S.J.C. RULE 4:01 – PROPOSED CHANGES REDLINED (UNCHANGED SECTIONS DELETED)

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Section 2. Venue of Disciplinary Hearings.

Unless the Board Chair or the Chair's designee specifies a different venue, a hearing on a petition for discipline shall take place at the offices of the Board.

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Deleted: (1) The following disciplinary districts are established:¶
(a) District 1 - the county of Suffolk.¶
(b) District 2 - the counties of Essex and Middlesex.¶
(c) District 3 - the counties of Norfolk and Plymouth.¶
(d) District 4 - the county of Worcester.¶
(e) District 5 - the counties of Barnstable, Bristol, Dukes County, and Nantucket.¶
(f) District 6 - the counties of Berkshire, Franklin, Hampden, and Hampshire.¶
(2) Generally, in the first instance, the disciplinary district in which the hearing of charges against a lawyer shall take place shall be that in which the lawyer maintains an office, or the principal office if the lawyer has more than one, or, if the lawyer does not maintain an office in this Commonwealth, in the district in which any conduct under investigation occurred. If the conduct under investigation occurred outside the Commonwealth, the chair of the Board of Bar Overseers (Board) (see section 5) shall designate the district for such purpose. In any instance, however, this court, or a justice, or the Board Chair may direct that any matter of discipline shall be dealt with in any district.

Section 3. Grounds for Discipline.

(1) Each act or omission by a lawyer, individually or in concert with any other person or persons, which violates any of the Massachusetts Rules of Professional Conduct (see Rule 3:07), shall constitute misconduct and shall be grounds for appropriate discipline even if the act or omission did not occur in the course of a lawyer-client relationship or in connection with proceedings in a court. A violation of this Chapter 4 by a lawyer, including without limitation the failure without good cause (a) to comply with a subpoena validly issued under section 22 of this rule; (b) to respond to requests for information by the Bar Counsel or the Board made in the course of the processing of a complaint; (c) to comply with procedures of the Board consistent herewith for the processing of a petition for discipline or for the imposition of public reprimand or admonition (see section 4 of this rule); or (d) to comply with a condition of probation or diversion to an alternative educational, remedial, or rehabilitative program shall constitute misconduct and shall be grounds for appropriate discipline.

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Section 5. The Board of Bar Overseers.

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(3) The Board of Bar Overseers

(a) may consider and investigate the conduct of any lawyer within this court's jurisdiction either on its own motion or upon complaint by any person;

(b) shall appoint a chief Bar Counsel (the Bar Counsel) who shall, with the concurrence of the Board, hire such assistants to the Bar Counsel as may be required, all to serve at the pleasure of the court, the appointment of the Bar Counsel to be with the approval of the court; and may employ and compensate such other persons as may be required or appropriate in the performance of the Board's duties;

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(c) shall appoint one or more hearing committees, each committee to consist of three or more individuals, to perform such functions as may be assigned by the Board with reference to charges of misconduct; provided, however, that each hearing committee shall be chaired by a lawyer and no hearing committee shall consist of more than one nonlawyer;

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(d) may appoint a special hearing officer, who shall be a lawyer, to hear charges of misconduct when, in view of the anticipated length of the hearing or for other reasons, the Board determines that a speedy and just disposition would be better accomplished by such appointment than by referring the matter to a hearing committee or panel of the Board;

(e) may, through its Chair, refer charges to an appropriate hearing committee, to a special hearing officer, or to a hearing panel of the Board;

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(f) shall review, and may revise, the findings of fact, conclusions of law, and recommendations of hearing committees, special hearing officers, or hearing panels. The Board in its discretion may refer an appeal taken pursuant to section 8(5) of this rule to a panel of its own members for its recommendation;

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(g) may issue a public reprimand to lawyers for misconduct, and in any case where disbarment or suspension of a lawyer is to be sought or recommended, or where the Bar Counsel or the Respondent-lawyer appeals pursuant to section 8(6) of this rule, shall file an information with this court;

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(h) with the approval of this court, may adopt and publish rules of procedure and other regulations not inconsistent with this rule;

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(i) may lease office space and make contracts and arrangements for the performance of administrative and similar services required or appropriate in the performance of the Board's duties;

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(j) may, but need not, consult with local bar associations in the several counties and their officers concerning any appointments which it is herein authorized to make;

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(k) may invest or direct the investment of the fees or any portion thereof, paid pursuant to Rule 4:03, section (1), and may cause funds to be deposited in any bank, banking institution, savings bank, or federally insured savings and

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loan association in this Commonwealth provided, however, that the Board shall have no obligation to cause these fees or any portion thereof to be invested; and

(l) may perform other acts necessary or proper in the performance of the Board's duties.

