

## **ARTICLE III. DISCIPLINARY PROCEDURE FOR ATTORNEYS**

**Rule 1. Jurisdiction.** Any attorney admitted to practice law in this State, or any attorney specially admitted by a court of this State for a particular proceeding, is subject to the disciplinary jurisdiction of this Court. Attorneys who have been suspended or disbarred by this Court shall remain subject to the court's disciplinary jurisdiction in proceedings for any misconduct committed while a member of the Bar.

Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt.

**Rule 2. Grounds for discipline.** Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct as adopted and promulgated as a rule of this court, and failure to comply with reasonable orders or requests of Disciplinary Counsel or the Disciplinary Board shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

**Rule 3. Types of discipline.** Misconduct shall be grounds for:

- (a) Disbarment by the Court; or
- (b) Suspension by this Court for a period not exceeding five (5) years; or
- (c) public censure by this Court; or
- (d) an order for restitution, community service, pro bono legal service, or substance-abuse treatment or other counseling.

**Rule 4. Disciplinary Board of this Court.** (a) This Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Rhode Island" (hereinafter referred to as "The Board") which shall consist of eight (8) members of the bar and four (4) members of the general public, who shall not be attorneys or hold public office. The Court shall designate one (1) member of the Board as chairperson and another as vice-chairperson.

(b) The terms of the public members of the Disciplinary Board shall commence on May 1, 1993. Initially, two (2) public members shall be appointed for a term of three (3) years; one (1) public member shall be appointed for a term of two (2) years; and one (1) public member shall be appointed for a term of one (1) year. The terms of present members of the Disciplinary Board at the time of the adoption

of this Rule shall remain in accordance with previous order of this Court. All terms thereafter shall be for three (3) years, and no member shall serve for more than six (6) years.

(c) Seven (7) members shall constitute a quorum. The Board shall act only with the concurrence of not less than seven (7) members, provided, however, that a single attorney Board member or a retired judge or justice of the Supreme, Superior, Family, District or Workers' Compensation Courts drawn from a panel established by this Court, may conduct a formal hearing as provided for in Rule 6(b).

(d) The Board shall have the power and duty:

(1) to consider and cause to be investigated the conduct of any attorney on its own motion or upon complaint in writing by any person or as directed by this Court;

(2) to review the findings and recommendations of the Chief Disciplinary Counsel, hereinafter referred to, with respect to formal charges and to prepare and forward its own findings and recommendations to this Court, which shall review such findings and recommendations on the basis of the record and shall enter an appropriate order disposing of the proceeding;

(3) to consider and cause to be investigated information that an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and to petition this Court for a determination when deemed advisable;

(4) to adopt rules of procedure not inconsistent with these rules and to refer to the Rhode Island Bar Association Committee on Fee Disputes the arbitration of fee disputes, upon complaints of clients against their attorneys which apparently do not involve violations of the Rules of Professional Conduct;

(5) to maintain records of all matters processed and the disposition thereof, subject to the following provisions:

(i) All files relating to a complaint terminated by a dismissal or by dismissal with a letter of suggestion shall be expunged from the files of the Disciplinary Board after the expiration of seven (7) years from the date of the dismissal;

(ii) All files relating to a complaint terminated by a dismissal with a letter of admonition shall be expunged from the files of the Disciplinary Board after the expiration of ten (10) years, so long as there has been no intervening disciplinary action taken with reference to the attorney and there is no complaint then pending against the attorney;

(iii) Upon written application to the Board, for good cause shown and with written notice to the attorney in question, who shall be given an opportunity to be heard, the Office of Disciplinary Counsel may request that records which would

otherwise be expunged under this Rule, be retained for such additional periods of time as the Board deems appropriate. The Office of Disciplinary Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted;

(iv) The term expunge shall mean that all files or other evidence of the existence of the complaint shall be destroyed, except that the Disciplinary Board may keep a docket showing the names of each respondent and complainant, the final disposition, and the date all files relating to the matter were expunged; and,

(v) After a disciplinary file has been expunged, any communication from the Disciplinary Board or Disciplinary Counsel responding to an inquiry regarding the existence of any disciplinary history of an attorney shall not disclose the existence of any expunged record.

