counsel shall provide the judicial officer or attorney with a copy of the grievance.

(D) Appeal. A grievant who is dissatisfied with a determination by a certified grievance committee not to file a complaint may secure a review of the determination by filing a written request with the director of the Board within fourteen days after the grievant is notified of the determination. The director shall refer the request for review to the Office of Disciplinary Counsel or, in the case of a conflict, to another certified grievance committee. The review shall be considered promptly by the Office of Disciplinary Counsel or certified grievance committee, a decision made within thirty days, and the grievant notified. The standard of review for an appeal shall be abuse of discretion or error of law. Extensions of time for completion of the review may be granted by the director, upon written request and for good cause shown. No further review or appeal by a grievant shall be authorized. If the original determination is not affirmed, any further proceedings shall be handled by the Office of Disciplinary Counsel or certified grievance committee.

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

(a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the

citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;

(b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;

(c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;

(d) The respondent's attorney registration number and his or her last known address;

(e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;

(f) A written certification, signed by disciplinary counsel or the president or chair of the certified grievance committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court.

(2) The complaint shall not include any documents, exhibits, or other attachments unless specifically required by Civ. R. 10.

(F) Materials Submitted with the Complaint. The relator shall submit with the complaint sufficient investigatory materials to demonstrate probable cause. The materials shall include any response submitted by or on behalf of the respondent to the notice of intent to file provided by the relator pursuant to Section 10(A) and an affidavit from bar counsel or other appropriate representative of the relator documenting relator's contacts with or attempts to contact the respondent prior to filing the complaint. The materials may include investigation reports, summaries, depositions, statements, and any other relevant material.

Section 11. Probable Cause Determinations; Certification and Service of Complaints.

(A) Probable Cause Panels. The Board shall establish two probable cause panels to review each complaint filed with the Board. The chair of the Board shall designate three commissioners to serve on each panel and shall designate one attorney or judge commissioner as chair. Each panel shall meet in person or by teleconference pursuant to a schedule established by the director of the Board. Except as provided in division (B) of this section, the director shall assign each complaint and the investigatory materials to a probable cause panel for review. Upon review solely of the complaint and any materials submitted with the complaint pursuant to Section 10 of this rule, the probable cause panel shall make an independent determination of whether probable cause exists for the filing of a complaint. The panel shall issue an order

certifying the complaint, in whole or in part, to the Board or dismissing the complaint and investigation in its entirety.

(B) Waiver of Probable Cause. If the respondent has expressly waived, in writing, his or her right to an independent determination of probable cause by the Board, the director shall immediately certify the complaint to the Board and send a copy of the complaint to the Office of Disciplinary Counsel or the appropriate certified grievance committee and by certified mail to the respondent.

(C) Service, and Publication of Certified Complaint; Notice of Dismissal. The director shall take the following action based on the order of the probable cause panel:

(1) If the panel certifies the complaint in its entirety, the director shall serve the complaint on the respondent via certified mail and send a copy to the relator.

(2) If the panel certifies the complaint in part, the director shall instruct the relator to prepare and submit a new complaint that conforms to the order of the probable cause panel. Upon receipt of the new complaint, the director shall serve the complaint on the respondent via certified mail and send a copy to the relator.

(3) If the panel dismisses the complaint for want of probable cause, the director shall provide the relator and respondent with notice of dismissal. The notice shall advise the relator of its ability to appeal the dismissal to the full Board.

(4) Upon certification to the Board, the director shall publish or post a copy of each complaint on the Board's web page.

(D) Appeal of Dismissal. Within seven days of receipt of the decision of the probable cause panel to dismiss the complaint in its entirety, the Office of Disciplinary Counsel or certified grievance committee may appeal the decision to the full Board by filing a written appeal with the director of the Board. Upon review solely of the complaint and any materials submitted with the complaint pursuant to Section 10 of this rule, the Board shall make an independent determination as to whether probable cause exists for the filing of a complaint. The Board shall issue an order certifying or dismissing the complaint and notify the relator and respondent of its decision as set forth in division (C) of this section. There shall be no appeal from the decision of the Board.

(E) Retention and Destruction of Probable Cause Materials. The director shall retain the complaint, summary of investigation, and attached investigatory materials until such time as a probable cause panel makes a final determination regarding certification of the complaint, until the time for appealing a dismissal of the complaint has expired, or until the Board issues an order regarding any appeal of a dismissal, whichever is later. After a final determination regarding probable cause has been made by a panel or the Board, the director shall dispose of all documents and investigatory materials, other than the formal complaint certified to the Board.

Section 12. Proceedings Before the Board on Certified Complaints.

(A) Manner of Discipline. Any judicial officer or attorney found guilty of misconduct shall be disciplined as follows:

- (1) Disbarment from the practice of law;
- (2) Suspension from the practice of law for an indefinite period subject to reinstatement as provided in Section 25 of this rule;
- (3) Suspension from the practice of law for a period of six months to two years subject to a stay in whole or in part;
- (4) Probation for a period of time upon conditions as the Supreme Court determines, but only in conjunction with a suspension ordered pursuant to division (A)(3) of this section;
- (5) Public reprimand.

(B) Disbarment or Resignation. A person who is disbarred, who has resigned with discipline pending, or, who has retired from the practice of law on or after September 1, 2007 shall not be readmitted to the practice of law in Ohio.

(C) Appointment of Hearing Panel. After the respondent has filed an answer or the time for filing an answer has elapsed, the director shall appoint a hearing panel consisting of three commissioners chosen by lot from commissioners who did not serve on the probable cause panel. The director shall designate one attorney or judge commissioner to serve as chair of the panel. No member of the hearing panel shall be a resident of the appellate district from which the complaint originated. Not more than one nonattorney shall serve on any hearing panel. A majority of the panel shall constitute a quorum. The panel chair shall rule on all motions and interlocutory matters. No ruling by the panel chair on a motion or interlocutory matter may be appealed other than in response to a show cause order issued by the Supreme Court.

(D) Notice to Respondent upon Filing of the Complaint. The director of the Board shall send a copy of the complaint by certified mail to the respondent with a notice requiring the respondent to file, within twenty days after the mailing of the notice, six copies of his or her answer and serve copies of the answer on counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted by the director for good cause shown.

(E) Amendments to the Complaint. The relator may file an amended complaint, without filing a motion for leave to amend, prior to the filing of an answer by the respondent. After an answer has been filed, the relator may file an amended complaint only upon leave of the panel chair or the written consent of the respondent. The panel chair may grant the motion for leave to amend for good cause shown. The amended complaint shall be filed and served as set forth in this rule. The amended complaint shall not be subject to probable cause review.

(F) Hearing. Upon reasonable notice and at a time and location set by the panel chair pursuant to the regulations of the Board, the panel shall hold a formal hearing on the complaint. Requests for continuances may be granted by the panel chair for good cause shown. All hearings shall be recorded by a court reporter provided by the Board and a transcript filed with the director.

(G) Authority of Hearing Panel; Dismissal. If, at the end of the evidence presented by the relator or of all evidence, a unanimous hearing panel finds that the evidence is insufficient to support a charge or count of misconduct, the panel may order on the record or in its report that the complaint or count be dismissed. If a unanimous hearing panel dismisses a complaint in its entirety, the director shall send a dismissal entry to the relator, respondent, and all counsel of record.

(H) Referral by Panel. In the alternative, if the hearing panel determines that findings of fact and recommendations for dismissal should be referred to the Board for review and action by the full Board, the panel may submit its findings of fact to the Board and may recommend dismissal in the same manner as provided in this rule with respect to public reprimand, probation, suspension, or disbarment. If the Board dismisses a complaint in its entirety, the director shall send a dismissal entry to relator, respondent, and counsel of record.

(I) Public Reprimand, Probation, Suspension, or Disbarment; Duty of Hearing Panel. If the hearing panel determines, by clear and convincing evidence, that respondent is guilty of misconduct and that a public reprimand, suspension for a period of six months to two years, probation, suspension for an indefinite period, or disbarment is merited, the hearing panel shall submit a report of its findings of fact, conclusions of law, and recommended sanction to the director. If applicable, the panel shall include in its report any conditions of probation, a stayed suspension, or reinstatement to the practice of law. Such conditions may include a requirement that the respondent or petitioner take and receive a passing score on the Multistate Professional Responsibility Examination.

(J) Review by Entire Board. After review, the Board may refer the matter to the hearing panel for further hearing, order a further hearing before the Board, or proceed on the report of the prior proceedings before the hearing panel. After the final review, the Board may dismiss the complaint or find that the respondent is guilty of misconduct. If the complaint is dismissed, the dismissal shall be reported to the director of the Board, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the hearing panel.

(K) Public Reprimand; Probation, Suspension, or Disbarment; Duty of Board after Review. If the Board determines that a public reprimand, suspension for a period of six months to two years, probation, suspension for an indefinite period, or disbarment is merited, the Board shall file a certified report of its proceedings, including its findings of fact, conclusions of law, and recommended sanction, with the clerk of the Supreme Court. The report shall include the record of proceedings before the Board, a transcript of testimony taken, if any, and an itemized statement of the actual and necessary expenses incurred in connection with the proceedings. The Board forthwith shall notify the respondent and all counsel of record of the

action, enclosing with the notice a copy of the Board's report and a copy of the statement of the actual and necessary expenses incurred.

Section 13. Aggravating and Mitigating Factors.

(A) In General. Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, the Board shall give consideration to specific professional misconduct and to the existence of aggravating or mitigating factors. In determining the appropriate sanction, the Board shall consider all relevant factors, precedent established by the Supreme Court of Ohio, and the aggravating and mitigating factors set forth in this section.

(B) Aggravation. The following shall not control the discretion of the Board, but may be considered in favor of recommending a more severe sanction:

- (1) Prior disciplinary offenses;
- (2) A dishonest or selfish motive;
- (3) A pattern of misconduct;
- (4) Multiple offenses;
- (5) A lack of cooperation in the disciplinary process;
- (6) The submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (7) A refusal to acknowledge wrongful nature of conduct;
- (8) The vulnerability of and resulting harm to victims of the misconduct;
- (9) A failure to make restitution.

(C) Mitigation. The following shall not control the discretion of the Board, but may be considered in favor of recommending a less severe sanction:

- (1) The absence of a prior disciplinary record;
- (2) The absence of a dishonest or selfish motive;
- (3) A timely, good faith effort to make restitution or to rectify consequences of misconduct;
- (4) Full and free disclosure to the Board or cooperative attitude toward proceedings;
- (5) Character or reputation;

- (6) Imposition of other penalties or sanctions;
- (7) Existence of a disorder when there has been all of the following:
 - (a) A diagnosis of a disorder by a qualified health care professional or qualified chemical dependency professional;
 - (b) A determination that the disorder contributed to cause the misconduct;
 - (c) In the case of mental disorder, a sustained period of successful treatment or in the case of substance use disorder or nonsubstance-related disorder, a certification of successful completion of an approved treatment program;
 - (d) A prognosis from a qualified health care professional or qualified chemical dependency professional that the attorney will be able to return to competent, ethical professional practice under specified conditions.
- (8) Other interim rehabilitation.

Section 14. Default; Interim Default Suspension.

(A) Certification of Default. If the respondent has not filed an answer to a complaint on or before the answer date set forth in the notice to the respondent of the filing of the complaint or any extension of the answer date, the director of the Board shall provide the relator and respondent, in writing, a notice of intent to certify respondent's default to the Supreme Court. The certification of default shall be filed thirty days after the notice of intent to certify unless the respondent files an answer prior to expiration of the thirty-day period. The certification shall include a copy of the formal complaint pending before the Board and either a certificate indicating that the complaint has been served on the respondent or a certificate indicating that the complaint has been served on the clerk of the Supreme Court pursuant to Section 27 of this rule.

(B)(1) Entry of Interim Default Suspension. Upon receipt of the certification, the Supreme Court shall issue the respondent an order to show cause why an interim default suspension shall not be entered. Notice of the order to show cause shall be served by the clerk of the Supreme Court as set forth in Section 17 of this rule, and any response to the order and answer briefs may be filed as set forth in Section 17 of this rule. Upon receipt of a response or expiration of the time for objections, the Court may enter an order it considers appropriate, including an order immediately suspending the respondent from the practice of law. Upon entry of an order suspending the respondent pursuant to this section, the clerk of the Supreme Court shall mail certified copies of the order as provided in Section 17 of this rule.

(2) If the relator determines that the respondent owes restitution to clients or third parties as a result of the misconduct alleged in the formal complaint, the relator shall file a notice of restitution owed with the Supreme Court. The notice of restitution owed shall be filed within

one hundred and eighty days of the date of the entry of an interim default suspension and shall be accompanied by sworn or certified documentary prima facie evidence in support of the claim of restitution. If relator files a motion to initiate default proceedings pursuant to division (D) of this section, the relator shall allege any claim of restitution owed in its motion and present evidence to the Board on remand in support of that claim.

(C) Motion for Leave to Answer. Within one hundred eighty days of the date of the entry of an interim default judgment suspension, the respondent may file a motion with the Supreme Court for leave to file an answer to the complaint pending before the Board. The motion shall include a copy of the respondent's answer as an attachment. The motion may include a request from the respondent to terminate the interim default suspension for good cause shown. Upon receipt of the motion and any response from the relator, the Court may grant the motion and remand the matter to the Board for further proceedings under Section 12 of this rule. The order remanding the matter to the Board shall indicate that the interim default judgment suspension either remains in place while proceedings are pending before the Board or is terminated for good cause shown.

(D) Motion to Initiate Default Proceedings. Within one hundred eighty days of the date of the entry of an interim default judgment suspension, the relator may file a motion with the Supreme Court to have the case remanded to the Board for the purpose of seeking the permanent disbarment of the respondent. Upon receipt of the motion, the Court may grant the motion and remand the matter to the Board for default proceedings pursuant to division (F) of this section. The order remanding the matter to the Board shall indicate that the interim default judgment suspension remains in place while proceedings are pending before the Board.

(E)(1) Indefinite Suspension; Restitution. If the respondent has not filed a timely motion for leave to answer pursuant to division (C) of this section or if the relator has not filed a timely motion to initiate disbarment proceedings pursuant to division (D) of this section, the Court shall issue the respondent an order to show cause why the interim default judgment suspension should not be converted into an indefinite suspension. If the relator has filed a notice and supporting evidence pursuant to division (B)(2) of this section, the order shall also direct the respondent to show cause why the respondent should not be ordered to pay restitution in accordance with relator's notice and evidence. Notice of the order to show cause shall be served by the clerk of the Supreme Court as set forth in Section 17 of this rule, and any response to the order and answer briefs may be filed as set forth in Section 17 of this rule. Upon receipt of a response or expiration of the time for objections, the Court may enter an order it considers appropriate, including an order immediately converting the interim default suspension into an indefinite suspension and ordering the payment of restitution.

(2) Further proceedings to terminate the indefinite suspension and reinstate the respondent to the practice of law shall be conducted pursuant to Section 25 of this rule, except that the respondent may file a petition for reinstatement no earlier than two years after the date of the entry of the interim default judgment suspension pursuant to division (B)(1) of this section.

(F) Default Proceeding. Within thirty days of the issuance of a remand order pursuant to division (D) of this section, the relator shall file a motion for default with the Board.

Prior to filing a motion for default, relator shall make reasonable efforts to contact the respondent.

(1) Motion. A motion for default shall contain all of the following:

(a) An affidavit from bar counsel or other appropriate representative of the relator documenting the efforts made to contact the respondent and the result;

(b) Sworn or certified documentary prima facie evidence in support of the allegations made;

(c) The recommendation of the relator that the respondent should be disbarred based on the misconduct alleged in the complaint and case law in support of the recommendation;

(d) A statement of any aggravating or mitigating factors of which the relator is aware;

(e) A certificate of service of the motion on respondent at the address shown for the respondent on the records of the Supreme Court and at the last address known to the relator, if different.

(2)(a) Disposition. The director of the Board shall refer the motion for default to a judge or attorney commissioner or Board-appointed master who shall rule on the motion. A commissioner or master appointed to rule on the motion for default shall rule on all motions and interlocutory matters, and no ruling by the commissioner or master on a motion or interlocutory matter may be appealed prior to entry of the final order. If a motion for default is granted, the commissioner or master shall prepare a certified report for review by the Board. After review, the Board shall file a final certified report in accordance with Section 12(K) of this rule finding one of the following:

(i) That the relator has failed to establish the allegations of the complaint by clear and convincing evidence and recommending that the complaint be dismissed and that the Court enter an order terminating the interim default judgment suspension;

(ii) That there is clear and convincing evidence to establish that respondent is guilty of misconduct and recommending the respondent be indefinitely suspended from the practice of law, subject to reinstatement as provided in Section 25 of this rule;

(iii) That there is clear and convincing evidence to establish that respondent is guilty of misconduct and recommending the respondent be disbarred.

(b) If the Supreme Court grants a motion for leave to answer and remands the matter to the Board pursuant to division (C) of this section, the chair of the Board shall set aside a default entry and order a panel hearing at any time before the report and recommendation of the Board are certified to the Supreme Court.

(G) Duty of Relator. The relator shall have a continuing duty to preserve evidence necessary to establish the misconduct alleged in the complaint filed with the Board.

Section 15. Impairment Suspension; Termination of Suspension.

(A) Suspension Based on Adjudication of Mental Illness.

(1) After an answer has been filed or the time for filing an answer has elapsed, the Board forthwith shall certify a complaint to the Supreme Court if the complaint, answer, or other subsequent pleading alleges mental illness that substantially impairs the ability of the respondent to practice law and is supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness.

(2) Upon receipt of a certified complaint pursuant to division (A)(1) of this section, the Supreme Court may suspend the respondent from the practice of law.

(B) Suspension Based on Order of Treatment for Alcohol and Other Drug Abuse.

(1) After an answer has been filed or the time for filing an answer has elapsed, the Board forthwith shall certify a complaint to the Supreme Court if the complaint, answer, or subsequent pleading alleges the existence of alcohol or other drug abuse that substantially impairs the ability of the respondent to practice law and is supported by a certified copy of a journal entry of a court of competent jurisdiction issued pursuant to R.C. 5119.93.

(2) Upon receipt of a certified complaint pursuant to division (B)(1) of this section, the Supreme Court may suspend the respondent from the practice of law.

(C) Impairment Suspension Based on Examination and Finding.

(1) The Board or hearing panel, on its own motion or motion of either party, may order a medical, psychological, or psychiatric examination of the respondent if any of the following applies:

(a) The complaint, answer, or any subsequent pleading alleges an existing mental illness, alcohol and other drug abuse, or disorder that substantially impairs the ability of the respondent to practice law but is unsupported by a journal entry of a court of competent jurisdiction;

(b) Mental illness, alcohol and other drug abuse, or disorder that substantially impairs the ability of the respondent to practice law otherwise is placed in issue.