(6) to communicate with respondent-attorneys, including calling such attorneys before the Board, for the purpose of clarifying or explaining provisions of the Rules of Professional Conduct and the disciplinary rules of the Supreme Court and to instruct and direct such respondent-attorneys to comply with such provisions and to admonish respondent-attorneys in connection therewith;

(7) To issue letters of reprimand to respondent-attorneys who have been found to have violated the Rules of Professional Conduct, provided however, such letters of reprimand shall not be issued where the respondent-attorney has been admonished by the Board for similar conduct in the past or where the alleged conduct reflects adversely on the attorney's honesty, trustworthiness, or fitness as a lawyer.

**Rule 5. Disciplinary Counsel.** (a) This Court shall appoint a Chief Disciplinary Counsel (hereinafter referred to as "Counsel") and such assistants and staff as may from time to time be required to properly perform the functions hereinafter prescribed.

(b) Counsel shall have the power and duty:

(1) to investigate all matters involving alleged misconduct which come to his/her attention whether by complaint or otherwise;

(2) to recommend to the Board the disposition of all matters involving alleged misconduct by dismissal or the prosecution of formal charges. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended by Counsel until the respondent-attorney shall have been afforded the opportunity to state his/her position with respect to the allegations against him/her;

(3) to prosecute all disciplinary proceedings before the Board;

(4) to appear at hearings before this Court with respect to motions for reinstatement by suspended or disbarred attorneys, to cross-examine witnesses testifying in support of the motion and to marshal available evidence, if any, in opposition thereto;

(5) to take such steps as may be necessary to ascertain and to inform this Court whenever an attorney has been declared incompetent or committed on the grounds of incompetency or disability; and

(6) to petition the court for immediate suspension prior to a hearing pursuant to Rule 6(b) when it is necessary for the public's protection;

(7) to maintain records of all matters processed and the disposition thereof, subject to the following provisions:

(i) All files relating to a complaint terminated by a dismissal or by dismissal with a letter of suggestion shall be expunged from the files of the Disciplinary Counsel after the expiration of seven (7) years from the date of the dismissal;

(ii) All files relating to a complaint terminated by a dismissal with a letter of admonition shall be expunged from the files of the Disciplinary Counsel after the expiration of ten (10) years, so long as there has been no intervening disciplinary action taken with reference to the attorney and there is no complaint then pending against the attorney;

(iii) Upon written application to the Board, for good cause shown and with written notice to the attorney in question, who shall be given an opportunity to be heard, the Office of Disciplinary Counsel may request that records which would otherwise be expunged under this Rule, be retained for such additional periods of time as the Board deems appropriate. The Office of Disciplinary Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted;

(iv) The term expunge shall mean that all files or other evidence of the existence of the complaint shall be destroyed, except that the Disciplinary Counsel may keep a docket showing the names of each respondent and complainant, the final disposition, and the date all files relating to the matter were expunged; and,

(v) After a disciplinary file has been expunged, any communication from the Disciplinary Board or Disciplinary Counsel responding to an inquiry regarding the existence of any disciplinary history of an attorney shall not disclose the existence of any expunged record.

(8) to require a respondent-attorney to undergo a physical or psychiatric examination or evaluation, if counsel has reason to believe that allegations of misconduct against a respondent-attorney are related to substance abuse or mental health problems;

(9) to advise respondent-attorneys of the availability of the Confidential Assistance Committee of the Rhode Island Bar Association and in appropriate instances, to refer respondent-attorneys to that Committee for evaluation by the Employees' Assistance Program.