(2) The medical, psychological, or psychiatric examination of respondent shall be conducted by one or more physicians or psychologists designated by the Board or hearing panel. The findings of the physician or psychologist shall be presented to the Board or hearing panel as evidence and made available to both parties. The parties shall have an opportunity to file

objections to the findings, and the hearing panel may conduct a hearing on the objections. After a hearing or if no objections are filed, the hearing panel shall prepare and submit a report and recommendation with the Board. The report may include a recommendation that the respondent be placed on an impairment suspension.

(3) If, after reviewing the report of the hearing panel, the Board concludes the record establishes that the respondent suffers from mental illness, alcohol and other drug abuse, or a disorder that substantially impairs the ability of the respondent to practice law, the Board shall prepare and certify a report and the record of the proceedings to the Supreme Court. The Board report shall be a matter of public record and shall be docketed by the clerk, but the report shall not be published or posted on the Supreme Court's web site. The Supreme Court may suspend the respondent from the practice of law and order the respondent's registration status changed to inactive. If the Court orders a impairment suspension under this section, further proceedings before the Board on any misconduct alleged in the formal complaint shall be stayed until such time as the respondent applies to the Board to have the impairment suspension terminated and a hearing panel determines that the application should be granted.

(D) Duty of Clerk on Entering Order. Upon the entry of a suspension order under this section, the clerk of the Supreme Court shall mail certified copies of the order as provided in Section 17 of this rule. A copy of the order shall be provided to the Office of Attorney Services, and that office shall change the registration of respondent to inactive status. The order shall be a matter of public record and shall be docketed by the clerk, but the order shall not be published or posted on the Supreme Court's web site.

(E) Termination. A suspension under this section may be terminated on application of the respondent to the Board and a showing of removal of the cause for the suspension. The director of the Board shall assign the application to a hearing panel. If the hearing panel finds by clear and convincing evidence that the suspension should be terminated and if the adjudication of a complaint alleging misconduct has been stayed as a result of the imposition of the suspension, the hearing panel shall conduct proceedings on the complaint in accordance with in Section 12 of this rule. The hearing panel shall prepare a written report of its findings and a recommendation with regard to the termination of the suspension and the disposition of any misconduct alleged in the formal complaint, including a recommended sanction for the misconduct that is found. The report of the hearing panel shall be submitted to the Board, and the report of the Board and the record of the proceedings shall be certified to the Supreme Court.

Section 16. Consent to Discipline.

(A) Content of Agreement. The relator and respondent may enter into a written agreement wherein the respondent admits to alleged misconduct and the relator and respondent agree upon a sanction, other than an indefinite suspension or disbarment, to be imposed for that misconduct. The written agreement may be entered into after a complaint is certified by the Board, but no later than sixty days after appointment of a hearing panel. For good cause shown, the chair of the hearing panel or the Board chair may extend the time for the parties to file a written agreement by an additional thirty days. The written agreement shall be signed by the

respondent, respondent's counsel, if the respondent is represented by counsel, and relator, and shall include all of the following:

(1) An admission by the respondent, conditioned upon acceptance of the agreement by the Board, that the respondent committed the misconduct listed in the agreement;

(2) The sanction agreed upon by the relator and respondent for the misconduct admitted by the respondent and any case law that supports the agreed sanction;

(3) Any aggravating and mitigating factors, including but not limited to those listed in Section 13, that are applicable to the misconduct and agreed sanction;

(4) An affidavit of the respondent that includes all of the following statements:

(a) That the respondent admits to having committed the misconduct listed in the agreement, that grounds exist for imposition of a sanction against the respondent for the misconduct, and that the agreement sets forth all grounds for discipline currently pending before the Board;

(b) That the respondent admits to the truth of the material facts relevant to the misconduct listed in the agreement;

(c) That the respondent agrees to the sanction to be recommended to the Board;

(d) That the respondent's admissions and agreement are freely and voluntarily given, without coercion or duress, and that the respondent is fully aware of the implications of the admissions and agreement on his or her ability to practice law in Ohio.

(e) That the respondent understands that the Supreme Court of Ohio has the final authority to determine the appropriate sanction for the misconduct admitted by the respondent.

(B) Filing and Consideration of the Agreement. The agreement shall be filed with the director of the Board and submitted to the hearing panel or a master. Relator and respondent may file a brief in support of the agreement. If the hearing panel, by majority vote, or master recommends acceptance of the agreement and concurs in the agreed sanction, the matter shall be scheduled for consideration by the Board. If the agreement is not accepted by the hearing panel or master, the matter shall be set for hearing.

(C) Board Consideration of the Agreement. If the agreement is submitted to the Board, the Board, by majority vote, may accept or reject the agreement. If the Board accepts the agreement, the agreement shall form the basis for the certified report submitted to the Supreme Court. If the Board rejects the agreement, the matter shall be returned to the hearing panel and set for a hearing.

(D) Rejected Agreement Not Admissible. If the agreement is not accepted by the hearing panel, the Board, or the Supreme Court, the agreement shall not be admissible or otherwise used in subsequent disciplinary proceedings.

Section 17. Supreme Court Review of Certified Report; Orders; Costs; Publication.

(A) Show Cause Order. Upon receipt of a final report of the Board, the Supreme Court shall issue the respondent an order to show cause why the report of the Board shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the clerk of the Supreme Court on the respondent and all counsel of record personally or by certified mail. The clerk shall not issue a show cause order upon receipt of a report recommending the acceptance of a consent to discipline agreement.

(B) Response to Show Cause Order. Within twenty days after the issuance of an order to show cause, the respondent or relator may file objections to the findings or recommendations of the Board and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued. The objections shall be accompanied by a brief in support of the objections and proof of service of copies of the objections and the brief on the director of the Board and all counsel of record. Objections and briefs shall be filed in the number and form required by the Rules of Practice of the Supreme Court of Ohio.

(C) Answer Briefs. Answer briefs and proof of service shall be filed within fifteen days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by the Rules of Practice of the Supreme Court of Ohio.

(D) Supreme Court Proceedings. After consideration of a matter submitted to it, the Supreme Court shall enter an order as it finds proper. If the Court rejects a consent to discipline agreement submitted pursuant to Section 16 of this rule, the Court shall remand the matter to the Board for further proceedings. Unless otherwise ordered by the Court, any disciplinary order or order accepting resignation shall be effective on the date that the order is announced. The order may provide for reimbursement of costs and expenses certified by the Board. An order imposing a suspension for an indefinite period or for a period of six months to two years may allow full or partial credit for any period of suspension imposed under Section 18 of this rule.

(1) Notice. Upon the entry of any disciplinary order pursuant to this rule or the acceptance of a resignation from the practice of law, the clerk of the Supreme Court shall mail certified copies of the entry or acceptance to counsel of record, to the Board, to respondent at his or her last known address, to the Office of Disciplinary Counsel, to the certified grievance committee for and the local bar association of the county or counties in which the respondent resides and maintains an office and the county or counties from which the complaint arose, to the Ohio State Bar Association, to the administrative judge of the court of common pleas for each county in which the respondent resides or maintains an office, and to the chief judges of the United States District Courts in Ohio, the United States Court of Appeals for the Sixth Circuit, to the disciplinary authority of any other jurisdiction in which the respondent is known to be admitted, and to the Supreme Court of the United States.

(2) **Publication.** Except as provided in Section 15 of this rule, the Supreme Court Reporter shall publish any disciplinary order or acceptance of a resignation from the practice of law entered by the Supreme Court under this rule in the *Ohio Official Reports*. The publication shall include the citation of the case in which the disciplinary order or the acceptance of a resignation was issued.

Section 18. Interim Suspension for a Felony Conviction or Default Under a Child Support Order.

(A)(1) **Interim Suspension.** A judicial officer or an attorney admitted to the practice of law in Ohio shall be subject to an interim suspension under either of the following circumstances:

(a) The judicial officer or attorney is convicted in Ohio of a felony or of an equivalent offense under the laws of any other state or federal jurisdiction;

(b) A final and enforceable determination has been made pursuant to Chapter 3123. of the Revised Code that the judicial officer or attorney is in default under a child support order.

(2) A certified copy of the entry of conviction of a judicial officer or an attorney of a felony offense shall be transmitted within ten days of the date of the entry by the judge entering the judgment to the director of the Board and to the Office of Disciplinary Counsel or the president, secretary, or chair of the geographically appropriate certified grievance committee. A certified copy of the court or child support enforcement agency determination that a judicial officer or attorney is in default under a child support order shall be transmitted as provided in R.C. 4705.021.

(3) Upon receipt from any source of a certified copy of the entry of conviction or of the determination of default under a child support order, the director promptly shall submit the entry or determination to the Supreme Court. The entry shall be submitted whether the conviction resulted from a plea of guilty or nolo contendere, from a verdict after trial, or otherwise and regardless of the pendency of an appeal.

(4) The Supreme Court may enter an order as it considers appropriate, including an order immediately suspending the judicial officer or attorney from the practice of law pending further proceedings pursuant to these rules.

(B) **Conclusive Evidence.** A certified copy of the entry of conviction of an offense or of a determination of default under a child support order shall be conclusive evidence of the commission of that offense or of the default in any disciplinary proceedings instituted against a judicial officer or an attorney based upon the conviction or default.

(C) **Time for Hearing.** Any disciplinary proceeding instituted against a judicial officer or an attorney based on a conviction of an offense or on default under a child support

order shall not be brought to hearing until all direct appeals from the conviction or proceedings directly related to the default determination are concluded.