**Rule 6. Procedure.** (a) *Investigation.* All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Counsel. Upon the conclusion of an investigation, Counsel shall recommend to a screening panel consisting of three (3) members of the Board, the disposition of all matters involving alleged misconduct either by dismissal or by the prosecution of formal charges before the Board. No disposition shall be recommended by Counsel until the Respondent-attorney shall have been afforded the opportunity to state his or her position with respect to the allegations against him or her. The recommended disposition shall be reviewed by a screening panel of the Board which may approve or modify such recommendation. The screening panel will then consider the results of the investigation made by Disciplinary Counsel, including any response made to the complaint by the Respondent-attorney. If the screening panel makes a determination that there is probable cause to believe that the Respondent-attorney is guilty of misconduct, further proceedings shall be brought in accordance with subsection (b). A respondent-attorney may demand as of right that a formal proceeding be instituted against him/her before the Board. In the event of such demand, the matter shall be disposed of in the same manner as any other formal hearing instituted before the Board.

(b) *Formal Hearing.* Formal disciplinary proceedings before the Board shall be instituted by Counsel filing with the Board a petition setting forth with specificity the charges of misconduct. A copy of the petition shall be served upon the respondent-attorney. Within twenty (20) days thereafter, the respondent-attorney shall serve a copy of his or her answer upon Counsel and file the original thereof with the Board. In the event the respondent-attorney fails to file an answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the court to file an answer if such failure was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer, if there are any issues of fact raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to the Board, and Counsel shall serve a notice of hearing upon the respondent-attorney, or his or her counsel, indicating the date and place of the hearing at least fifteen (15) days in advance thereof. The notice of hearing shall advise the respondent-attorney that he or she is

entitled to be represented by counsel to summon and cross-examine witnesses and to present evidence in his or her own behalf.

In the event a division of the Board conducts a formal hearing, it shall receive evidence, make findings of fact and recommendations to the Board for Board action.

The Board shall submit a report to this Court within sixty (60) days after the conclusion of the hearing and submission of briefs, if any, containing its findings and recommendations, together with a record of the proceedings before it.

If after notice of hearing has been served any member of the Board assigned to hear the matter is unable to serve and no other member of the Board is available, a former member of the Board, designated by the Chairperson or Vice Chairperson, is authorized and may sit in his/her stead.

(c) *Annual Report.* The Board shall annually in July report to the Court in writing all matters presented for its consideration during the year ended on the previous December 31.

(d) *Review by this Court.* If the Board determines that a proceeding should be dismissed, or that it should be concluded by public censure, suspension or disbarment, it shall submit its findings and recommendations, together with the entire record, to this Court. This Court shall review the record and enter an appropriate order. Proceedings, if any, before this Court shall be conducted by Counsel.

(e) *Duty to Cooperate.* The failure of an attorney whose conduct is the subject of an investigation authorized by these rules to comply with the reasonable orders and requests of either Counsel or the Board shall constitute unprofessional conduct, and any such failure shall be referred forthwith to this Court for such action as it deems appropriate.

**Rule 7. Immunity.** Communication to the Board, Hearing Panels or Counsel made in good faith, relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness.

Members of the Board, Counsel and staff shall be immune from suit for any conduct in the course of their official duties.

Complaints against members of the Board involving alleged violations of the Rules of Professional Conduct shall be submitted directly to this Court. Complaints against Counsel involving alleged violations of the Rules of Professional Conduct shall be submitted directly to the Board.

**Rule 8. Refusal of complainant to proceed.** Neither unwillingness or neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise or restitution, shall in itself, justify abatement of an investigation into the conduct of an attorney.

**Rule 9. Collateral proceedings.** Processing of complaints involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation shall not be deferred unless the Board in its discretion, for good cause shown, decides otherwise. In the event a deferment of disciplinary investigation or proceeding is authorized by the Board as a result of pending related litigation, the respondent-attorney shall make all reasonable efforts to obtain the prompt trial and disposition of such pending litigation. In the event the respondent-attorney fails to take reasonable steps to assure prompt disposition of the litigation, the investigation and subsequent disciplinary proceedings indicated shall be conducted promptly.