(D)(1) Reinstatement. A judicial officer or an attorney suspended under this rule or Rule II of the Supreme Court Rules for the Government of the Judiciary of Ohio shall be reinstated by the Supreme Court upon the filing with and submission to the Supreme Court by the director of any of the following:

- (a) A certified copy of an entry reversing the conviction of the offense;
- (b) A certified copy of an entry reversing the determination of default under a child support order;
- (c) A notice from a court or child support enforcement agency that the judicial officer or attorney is no longer in default under a child support order or is subject to a withholding or deduction notice or a new or modified child support order to collect current support or any arrearage due under the child support order that was in default and is complying with that notice or order.

(2) Reinstatement shall not terminate any pending disciplinary proceeding.

(E) Duty of Clerk on Entering Order. Upon the entry of an order suspending or reinstating a judicial officer or an attorney pursuant to this section, the clerk of the Supreme Court shall mail certified copies of the order as provided in Section 17 of this rule.

Section 19. Interim Remedial Suspension.

(A)(1) Motion; Response. Upon receipt of substantial, credible evidence demonstrating that a judicial officer or attorney has committed a violation of the Code of Judicial Conduct or Ohio Rules of Professional Conduct and poses a substantial threat of serious harm to the public, the Office of Disciplinary Counsel or appropriate certified grievance committee shall do both of the following:

(a) Prior to filing a motion for an interim remedial suspension, make a reasonable attempt to provide the judicial officer or attorney with notice, which may include notice by telephone, that a motion requesting an order for an interim remedial suspension will be filed with the Supreme Court.

(b) File a motion with the Supreme Court requesting that the Court order an interim remedial suspension. The Office of Disciplinary Counsel or appropriate certified grievance committee shall include, in its motion, proposed findings of fact, proposed conclusions of law, and other information in support of the requested order. Evidence relevant to the requested order shall be attached to or filed with the motion. The motion may include a request for an immediate, interim remedial suspension pursuant to the Rules of Practice of the Supreme Court of Ohio. The motion shall include a certificate detailing the attempts made by the relator to provide advance notice to the respondent of the relator's intent to file the motion. The motion

also shall include a certificate of service on the respondent at the most recent address provided by the respondent to the Office of Attorney Services and at the last address of the respondent known to the relator, if different.

(2) After the filing of a motion for an interim remedial suspension, the respondent may file a memorandum opposing the motion in accordance with the Rules of Practice of the Supreme Court of Ohio. The respondent shall attach to or file with the memorandum any rebuttal evidence.

(B) Order. Upon consideration of the motion and any memorandum opposing the motion, the Supreme Court may enter an interim remedial order immediately suspending the respondent, pending final disposition of disciplinary proceedings predicated on the conduct threatening the serious harm or may order other action as the Court considers appropriate. If requested by the relator, the Supreme Court may order an immediate interim remedial suspension, prior to receipt of a memorandum opposing the relator's motion, pursuant to the Rules of Practice of the Supreme Court of Ohio. If an order is entered pursuant to this division, an attorney may be appointed pursuant to Section 26 of this rule to protect the interest of the suspended attorney's clients.

(C)(1) Motion for Dissolution or Modification of the Suspension. The respondent may request dissolution or modification of the order of suspension by filing a motion with the Supreme Court. The motion shall be filed within thirty days of entry of the order imposing the suspension, unless the respondent first obtains leave of the Supreme Court to file a motion beyond that time. The motion shall include a statement and all available evidence as to why the respondent no longer poses a substantial threat of serious harm to the public. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

(2) In addition to the motion allowed by division (C)(1) of this section, the respondent may file a motion requesting dissolution of the interim remedial suspension order, alleging that one hundred eighty days have elapsed since the entry of the order and the relator has failed to file with the Board a formal complaint predicated on the conduct that was the basis of the order. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

(D) Procedure. The Rules of Practice of the Supreme Court of Ohio shall apply to interim remedial suspension proceedings filed pursuant to this section.

(E) Duty of Clerk on Entering Order. Upon the entry of an order suspending or reinstating the respondent pursuant to this section, the clerk of the Supreme Court shall mail certified copies of the order as provided in Section 17 of this rule.

Section 20. Reciprocal Discipline.

(A) Notification of Disciplinary Action. Within thirty days of the issuance of a disciplinary order in another jurisdiction, an attorney admitted to the practice of law in Ohio shall provide written notification to the Office of Disciplinary Counsel and the clerk of the Supreme Court of the action. Upon receiving notice from the attorney or another party that an attorney admitted to the practice of law in Ohio has been subjected to discipline in another jurisdiction, the Office of Disciplinary Counsel shall obtain a certified copy of the disciplinary order and file the copy with the clerk of the Supreme Court.

(B)(1) Show Cause Order. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to the practice of law in Ohio has been subjected to discipline in another jurisdiction, the Supreme Court shall issue a notice directed to the attorney containing both of the following:

(a) A copy of the order from the other jurisdiction;

(b) An order directing that the attorney notify the Supreme Court, within twenty days from the service of notice, of any claim by the attorney predicated upon the grounds set forth in division (C)(1) of this section that the imposition of the identical or comparable discipline in Ohio would be unwarranted and the reasons for that claim.

(2) If the attorney files a response to a show cause order, Office of Disciplinary Counsel or a certified grievance committee may file a reply to the response within fifteen days.

(C) Disposition.

(1) After service of the notice issued pursuant to division (B)(1) of this section, the Supreme Court shall impose the identical or comparable discipline imposed in the other jurisdiction, unless the attorney proves either of the following by clear and convincing evidence:

(a) A lack of jurisdiction or fraud in the other jurisdiction's disciplinary proceeding;

(b) That the misconduct established warrants substantially different discipline in Ohio.

(2) Reciprocal discipline may be imposed even if the term of the attorney's discipline in the other jurisdiction has expired. In determining whether to impose reciprocal discipline after the attorney's discipline in the other jurisdiction has expired, the Supreme Court may consider whether the attorney provided timely written notification pursuant to division (A) of this section and, if the attorney delayed in providing written notification, whether the delay in notification was caused by factors beyond the attorney's control.

(3) Reciprocal discipline shall be effective on the date it is announced by the Supreme Court.

(D) Res Judicata. In all other respects, a final adjudication in another jurisdiction that an attorney has been subjected to discipline shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Ohio.

(E) Enhancement of Sanction. If an attorney fails to report to the Office of Disciplinary Counsel and to the clerk of the Supreme Court that he or she has been subjected to discipline in another jurisdiction, the Supreme Court may enhance the sanction that it would have imposed had the attorney complied with division (A) of this section.

(F) Court Discretion. The Supreme Court may make its determination under this section from the pleadings filed, or may permit or require briefs or a hearing or both.

Section 21. Probation Procedures.

(A) Supervision. If the disciplinary order entered by the Supreme Court imposes a term of probation, the relator shall do all of the following:

- (1) Supervise the term and conditions of probation;
- (2) Maintain the probation file;
- (3) Appoint, in any manner it considers appropriate, one or more monitoring attorneys who are admitted to the practice of law in Ohio and in good standing and are not members of a certified grievance committee or counsel for the relator and select one or more replacement monitoring attorneys, if necessary;
- (4) Receive reports from the monitoring attorneys;
- (5) Investigate reports of probation violations.
- (6) If the probation involves recovery from a disorder, select as one of the monitoring attorneys a person designated by a committee or subcommittee of a bar association, or by a non-profit corporation established by a bar association, designed to assist lawyers with disorders, which person shall satisfy the requirements of division (A)(3) of this section and who shall monitor compliance with only that portion of the term of probation involving recovery from a disorder.

(B) Monitoring. The monitoring attorney shall, with respect to those aspects of the terms of probation assigned to that attorney, do all of the following:

- (1) Monitor compliance by the respondent with the conditions of probation imposed by the Supreme Court;
- (2) File with the relator, at least quarterly or as otherwise determined by the relator, written, certified reports regarding the status of the respondent and compliance with the conditions of probation;

(3) Immediately report to the relator any violations by the respondent of the conditions of probation.

(C) Duties of Respondent. The respondent shall do all of the following:

(1) Have a personal meeting with the monitoring attorneys at least once each month during the first year of probation, and at least quarterly thereafter, unless the monitoring attorneys require more frequent meetings;

(2) Provide the monitoring attorneys with a written release or waiver, on a form approved by the Board, for use in verifying compliance regarding medical, psychological, or other treatment and attendance at self-help programs;

(3) Cooperate fully with the efforts of each monitoring attorney to monitor the respondent's compliance.

(D) Termination of Probation. At the expiration of the probation period, the respondent shall apply for termination of probation. The application shall be in writing and filed with the clerk of the Supreme Court. The application shall indicate the date probation was ordered, include an affidavit by respondent stating that the respondent has complied with the conditions of probation, indicate whether any formal disciplinary proceedings are pending against the respondent, and request termination of probation. The Supreme Court shall order the termination of probation if all costs of the proceedings as ordered by the Supreme Court have been paid, the respondent has complied with the conditions of probation, and no formal disciplinary proceedings are pending against the respondent. The clerk of the Supreme Court shall provide notice of the termination of probation to all persons and organizations who received copies of the disciplinary order pursuant to Section 17 of this rule.

(E) Violation of Probation; Authority and Duty of Relator. The relator immediately shall investigate any report of a violation of the conditions of probation by the respondent. If it finds probable cause to believe that a significant or continuing violation of the conditions of probation has occurred, it shall notify the respondent of the report of probation violation and provide an opportunity to respond to the report. Thereafter, if warranted, the relator shall file a petition for the revocation of probation, reinstatement of any stayed suspension, and citation for contempt with the director of the Board within thirty days after its receipt of the report, in the same manner as provided in Section 10 of this rule. If, upon investigation of a report of a violation of probation, the relator determines that the filing of a petition for revocation of probation with the director of the Board is not warranted, the person reporting the alleged violation of probation shall be notified in writing of that determination.

(F) Duty of the Board upon Filing of Petition. Upon receipt of a petition for revocation of probation, the director of the Board shall send a copy of the petition by certified mail to the respondent with a notice requiring the respondent to file, within ten days after the mailing of the notice, six copies of the respondent's answer and serve copies on counsel of

record. Extensions of time for the filing of the answer may be granted by the director of the Board for good cause shown.

(G) Hearing by Panel; Motion for Default.

(1) After the respondent has filed an answer, a formal hearing shall be held by a panel of three commissioners appointed in the same manner as provided in Section 12 of this rule. The panel shall conduct a hearing only on the issue of probation violation within thirty days after the answer date set forth in the notice to the respondent of the filing of the petition or any extension of the answer date.

(2) If no answer has been filed by the respondent within ten days after the answer date set forth in the notice to the respondent of the filing of the petition or any extension of the answer date, relator shall file a motion for default in accordance with Section 14 of this rule. If a motion for default is granted, the panel forthwith shall make its certified report to the Supreme Court, pursuant to division (H) of this section.

(H) Certification of Panel Report. If the panel determines by clear and convincing evidence that the respondent is guilty of a significant or continuing violation of the conditions of probation, the panel shall make a certified report of the proceedings before it, including findings of fact and recommendations, and shall file the report, together with the transcript of testimony taken or, in the case of a default, the documentary evidence received, and an itemized statement of the actual and necessary expenses incurred in connection with the proceedings, with the clerk of the Supreme Court. The panel promptly shall notify the respondent and all counsel of record of its action, enclosing with the notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred. If the panel finds that the evidence is insufficient to support a charge of a violation of probation, the panel shall order that the petition for revocation of probation be dismissed. The panel shall report its action to the director of the Board who shall give written notice of the action taken to those persons and organizations identified in Section 12 of this rule.

(I) Reinstatement of Stayed Suspension. On the filing of the final certified report by the panel, the Supreme Court may issue to the respondent an order reinstating any period of suspension previously stayed by the Supreme Court, pending the entry of a final order by the Supreme Court. Notice of an order reinstating any period of suspension previously stayed shall be served personally or by certified mail by the clerk of the Supreme Court on the respondent and all counsel of record.

(J) Show Cause Order; Objections; Answer Briefs. On the filing of the final certified report of the panel, the Supreme Court shall issue to the respondent an order to show cause in accordance with Section 17 of this rule. Any response or objections to the order to show cause, and any answer briefs, shall be filed in accordance with Section 17 of this rule.

(K) Review by Court. After a hearing on objections, or if objections are not filed within the prescribed time, the Supreme Court shall enter an order as it finds proper in accordance with Section 17 of this rule. If the Supreme Court finds that the respondent has not

violated the conditions of probation, the Supreme Court shall issue an order that does all of the following:

- (1) Dismisses the matter;
- (2) Reinstates the respondent to the practice of law, if the Supreme Court suspended the respondent pursuant to division (I) of this section;
- (3) Reinstates any remaining period of probation, subject to any full or partial credit allowed by the Supreme Court for any period of suspension imposed under division (I) of this section.

(L) Reimbursement of Expenses. A monitoring attorney may be reimbursed from the Attorney Services Fund for direct expenses incurred by the monitoring attorney in performing the obligations imposed on the monitoring attorney by this section. Reimbursement shall be limited to necessary costs for copies of documents, travel expenses, postage, and long distance telephone charges. No reimbursement shall be allowed for the cost of the time of the monitoring attorney or other personnel in discharging these obligations. Reimbursement shall be made on submission to the director of the Board of proof of expenditures.

Section 22. Duties of a Disbarred or Suspended Attorney.

(A) Content of Supreme Court Order. In its order disbaring or suspending an attorney or in any order pertaining to the resignation of an attorney, the Supreme Court shall include a time limit, not to exceed thirty days, within which the disqualified attorney shall do all of the following:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the order, and, in the absence of co-counsel, notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in his or her place;
- (2) Regardless of any fees or expenses due the attorney, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
- (3) Refund any part of any fees or expenses paid in advance that are unearned or not paid and account for any trust money or property in his or her possession or control;
- (4) Notify opposing counsel or, in the absence of counsel, the adverse parties in pending litigation, of his or her disqualification or resignation to act as an attorney after the effective date of the disqualification order and file a notice of disqualification of counsel with the court or agency before which the litigation is pending for inclusion in the respective file or files.

(B) Disqualified Attorney Address. All notices required by a disciplinary order of the Supreme Court shall be sent by certified mail and contain a return address where communications may be directed to the disqualified attorney.

(C) Affidavit. Within the time limit prescribed by the Supreme Court, the disqualified attorney shall file with the clerk of the Supreme Court and the Office of Disciplinary Counsel an affidavit showing compliance with the order entered pursuant to this rule and proof of service of notices required by the order. The affidavit also shall set forth the address where the affiant may receive communications and the disqualified attorney shall inform the clerk and the Office of Disciplinary Counsel of any subsequent change in address.

(D) Proof of Compliance. A disqualified attorney shall maintain a record of the various steps taken pursuant to the order entered by the Supreme Court so that, in any subsequent proceeding, proof of compliance with the order will be available for receipt in evidence.

Section 23. Employment of a Disqualified or Suspended Attorney.

(A) General Prohibitions. A disqualified or suspended attorney shall not do either of the following:

- (1) Have any direct client contact, other than serving as an observer in any meeting, hearing or interaction between an attorney and a client;
- (2) Receive, disburse, or otherwise handle client trust funds or property.

(B) Prohibited Relationships. On or after September 1, 2008, a disqualified attorney shall not enter into an employment, contractual, or consulting relationship with an attorney or law firm with which the disqualified attorney was associated as a partner, shareholder, member, or employee at the time the attorney engaged in misconduct that resulted in his or her disqualification from the practice of law.

(C) Registration of Relationship. An attorney or law firm seeking to enter into an employment, contractual, or consulting relationship with a disqualified or suspended attorney shall register the employment, contractual, or consulting relationship with the Office of Disciplinary Counsel. The registration shall be on a form provided by the Office of Disciplinary Counsel and shall include all of the following:

- (1) The name of and contact information for the disqualified or suspended attorney;
- (2) The name of and contact information for the attorney or law firm seeking to enter into the relationship with the disqualified or suspended attorney;
- (3) The name of and contact information for the attorney responsible for directly supervising the disqualified or suspended attorney, if different than the attorney identified in division (C)(2) of this section;

(4) The capacity in which the disqualified or suspended attorney will be employed, including a description of duties to be performed or services to be provided;

(5) An affidavit executed by either the attorney filing the registration or the supervising attorney indicating that the attorney has read the Supreme Court's order disbaring, accepting the resignation of, or suspending the attorney to be employed and understands the limitations contained in that order;

(6) Any other information considered necessary by the Office of Disciplinary Counsel.

(D) Written Acknowledgement. Upon receipt of a completed registration form, the Office of Disciplinary Counsel shall send a written acknowledgement to the attorney or law firm that filed the registration form and any supervising attorney identified on the form. Upon receipt of the written acknowledgement, the employment, contractual, or consulting relationship may commence.

(E) Amendments to Registration. An attorney who registers the employment of a disqualified or suspended attorney shall file an amended registration form with the Office of Disciplinary Counsel when there is any material change in the information provided on a prior registration form and shall notify the Office of Disciplinary Counsel upon termination of the employment, contractual, or consulting relationship.

(F) Notice to Clients. If a disqualified or suspended attorney will perform work or provide services in connection with any client matter, the employing attorney or law firm shall inform the client of the status of the disqualified or suspended attorney. The notice shall be in writing and provided to the client before the disqualified or suspended attorney performs any work or provides any services in connection with the client matter.

Section 24. Reinstatement Proceedings; Term or Interim Suspension.

(A) Application for Reinstatement. Upon the dissolution of an interim remedial suspension imposed pursuant to Section 19 of this rule or expiration of a suspension for a period of six months to two years, including any period that the order of the Supreme Court has allowed as a credit for a suspension imposed under Section 18 of this rule, the respondent may apply for reinstatement to the practice of law.

(B) Contents of Application. The application shall be in writing and filed with the clerk of the Supreme Court with the number of copies required by the Rules of Practice of the Supreme Court of Ohio. The application shall include the date the suspension was ordered and a request for reinstatement. The application shall be accompanied by an affidavit executed by the respondent indicating all of the following:

(1) Whether any formal disciplinary proceedings are pending against the respondent;

(2) Whether the respondent has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction;

(3) Whether the respondent has complied with the continuing legal education requirements of Gov. Bar R. X.

(B) Requisites for Reinstatement. The Supreme Court shall order the respondent reinstated if all of the following conditions are satisfied:

(1) All costs of the proceedings as ordered by the Supreme Court have been paid;

(2) The respondent has complied with the order of suspension;

(3) The respondent has complied with the continuing legal education requirements of Gov. Bar R. X;

(4) No formal disciplinary proceedings are pending against the respondent;

(5) The respondent has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction.