The acquittal of the respondent-attorney on criminal charges or a verdict or judgment in his or her favor in a civil litigation involving substantially similar material allegations shall not in and of itself justify abatement of a disciplinary investigation predicated upon the same material allegations.

**Rule 10. Service of notice.** In the event a respondent-attorney cannot be located and personally served with notices required under these rules, such notices may be served upon the respondent-attorney by addressing them to the address furnished by the respondent-attorney in the last registration statement filed by him or her in accordance with Article IV, Rule 1.

**Rule 11. Subpoena powers.** At any stage of an investigation, Counsel shall have the right to summon witnesses and require production of records by issuance of subpoenas. A respondent-attorney shall have the right to summon witnesses and require production of records before the Board by issuance of subpoenas.

Said subpoenas shall be obtained by filing with the Clerk of this Court a statement calling for the issuance of the subpoena. On the same day that this statement is filed with the Clerk, the party seeking the subpoena shall send by registered or certified mail a copy of the statement to either Counsel or the respondent-attorney, as the case may be. Upon the filing of the statement, the Clerk shall forthwith issue the subpoena, and it shall be served by a duly authorized officer.

Said subpoenas shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these rules, and that it is

regarded as contempt of this Court or grounds for discipline under these rules for a person subpoenaed to breach the confidentiality of the investigation. It shall not be regarded as breach of confidentiality for a person subpoenaed to consult with an attorney.

All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceedings.

Any attack on the validity of a subpoena so issued shall be heard and determined by the Board.

Witnesses before the Board shall be examined under oath or affirmation.

Testimony may be taken by deposition or such other method as may be authorized by the Board if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.

The subpoena and deposition procedure shall be subject of the protective requirements of confidentiality provided in Rule 21.

Any rule or rules of this Court or any statute or statutes providing for discovery are not applicable in this type of proceeding, which proceeding shall be governed by these rules alone.

**Rule 12. Attorneys convicted of crimes.** (a) Upon the filing with this Court of a certified copy of an order demonstrating that an attorney has been convicted of a crime which is punishable by imprisonment for more than one year in this or any other jurisdiction, this Court may direct the respondent-attorney to show cause why he or she should not be suspended during the pendency of any appeal and until the final disposition of any disciplinary proceeding instituted against him or her based upon such conviction.

(b) A certificate of a conviction of an attorney for such a crime shall be conclusive evidence of the conviction of that crime in any disciplinary proceeding instituted against him or her based upon the conviction.

(c) Upon the receipt of a certificate of conviction of an attorney for such a crime, this Court may, in addition to any order of suspension it may enter in accordance with the provisions of (a) above, also refer the matter to the Board for the institution of a formal disciplinary proceeding in which the sole issue to be determined shall be the extent of the discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

(d) Upon receipt of a certificate of a conviction of any attorney for a crime other than a crime referred to in (a) above, this Court shall take such action as it deems warranted.



(e) An attorney suspended under the provisions of (a) above will be reinstated immediately upon the filing with this Court of a certificate demonstrating that the underlying conviction for such a crime has been reversed or vacated, but the reinstatement will not terminate any formal proceeding then pending against the attorney.

(f) The Clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this Court.

(g) Upon being advised that an attorney has been convicted of a crime within this State, Counsel shall determine whether the Clerk of the Court where the conviction occurred has forwarded a certificate to this Court in accordance with the provisions of (f) above. If the certificate has not been forwarded by the Clerk, or if the conviction occurred in another jurisdiction, it shall be the responsibility of Counsel to obtain a certificate of the conviction and to transmit it to this Court.

**Rule 13. Consent to disbarment.** (a) An attorney who is the subject of an investigation into allegations of misconduct on his or her part may consent to disbarment, but only by delivering to the Board an affidavit stating that he or she desires to resign and that:

(1) his or her consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting his or her consent;

(2) he or she is aware that there is a presently pending investigation into allegations that he or she has been guilty of misconduct the nature of which he or she shall specifically set forth;

(3) he or she acknowledges that the material facts upon which the complaint is predicated are true or he or she submits his or her consent because he believes that if charges were predicated upon the misconduct under investigation he or she could not successfully defend himself or herself against them.