(D) Reinstatement Prior to Completion of Probation or Other Sanction. Notwithstanding the requirement of division (C)(5) of this section, the respondent may apply for reinstatement prior to completing a term of probation, community control, intervention in lieu of conviction, or sanction imposed as part of a sentence for a felony conviction if the disciplinary order issued pursuant to Section 17 authorizes such an application. If an application is authorized, the application shall be in the form and content specified in division (A) of this section and shall include an affidavit from the trial judge, dated not more than thirty days prior to the date the application is filed, as evidence that the respondent is in compliance with the terms and conditions of probation, community control, intervention in lieu of conviction, or sanction imposed as part of a sentence for a felony conviction.

(E) Notice. The clerk of the Supreme Court shall provide notice of the reinstatement to all persons or organizations who received copies of the Supreme Court disciplinary order of suspension pursuant to Section 17 of this rule.

Section 25. Reinstatement Proceedings; Indefinite Suspension.

(A) Petition for Reinstatement. No petition for reinstatement to the practice of law may be filed or entertained by the Supreme Court within two years of either of the following:

(1) The entry of an order suspending the petitioner from the practice of law for an indefinite period, including any period that the order of the Supreme Court imposing the suspension has allowed as a credit for a suspension imposed under Section 18 of this rule;

(2) The denial of a petition for reinstatement to the practice of law filed by the petitioner.

(B) Contents of Petition for Reinstatement. Except as provided in division (A) of this section, a person who has been suspended from the practice of law for an indefinite period and who wishes to be reinstated may file with the clerk of the Supreme Court a verified petition and the number of copies of the petition as required by the Rules of Practice of the Supreme Court of Ohio. The petition shall include all of the following:

(1) The date on which the suspension was ordered and, if there was a reported opinion, a citation to the opinion;

(2) The dates on which all prior petitions for reinstatement were filed and denied or granted;

(3) The names of all persons and organizations, except the petitioner and the Board, who were or would be entitled under this rule to receive from the clerk of the Supreme Court certified copies of the disciplinary order of the Supreme Court against petitioner resulting in his or her suspension, the name of the bar association of the county or counties in which he or she resides at the time of the filing of the petition and of each county in which he or she proposes to maintain an office if reinstated, and the Ohio State Bar Association;

(4) An affidavit executed by the petitioner indicating whether the petitioner has any formal disciplinary proceedings pending, has complied with the continuing legal education requirements of Gov. Bar R. X, and has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction;

(5) The facts upon which the petitioner relies to establish by clear and convincing evidence that he or she possesses all the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law in Ohio at the time of his or her original admission and that he or she is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

(C) Costs to be Deposited with Petition for Reinstatement. A petition for reinstatement shall be accompanied by a deposit, in an amount fixed by the clerk, for probable costs and expenses to be incurred in connection with the proceedings. The costs shall include any amounts unpaid under any prior order of the Supreme Court and any amounts owed to the Lawyers' Fund for Client Protection for reimbursement of an award made pursuant to Gov. Bar R. VIII as the result of petitioner's misconduct.

(D)(1) Requisites for Reinstatement. The petitioner shall not be reinstated unless he or she establishes all of the following by clear and convincing evidence to the satisfaction of the panel hearing the petition for reinstatement:

(a) That the petitioner has made appropriate restitution to the persons who were harmed by his or her misconduct;

(b) That the petitioner possesses all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law in Ohio at the time of his or her original admission;

(c) That the petitioner has complied with the order of suspension;

(d) That the petitioner has complied with the continuing legal education requirements of Gov. Bar R. X;

(e) That the petitioner has completed a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction;

(f) That the petitioner is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action.

(2) Notwithstanding provisions of this section to the contrary, the petitioner may file and the Board may consider a reinstatement petition from a petitioner prior to completing a term of probation, community control, intervention in lieu of conviction, or any sanction imposed as part of a sentence for a felony conviction. In addition to the requirements of division (B) of this section, the reinstatement petition shall include an affidavit from the trial judge, dated not more than thirty days prior to the date the petition is filed, as evidence that the respondent is in compliance with the terms and conditions of probation, community control, intervention in lieu of conviction, or sanction imposed as part of a sentence for a felony conviction and shall include the facts upon which the petitioner relies to establish by clear and convincing evidence that the petitioner should be reinstated to the practice of law in Ohio while subject to a term of probation, community control, intervention in lieu of conviction, or sanction imposed as part of a sentence for a felony conviction. The Board shall not recommend reinstatement of the petitioner unless it finds by clear and convincing evidence that good cause exists for waiving the reinstatement requirement of division (D)(1)(e) of this section and details that finding in its final report.

(E) Petition for Reinstatement Referred to Board. Unless denied forthwith for insufficiency in form or substance, the clerk shall forward five copies of the petition to the director of the Board. The Board shall conduct a hearing or hearings and take and report evidence relevant to the rehabilitation of the petitioner and his or her possession of all the mental, educational, and moral qualifications required of an applicant for admission to the practice of law in Ohio at the time of his or her original admission.

(F) Hearing of Petition; Appeal.

(1) Appointment of Panel. The director, by lot, shall appoint a hearing panel of three commissioners, none of whom shall be a resident of the appellate district in which the petitioner resides or of the appellate district in which the petitioner resided at the time of

suspension. The director shall appoint an attorney or judge commissioner as chair of the panel, and the panel shall conduct a hearing on the petition.

(2) **Notice; Hearing.** The Board shall provide reasonable notice of any hearing to the petitioner or counsel for the petitioner and to all persons or organizations referred to in division (B)(3) of this section. Hearings shall be public and any interested person, member of the bar, and the Office of Disciplinary Counsel may appear before the hearing panel in support of or opposition to the petition.

(3) **Referral to Disciplinary Counsel.** If a certified grievance committee of a bar association referred to in division (B)(3) of this section determines that matters relating to petitioner's qualifications for reinstatement are sufficiently serious and complex as to require the assistance of Office of Disciplinary Counsel, the chair of the committee shall direct a written request for assistance to the Office of Disciplinary Counsel. The Office of Disciplinary Counsel shall investigate all referred matters and report the results of the investigation to the committee that requested it.

(4) **Panel Report.** The hearing panel shall make and certify a report to the Board of the proceedings before it, including its findings of fact and recommendations. All proceedings before the panel and the Board, whenever appropriate, shall be governed by the provisions of this rule governing disciplinary proceedings, including proceedings in the Supreme Court for an issuance of an order to show cause why the final report of the Board should not be confirmed.

(5) **Conditional Grant; Denial; Appeal.** The Board may recommend that the petitioner be required to take and pass a regular bar examination of the Supreme Court as a condition to readmission. If the final report recommends denial of the petition, the petitioner shall have twenty days from receipt of notice of the date of filing the report to file objections and a brief in support of the objections.

(6) **Grant of Petition; Appeal.** If the final report recommends granting the petition, any person or organization referred to in division (B)(3) of this section shall have twenty days from the receipt of notice of filing of the report to file objections to the recommendations and a brief in support of the objections. The Supreme Court shall enter an appropriate order that may include provisions for reimbursement of the costs and expenses incurred in connection with the proceedings. The order of reinstatement may be subject to conditions the Supreme Court considers appropriate including, but not limited to, requiring the petitioner to serve a period of probation under Section 21 of this rule on conditions the Supreme Court determines and requiring the petitioner to subsequently take and pass a regular bar examination of the Supreme Court and take the oath of office.

Section 26. Appointed Attorney to Inventory Files.

(A) **Appointment.** When an attorney dies, is suspended pursuant to Section 15 of this rule, fails to comply with Section 22 of this rule, or otherwise abandons his or her client files and no partner, executor, or other responsible party capable of conducting the attorney's affairs is available and willing to assume appropriate responsibility, disciplinary counsel or the chair of a

certified grievance committee may appoint one or more attorneys to inventory the files of an attorney and take action, including the actions set forth in Section 22, as is necessary to protect the interest of clients of the attorney. An attorney is considered to have abandoned client files if the attorney has had no contact with the files or has not responded to inquiries about the files and either is incapacitated, has disappeared and, through reasonable efforts, cannot be found or contacted, or has been deported.

(B) Request for Appointment. Prior to making an appointment pursuant to division (A) of this section, the chair of a certified grievance committee shall submit a written request to the director of the Board for approval of the appointment and the fees to be charged by the appointed attorney. The appointed attorney shall submit an invoice, signed by the chair of the certified grievance committee, to the director of the Board for payment of fees. Upon receipt of a proper invoice, the director shall pay the fees from the Attorney Services Fund.

(C) Recovery of Costs. If the attorney whose files are inventoried has been disciplined or has resigned with discipline pending, the director or disciplinary counsel may certify the fees and expenses incurred in connection with the inventory to the Supreme Court and request that the Court issue an order directing the attorney to repay the fees and expenses incurred. If the attorney whose files are inventoried has died, the director or disciplinary counsel may file a claim, with the assistance of the Attorney General, against the estate of the deceased attorney to recover the fees and expenses incurred in connection with the inventory. Any moneys repaid or recovered pursuant to this division shall be deposited in the Attorney Services Fund.

(D) Confidentiality; Disqualification. Except as necessary to carry out the order of appointment by disciplinary counsel or chair of a certified grievance committee, the appointed attorney or attorneys shall not disclose any information contained in inventoried files without the written consent of the client to whom the files relate. An appointed attorney may not represent that client.

(E) Destruction of Inventoried Files. Seven years after completing an inventory of abandoned files, the Office of Disciplinary Counsel or a certified grievance committee may destroy abandoned files other than original legal documents such as deeds or unprobated wills. Before destroying any abandoned files, the Office of Disciplinary Counsel or a certified grievance committee shall make a reasonable effort to return files to the clients. File destruction shall be conducted in a manner that protects client confidentiality.