(b) Upon receipt of the required affidavit, the Board shall file it with this Court and this Court shall enter an order disbarring the attorney on consent.

(c) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

**Rule 14. Reciprocal discipline.** (a) Upon being disciplined in another jurisdiction, a lawyer admitted to practice in this State shall promptly inform Disciplinary Counsel of the discipline. Upon notification from any source that a

lawyer within the jurisdiction of the Board has been disciplined in another jurisdiction, Counsel shall obtain a certified copy of the disciplinary order and file it with the court.

(b) Upon receipt of a certified copy of an order that an attorney admitted to practice in this state has been disciplined in another jurisdiction, this court shall forthwith issue a notice directed to the respondent-attorney containing:

(1) a copy of said order from the other jurisdiction; and

(2) an order directing that the respondent-attorney inform this Court within thirty (30) days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical discipline in this State would be unwarranted, and the reasons therefor.

Counsel shall cause this notice to be served upon the respondent-attorney.

(c) In the event the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline imposed in this State shall be deferred until such stay expires.

(d) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (a) above, this Court shall impose the identical discipline unless Counsel or the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline is predicated, it clearly appears:

(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not consistently with its duty accept as final the conclusion on that subject; or

(3) that the imposition of the same discipline would result in grave injustice; or

(4) that the misconduct established has been held to warrant substantially different discipline in this State.

Where this Court determines that any of said elements exist, this Court shall enter such order as it deems appropriate.

(e) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

**Rule 15. Disbarred or suspended attorneys.** (a) A disbarred or suspended attorney shall promptly furnish to the Clerk of this Court and to the Disciplinary Counsel the names and addresses of all clients he or she represents in pending matters other than litigation or administrative proceedings. The Clerk shall notify the clients by registered or certified mail, return receipt requested, of the

disciplinary action taken and the consequent inability of the attorney to act in their behalf. The Clerk shall also advise the clients that they may seek legal advice elsewhere.

(b) A disbarred or suspended attorney shall promptly furnish to the Clerk of this Court and to the Disciplinary Counsel the names and addresses of all clients who are involved in pending litigations or administrative proceedings. The Clerk shall notify the clients by registered or certified mail, return receipt requested, of the disciplinary action taken and the consequent inability of the attorney to act in their behalf. The Clerk will also notify the attorney for each adverse party in such matter or proceeding of the other attorney's inability to practice law. The notice given the clients shall advise them of the need for a prompt substitution of another attorney.

(c) Nothing in the above sections shall bar the disciplined attorney from communicating with his or her clients in an attempt to refer them to another attorney.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the Court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(d) Orders imposing suspension or disbarment shall be effective immediately unless this Court otherwise directs. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date, he or she may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(e) Within ten (10) days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this Court an affidavit showing:

(1) that he or she has fully complied with the provisions of the order and with these rules;

(2) all other state, federal and administrative jurisdictions to which he or she is admitted to practice; and

(3) that he or she has served a copy of such affidavit upon Counsel.

Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him or her.

(f) If the disbarred or suspended attorney fails to comply with the foregoing provisions of this rule, this Court, upon expiration of the 10-day period for filing an affidavit of compliance, will appoint an attorney or attorneys to inventory the files of the disbarred or suspended attorney and to take such action as seems indicated to protect the interests of the clients of the disbarred or suspended attorney.

(g) The Clerk of this Court shall cause a notice of the suspension or disbarment to be published in the Rhode Island Bar Journal and a newspaper of general circulation in the county in which the disciplined attorney maintained his or her practice.

(h) The Clerk of this Court shall promptly transmit a certified copy of the order of suspension or disbarment to all courts within this State. This Court shall make such further order as it deems necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(i) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these rules, so that, upon any subsequent proceeding instituted by or against him or her, proof of compliance with these rules and with the disbarment or suspension order will be available. Proof of compliance with these rules and the disbarment or suspension order shall be a condition precedent to any petition for reinstatement.