Section 27. Applicability of Rules; Special Service; Construction of Rule.

(A) Applicability of Rules. The Board and hearing panels shall follow the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence wherever practicable unless a specific provision of this rule or Board hearing procedures and guidelines provides otherwise.

(B) Clerk is Agent for Service of Notices on Nonresident Judicial Officer or Attorney. Any nonresident of this state, having been admitted as an attorney by the rules of the Supreme Court, or any resident of this state, having been admitted as an attorney by the rules of

the Supreme Court, who subsequently becomes a nonresident or conceals his or her whereabouts, by such admission to the practice of law within this state makes the clerk of the Supreme Court his or her agent for the service of any notice provided for in any proceeding instituted against such judicial officer or attorney, pursuant to this rule.

(C) Rule to be Liberally Construed. The process and procedure under this rule and regulations approved by the Supreme Court shall be as summary as reasonably may be. Amendments to any notice, answer, objections, report, or order to show cause may be made at any time prior to final order of the Supreme Court. The party affected by an amendment shall be given reasonable opportunity to meet any new matter presented. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule and regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be construed liberally for the protection of the public, the courts, and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable and to all future investigations, complaints, and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule. To the extent that application of this amended rule to pending proceedings may not be practicable, the regulations in force at the time this amended rule became effective shall continue to apply.

Sections 28-34. RESERVED

Section 35. Definitions.

As used in this rule:

(A) “Alcohol and other drug abuse” has the same meaning as in R.C. 5119.90 [Involuntary Treatment].

(B) “Approved treatment program” means a chemical dependency treatment program approved by a state agency, Ohio Lawyers Assistance Program, or other appropriate authority.

(C) “Complaint” means a formal written allegation of misconduct, mental illness, mental disorder, substance use disorder, or nonsubstance-related disorder of a person designated as the respondent.

(D) “Confidential” acknowledges the oath of office of Sections 1, 4, and 5 of this rule, the necessity of confidentiality of all proceedings, documents, and deliberations of a certified grievance committee, the Office of Disciplinary Counsel, and the Board and its hearing panels.

(E) “Disorder” means a mental disorder, substance use disorder, or nonsubstance-related disorder.

(F) “Disqualified attorney” means a former attorney who has been disbarred or who has resigned with discipline pending.

(G) “Judicial officer” means any person who is subject to the Code of Judicial Conduct as set forth in the Application section of that code.

(H) “Mental disorder,” “substance use disorder,” and “nonsubstance-related disorder” have the same meanings as in the most recent edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

(I) “Mental illness” has the same meaning as in R.C. 5122.01(A) [Mental Illness Adjudication].

(J) “Misconduct” means any violation by a judicial officer or an attorney of any provision of the oath of office taken upon admission to the practice of law in this state or any violation of the Ohio Rules of Professional Conduct or the Code of Judicial Conduct, disobedience of these rules or of the terms of an order imposing probation or a suspension from the practice of law, or the commission of an illegal act or conviction of a crime that reflects adversely on the lawyers’ honesty or trustworthiness.

(K) “Probable cause” means there is substantial, credible evidence that misconduct has been committed.

(L) “Qualified health care professional” means an individual who is licensed, certified, or otherwise authorized or permitted by law to provide diagnoses and treatment of disorders and who is acting within the scope of his or her practice;

(M) “Qualified chemical dependency professional” means an individual who is licensed, certified, or otherwise authorized or permitted by law to provide diagnoses and treatment of substance use disorders and is acting within the scope of his or her practice.

**PROCEDURAL REGULATIONS OF THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

Reg. 1. Pleadings and Motions.

(A) **Motions.** Within the period of time permitted for an answer to the complaint, the respondent may file any motion appropriate under Civ. R. 12, supported by a brief and affidavits if necessary. A brief and affidavits, if appropriate, in opposition to such motion may be filed within fourteen days after service of such motion, unless a shorter or longer period is ordered by the chair of the Board or a hearing panel. No oral hearing will be granted, and rulings of the Board will be made by the chair or vice-chair of the Board or any commissioner designated by the director of the Board. All motions shall be made in accordance with Gov. Bar R. V and this regulation.

(B) **Extensions of time.** For good cause, the Board chair, or, after appointment of a panel, the chair or judge or lawyer commissioner appointed to the panel may grant extensions of time for the filing of any pleading, motion, brief or affidavit, either before or after the time permitted for filing. No extension of time may be requested or granted to file a consent to discipline agreement beyond the time set forth in Gov. Bar R. V, Section 16.

(C) **Withdrawal of Counsel.** Counsel seeking to withdraw from a pending case in which a hearing has been scheduled shall file a motion to withdraw. In the case of counsel for the respondent or petitioner, the motion shall include a certification that a copy of the motion to withdrawal has been provided to the respondent or petitioner and that withdrawing counsel has complied or will comply with the applicable requirements of Prof. Cond. R. 1.16. The panel chair may conduct a hearing or phone conference prior to ruling on the motion.

(D) **Proof of Service.** Every pleading after the complaint shall show proof of service.

Reg. 2. Miscellaneous Procedures.

(A) Depositions taken in disciplinary proceedings shall be filed with the director as prescribed in Civ. R. 32.

(B) If relator and respondent stipulate to facts, the panel chair or a judge or lawyer commissioner member of the panel may either cancel a hearing and deem the matter submitted in writing or order that a hearing be held with all counsel and the respondent present.

(C) Notwithstanding the agreement of relator and respondent on a stipulated violation or recommended sanction, neither the hearing panel nor the Board is bound by the joint recommendation. The panel retains discretion to make a recommendation to the Board, and the Board retains discretion to make a final recommendation to the Supreme Court on the violation or appropriate sanction.

Reg. 3. Filings; Required Number of Copies; Exhibits; Manner of Service.

(A) All pleadings, motions, briefs, stipulations, consent to discipline agreements, and other documents shall be filed with the director of the Board and contain a certificate of service. The certificate of service shall include a statement that service has been made on the opposing party and the manner of service and shall indicate whether the document has been served on the panel and, if so, the manner of service.

(B) Complaints shall be filed with the Board as required by Gov. Bar R. V. All other documents shall be filed with the Board in the following number:

(1) If no hearing panel has been appointed, the original document and four copies;

(2) If a hearing panel has been appointed and the document has not been served on the panel, the original document and four copies;

(3) If a hearing panel has been appointed and the document has been served on the panel, the original document and one copy.

(C) A party who files or presents exhibits for use at a hearing shall provide or have available sufficient copies for use at the hearing by the opposing party, witnesses, and the hearing panel.

(D) Whenever provision is made for the service of any notice, order, report, or other paper or copy upon any complainant, relator, respondent, petitioner, or other party, in connection with any proceeding under these rules, service may be made upon counsel of record for such complainant, relator, respondent, petitioner, or other party, either personally or by certified mail.

(E) The chair of a hearing panel may order the service of documents on the panel by electronic or other alternative means. Any order of the panel chair shall not relieve a party from filing documents with the Board as contained in this regulation.

Reg. 4. Quorum of Panel or Board.

Except as otherwise provided in Gov. Bar R. V, a majority of the Board or a hearing panel shall constitute a quorum for all purposes, and the action of a majority of those present comprising the quorum shall be the action of the Board or a hearing panel

Reg. 5. Manner of Service on Clerk; Record of Service a Public Record.

All notices shall be served by the director of the Board upon the clerk of the Supreme Court by filing with the clerk a true and attested copy of the notice and any accompanying document and by sending to respondent, by certified mail, postage prepaid, return receipt requested, a like, true, and attested copy, with an endorsement thereon of service, upon the clerk of the Supreme Court, addressed to the respondent at the respondent's last known address. The receipt indicating the certified mail number shall be attached to and made a part of the return of

service of such notice by the director. The panel or Board or court before which there is pending any proceeding in which notice has been given as provided in this section may order a continuance as is necessary to afford the respondent reasonable opportunity to appear and defend. The clerk of the Supreme Court shall keep a record of the day and hour of service upon the clerk of notice and any accompanying document, which shall be a public record in the office of the clerk.

Reg. 6. Issuance of Subpoenas; Foreign Subpoenas.

(A) Subpoenas. A subpoena shall be issued upon application of the special investigator, respondent, or authorized representative of the relator and submission of a praecipe to the director. A notice of subpoena is not required to be issued to the respondent unless probable cause has been found. If probable cause is found, any subpoena previously issued during the investigation into the alleged misconduct shall become public and available for disclosure upon request. A motion to quash a subpoena issued under this section shall be filed with the Board. If the motion to quash is filed prior to the appointment of a hearing panel, the motion shall be ruled upon by the chair or vice-chair of the Board. If a hearing panel has been appointed, the motion to quash shall be ruled on by the chair of the hearing panel.

(B)(1) Subpoena pursuant to law of another jurisdiction. A foreign disciplinary authority, pursuant to the law of that jurisdiction and where the issuance of the subpoena has been duly approved, if such approval is required by the law of that jurisdiction, may request issuance of a subpoena for use in an attorney or judicial discipline or impairment proceeding. The director shall issue a subpoena upon such request as provided in this rule.

(2) A subpoena issued pursuant to this rule may be issued to compel the attendance of witnesses and production of documents in the county where the witness resides, is employed or as otherwise agreed by the witness. Service, enforcement, and challenges to such subpoenas shall be as provided in Gov. Bar R. V and these regulations.

(C) Request for foreign subpoena in aid of proceeding in this jurisdiction. In furtherance of disciplinary or impairment proceedings in this state, a relator or respondent may apply for the issuance of subpoenas in another jurisdiction pursuant to the rules of that jurisdiction. The director may provide assistance to facilitate a request made under this division.