**Rule 16. Reinstatement.** (a) No attorney suspended or disbarred may resume practice until reinstated by order of this Court as provided in this rule.

(b) A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

(c) Petitions for reinstatement by disbarred or suspended attorneys shall be filed with this Court and served upon Counsel at least sixty (60) days prior to the date of hearing. Petitions for reinstatement shall include a five hundred (\$500) dollar filing fee payable to the Clerk of this Court. This Court shall promptly schedule a hearing at which the respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this State and that his or her resumption of the practice of law within the State will be neither detrimental to the integrity and standing of the Bar or the administration of justice

nor subversive of the public interest. Respondent-attorney shall file a reinstatement questionnaire with Counsel at the same time as the filing of the petition.

(d) No attorney who has been suspended for more than one (1) year or has been disbarred shall be eligible for reinstatement unless he or she shall have successfully passed the Multi-state Professional Responsibility Examination within thirty (30) days prior to his or her filing of the petition for reinstatement. The attorney applying for reinstatement shall pay all expenses of the examination.

(e) This Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the respondent-attorney.

**Rule 17. Incompetency or incapacity.** (a) Where an attorney has been judicially declared incompetent or committed on the grounds of incompetency, this Court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of this Court. A copy of such order shall be served upon such attorney, his or her guardian and/or the director of the institution to which he or she has been committed in such manner as this Court may direct.

(b) Whenever the Board shall petition this Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction of drugs or intoxicants, this Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as this Court shall designate. If, upon due consideration of the matter, this Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him or her to inactive status on the ground of such incapacity for an indefinite period and until the further order of this Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

This Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent-attorney if he or she is without adequate representation.

(c) If, during the course of a disciplinary proceeding the respondent-attorney contends that he or she is suffering from an incapacity by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent-attorney to adequately defend himself or herself, this Court thereupon shall enter an order immediately transferring the respondent-attorney to inactive status until a determination is made of the

respondent-attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions (b) above.

If this Court shall determine that the respondent-attorney is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent-attorney.

(d) The Clerk of this Court shall cause a notice of transfer to inactive status to be published in the Rhode Island Bar Journal and a newspaper of general circulation in the county in which the incapacitated attorney maintained his or her practice.

(e) The Clerk of this Court shall promptly transmit a certified copy of the order of transfer to inactive status to all courts within the State and shall request such action as this Court may direct under the provisions of Rule 18 in order to protect the interests of the incapacitated attorney and his or her clients.

(f) No attorney transferred to inactive status under the provision of this rule may resume active status until reinstated by order of this Court. Any attorney transferred to inactive status under the provision of this rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as this Court may direct in the order transferring the respondent-attorney to inactive status or any modification thereof. Such application shall be granted by this Court upon a showing by clear and convincing evidence that the attorney's incapacity has been removed and he or she is fit to resume the practice of law. Upon such application, this Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's incapacity has been removed, including a direction for an examination of the attorney by such qualified medical experts as this Court shall designate. In its discretion, this Court may direct that the expense of such an examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above and, thereafter, in proceedings duly taken, he or she has been judicially declared to be competent, this Court may direct his or her reinstatement to active status upon such terms as are deemed proper and advisable.

(g) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of incapacity shall be deemed to constitute a waiver of a doctor/patient privilege, if any, with respect to any treatment of the attorney during the period of his or her incapacity. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his or her transfer to inactive status and he or she shall furnish to this Court

written consent to each to divulge such information and records as requested by court-appointed medical experts. In a proceeding seeking an order of reinstatement to active status under this rule, the burden of proof shall rest with the respondent-attorney.

(h) The Clerk of the Court of any court within the State in which an attorney has been judicially declared incompetent or has been committed on the grounds of incompetency shall, within ten (10) days of said decree, transmit a certificate thereof to this Court.

**Rule 18. Appointment of substitute counsel.** (a) Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, and no partner, or other responsible party capable of conducting the attorney's affairs is known to exist, this Court upon proper proof of the fact, will appoint an attorney or attorneys to inventory the files of the inactive, missing or deceased attorney and to take such action as seems indicated to protect the interests of the inactive, missing or deceased attorney and his or her clients.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of this Court.

**Rule 19. Record keeping.** (a) Any of the records required to be kept by the provisions of Rules 1.15 and 1.16 of the Rules of Professional Conduct, shall be produced at the discretion of this Court before any person designated by it in connection with a complaint or investigation pending before the Board and/or Counsel. When so produced, all such records shall remain confidential, except for the purposes of the particular proceeding, and their contents shall not be disclosed by anyone in such a way as to violate the attorney/client relationship.

(b) Any attorney who does not maintain and keep or cause to be maintained and kept the accounts and records as specified and required by the provisions of Rules 1.15 and 1.16 of the Rules of Professional Conduct or who does not produce such records pursuant to the provisions of paragraph (a) of this rule, shall be subject to the disciplinary proceedings.

**Rule 20. Expenses.** Any expenses or costs incurred by the members of the Board, Counsel or his or her assistants or staff, in their discharging their duties under this rule shall be paid by the Clerk on order of this Court.

**Rule 21. Confidentiality.** All proceedings involving allegations of misconduct by or incapacity of an attorney shall be kept confidential until and unless a

probable cause determination has been made by the Board, except where the proceeding is predicated upon a conviction of the respondent-attorney for a crime. Upon the determination of probable cause, the petition for formal disciplinary action and the attorney's written answer shall be public documents, provided, however, that upon motion made by either Chief Disciplinary Counsel or respondent-attorney for a protective order, the record of proceedings may be sealed to protect the identity of the complainant. This provision shall not be construed to deny access to relevant information to law enforcement agencies, authorized agencies investigating the qualifications of judicial candidates, for admission to practice or for government employment; provided, however, the fact of any dismissed complaint shall be deemed irrelevant to any such investigation. The Clerk of the Court shall transmit notice of all discipline imposed by this Court, or transfers to inactive status due to incapacity, to the National Discipline Data Bank maintained by the American Bar Association.

**Rule 22. Appointment of attorney by the courts.** Upon representation in writing by any person to the Presiding Justice of the Superior Court, the Chief Judge of either the Family or District Courts of his or her inability to obtain counsel in connection with a claim or complaint against an attorney authorized to practice law before such court arising out of said attorney's practice of law, the Presiding Justice or the Chief Judge shall appoint an attorney to represent such person at the latter's cost and expense. In the case of indigent complainants, the Presiding Justice of the Superior Court or the Chief Judge may refer the complaint to an appropriate agency, or, in their discretion, appoint an attorney for the complainant, to be compensated by such agency to the extent possible, or to serve without compensation. Any attorney so appointed shall not withdraw from such representation without the permission of the appointing authority.

**Rule 23. Resignation.** Any individual who desires to resign from membership in the Bar of this State shall file a motion requesting the same with the Clerk of the Court. If the Clerk reports that the movant is a member in good standing and that there are no complaints pending, the motion will be granted as a matter of course.

Anyone whose resignation is accepted shall remain subject to the Supreme Court's disciplinary jurisdiction in proceedings for any misconduct committed while a member of the Bar.

All resignees shall, for a period of five (5) years following the acceptance of their resignation, file the statements of registration presently required by Article IV, Rule 1 of attorneys who have discontinued the practice of law in this jurisdiction.



If a resigned member desires reinstatement, he or she shall proceed as provided for in Rule 16.

**Rule 24. Proceedings in cases involving conviction of crime.** An attorney admitted to practice in this State who is convicted in a court of record of a crime which is punishable by imprisonment for more than one (1) year in this or any other jurisdiction may, in lieu of or in advance of proceedings pursuant to Rule 6, be ordered to appear before the court to show cause why his or her admission to the bar should not be revoked or suspended.