Reg. 7. Board-Appointed Master.

(A) Appointment. The Board may appoint one or more masters to perform duties set forth in Gov. Bar R. V and these regulations. A Board-appointed master shall have formerly served as a judge or attorney commissioner of the Board and shall be registered as active with the Supreme Court. At the request of a hearing panel chair, a master may assume any or all case management responsibilities occurring after the appointment of a hearing panel and before the formal hearing on the complaint, but shall not exercise adjudicatory powers under Gov. Bar R. V.

(B) Compensation. A Board-appointed master shall be entitled to a per diem and be reimbursed for travel on the same basis as commissioners of the Board.

(C) Proceedings and Powers. The order of reference to a master shall be signed by the chair of a hearing panel. The order of reference may specify or limit the master's powers and may direct the master to report only upon particular issues or to perform particular acts. Unless so specified or limited, the master may perform all of the following:

(1) Assist the parties and counsel in making all discovery disclosures including the use of interrogatories, depositions, and requests for admission;

(2) Conduct pre-trials with counsel and supervise the amendment of pleadings, the use of stipulations between the parties, the preparation of witness lists and exhibits;

(3) Rule on all motions and interlocutory matters, after consultation with the panel chair, that occur after the appointment of a hearing panel and before the formal hearing on the complaint;

(4) Fix a date for the formal hearing before the hearing panel after consultation with the panel chair.

(D) Report. The master shall prepare a written report upon the matters submitted to or considered by the master after consultation with the parties and the panel chair. The master shall serve a copy of the report on each party and file the report with the director. The report shall become the order of the Board unless a party files a written objection to the report within ten days of the filing with the Board. All objections shall be decided by the chair of the hearing panel as set forth in Gov. Bar R. V.

Reg. 8. Time Guidelines for Pending Cases.

(A) Pre-hearing Conference. Within forty days of the appointment of a hearing panel, the panel chair shall conduct a pre-hearing conference with the parties and counsel of record. At the discretion of the panel chair, a pre-hearing conference may be held by telephone, and may be continued from day-to-day. The pre-hearing conference shall be conducted to accomplish the following objectives:

(1) Simplification of the issues;

(2) Determine the necessity for any amendment to the pleadings;

(3) Establish a discovery timetable;

(4) Identify anticipated witnesses and the exchange of reports of anticipated expert witnesses;

(5) Identify and arrange for the exchange of copies of anticipated exhibits;

(6) Discuss the possibility of a consent to discipline agreement, obtaining stipulations of fact, and obtaining stipulations regarding the admissibility of exhibits;

(7) Establish a final hearing date;

(8) Discuss any other matters that may expedite the resolution of the case.

(B) Order. Following the pre-hearing conference, the panel chair shall file an order as appropriate in the case. The order may include deadlines for discovery, the exchange of witness lists, submission of stipulations, and a hearing date. The order of the panel chair shall be subject to modification *sua sponte* or for good cause.

(C) Hearing Date. The panel chair shall establish a hearing date in consultation with the parties and other panel members. The hearing date shall be no more than one hundred fifty days following the appointment of the panel. Continuances of the hearing date shall not thereafter be granted due to counsel's or respondent's scheduled appearance before any state court or public agency, except the Supreme Court of Ohio or this Board as set forth in Rule 41(B)(2) of the Rules of Superintendence for the Courts of Ohio.

(D) Submission of Panel Reports.

(1) The report of the panel for all hearings not conducted on an expedited basis shall be submitted to the director within forty days of the filing of the transcript for consideration at the next regularly scheduled meeting of the Board. For good cause shown and at the request of the panel chair, the director may extend the date for the filing of the hearing panel report with the Board.

(2) The panel report should be submitted to the director at least seven days prior to the Board meeting.

(E) Time Guidelines Not Jurisdictional. Failure by the Board to meet the time guidelines set forth in this regulation shall not be grounds for dismissal of the complaint.

Reg. 9. Voluntary Dismissal.

Following the filing of the complaint, the relator may not voluntarily dismiss the complaint without leave of the chair of the hearing panel. A motion to voluntarily dismiss shall be accompanied by a memorandum setting forth the basis for the dismissal and, if required by the panel, be accompanied by supporting affidavits, depositions, or documents. The panel chair may conduct a hearing on the motion to dismiss and may require the testimony of witnesses and production of documents.

Reg. 10-14. [Reserved]

Reg. 15. Advisory Opinions.

(A) Advisory Opinion Committee. There shall be an Advisory Opinion Committee that shall be a standing committee of the Board. Each year, the chair of the Board shall appoint five or more commissioners to serve on the committee and shall designate one of the committee members to serve as chair of the committee. A committee member shall serve a one-year term and may be reappointed to the committee. The committee shall meet at the call of the chair and may meet in person or by telephone conference.

(B)(1) Standards for Issuing Advisory Opinions. The Board may issue nonbinding advisory opinions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary of Ohio, the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, or the Attorney's Oath of Office. Pursuant to R.C. 102.08, the Board may issue an advisory opinion upon the request of a judicial officer, court employee, or judicial candidate regarding the application of R.C. Chapter 102. or R.C. 2921.42 or 2921.43. The following standards shall govern the issuance of advisory opinions:

(a) The question presented shall be prospective or hypothetical in nature and shall not involve completed conduct or questions pending before a court;

(b) The question presented shall be one of broad interest or importance to the Ohio bar or judiciary;

(c) The question presented shall involve the conduct of the person requesting the opinion.

(2) The committee or Board may decline to issue an opinion regarding a question that does not satisfy the standards set forth in this regulation or that is overly broad, lacks sufficient information, or is of narrow interest. The Board staff shall notify the requester of a decision to decline the issuance of an opinion. If an opinion is not issued, the committee or Board may direct the Board staff to provide guidance in a staff letter. The staff letter may be based upon previous opinions of the Board, the views of the committee or the Board, or other relevant information. A staff letter will contain language to indicate that it is a nonbinding staff letter and not an advisory opinion of the Board.

(C) Procedure for Requesting an Advisory Opinion. A request for an advisory opinion shall be submitted in writing to the director. The Board staff will send the requester a written acknowledgment of the request.

(D) Procedure for Preparing and Issuing Advisory Opinions.

(1) Advisory opinion requests will be researched by the Board staff. If a decision is made to issue an opinion, the Board staff will prepare a draft opinion for review by the Advisory Opinion Committee. A draft opinion will be forwarded to the committee for review prior to the next scheduled committee meeting. The committee will review the draft, make comments or

suggestions, and by majority decision approve or disapprove of the draft. The Board staff and committee will complete the process of researching, drafting, and reviewing an opinion as expeditiously as possible, preferably within two to six months after selection of the request.

(2) Each draft opinion approved by the committee will be sent to commissioners for review prior to a Board meeting and placed on the agenda for consideration at that meeting. Upon review, commissioners may direct comments, suggestions, or objections to the Board staff. The Board may vote to adopt or modify the draft opinion or to return the draft opinion to the committee for further review.

(E) Issuance of Advisory Opinions. A copy of an adopted opinion will be issued to the requester. Issued opinions shall not bear the name of the requester and shall not include the request letter. However, the requester's name and the request letter are not private and shall be made available upon request. Copies of issued opinions will be submitted for publication in the ABA/BNA Lawyers' Manual on Professional Conduct, the Ohio State Bar Association Report, and other publications or electronic communications as the Board deems appropriate. Copies of issued opinions will be forwarded to the Law Library of the Supreme Court of Ohio, county law libraries, Office of Disciplinary Counsel, and local and state bar associations with certified grievance committees. In addition, copies of opinions relating to judges will be forwarded to the Ohio Ethics Commission, Ohio Elections Commission, Ohio Judicial Conference, Ohio Judicial College, Secretary of State of Ohio, and the National Center for State Courts Center for Judicial Ethics.

(F) Maintenance of Advisory Opinions.

(1) Each advisory opinion shall be maintained in the Board's offices and posted on the Board's web page.

(2) An advisory opinion that becomes withdrawn, modified, not current, or affected by other significant changes will be marked with an appropriate designation to indicate the status of the opinion.

(3) The designation "Withdrawn" will be used when an opinion has been withdrawn by majority vote of the Board. The designation indicates that an opinion no longer represents the advice of the Board.

(4) The designation "Modified" will be used when an opinion has been modified by majority vote of the Board. The designation indicates that an opinion has been modified by a subsequent opinion.

(5) The designation "Not Current" will be used at the discretion of the Board's attorney staff to indicate that an opinion is not current in its entirety. The designation that an opinion is no longer current in its entirety may be used to indicate a variety of reasons such as subsequent amendments to rules or statutes, or developments in case law.

(6) The designation “CPR Opinion” will be used when an opinion provides guidance under the Ohio Code of Professional Responsibility that is superseded by the Ohio Rules of Professional Conduct, effective February 1, 2007. The designation indicates that the opinion provides guidance regarding the Board’s advice under the superseded Code.

(7) The designation “Former CJC Opinion” will be used when an opinion provides guidance under the former Ohio Code of Judicial Conduct that is superseded by the Ohio Code of Judicial Conduct, effective March 1, 2009. The designation indicates that the opinion provides guidance regarding the Board’s advice under the superseded Code.

(8) Other designations, as needed, may be used by majority vote of the Board

(9) The Advisory Opinion Index will include a status list identifying the opinions and the designations.

Reg. 20. Effective Date.

(A) The Procedural Regulations of the Board of Professional Conduct take effect January 1, 2015.