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Section 6. Hearing Committees.

(4) If a special hearing officer is appointed to hear disciplinary charges, that officer shall perform all the duties imposed upon a hearing committee by this rule or by the rules of the Board. Unless otherwise provided herein, the words "hearing committee" used throughout this rule shall also mean a special hearing officer or hearing panel.

Section 7. The Bar Counsel.

The Bar Counsel

(1) shall investigate all matters involving alleged misconduct by a lawyer coming to his or her attention from any source, except matters involving alleged misconduct by the Bar Counsel, assistant Bar Counsel, or any member of the Board, which shall be forwarded to the Board for investigation and disposition, provided that Bar Counsel need not entertain any allegation that Bar Counsel in his or her discretion determines to be frivolous, to fall outside the Board's jurisdiction, or to involve conduct that does not warrant further action;

(2) shall dispose of all matters involving alleged misconduct by a lawyer in accordance with this rule and any rules and regulations issued by the Board for his or her guidance which may provide

(a) that Bar Counsel need not pursue or may close a complaint whenever the matter complained of is frivolous, falls outside the jurisdiction of the Board, or involves allegations of misconduct that do not warrant further action,

(b) for adjustment of complaints found by the Bar Counsel to be of a minor character by informal conference, admonition, or by diversion to an alternative educational, remedial, or rehabilitative program, and

(c) for disposition by recommending to the Board the institution of formal proceedings in which the Bar Counsel seeks public discipline,

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but, except as to a complaint that is closed by Bar Counsel or that Bar Counsel determines need not be pursued, no disposition shall be recommended or undertaken by the Bar Counsel until the accused lawyer shall have been afforded opportunity to state his or her position with respect to the allegations against him or her;

(3) shall prosecute all disciplinary proceedings before hearing committees, special hearing officers, the Board, and this court;

(4) shall appear, with full rights to participate as a party, at hearings conducted with respect to petitions for reinstatement by suspended or disbarred lawyers, lawyers who have resigned, or lawyers on disability inactive status;

(5) shall maintain permanent records of all matters presented to him or her and the disposition thereof, except that (a) the Board may provide by rule for the expunction of the records of a complaint against a lawyer which has been docketed solely on account of a report made by a financial institution that has dishonored an instrument presented against a lawyer's trust account when the instrument was dishonored solely due to the error of the financial institution, and (b) the Bar Counsel shall destroy and expunge the records of a complaint against a lawyer which has been closed and not subsequently reopened within six years of the date of closing unless a complaint has been filed in the intervening six-year period. In the event a complaint is so filed or reopened, the records shall not be destroyed and expunged until the expiration of six years from the date on which all complaints have been closed and not reopened and all complaints have been dismissed and not reopened;

(6) shall, with the concurrence of the Board, hire such assistants to the Bar Counsel as may be required; and

(7) may delegate any duties or functions to a duly appointed assistant acting under his or her general supervision.

Section 8. Procedure.

(1) **Investigation**. In accordance with any rules and regulations of the Board, investigations (whether upon complaint or otherwise) shall be conducted by the Bar Counsel, except as otherwise provided by section 7(1) of this rule. Following completion of any investigation, or of a determination pursuant to section 7(1) that an investigation is not warranted, the Bar Counsel shall take further action, which may include, among others,

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(a) closing, or declining to pursue a complaint and informing the complainant of the complainant's right to request review by a member of the Board;

(b) closing a matter after adjustment, informal conference, or diversion to an alternative educational, remedial, or rehabilitative program;

(c) recommending to the Board that

(i) an admonition of the lawyer be administered;

(ii) formal proceedings be instituted; or

(iii) public discipline be imposed by agreement.

Except in the case of a recommendation that public discipline be imposed by agreement, a designated Board member may approve, reject, or modify the recommended action, but the Bar Counsel may appeal to the Board Chair from any modification or rejection of a recommendation that an admonition be administered, or that formal proceedings be instituted. The Board Chair may approve or modify the recommended action. A recommendation that formal discipline be imposed by agreement shall be submitted directly to the full Board.

(2) **Admonition**.

(a) On appeal by Bar Counsel pursuant to subsection (1), the decision of the Board Chair to approve, modify, or reject the recommendation of an admonition shall be final.

(b) If an admonition is approved by either the designated Board member or the Board Chair on appeal, the Bar Counsel shall make service of the admonition on the Respondent-lawyer together with a summary of the basis for the admonition. Bar Counsel shall also provide written notice to the Respondent-lawyer of the right to demand in writing within fourteen days of the date of service that the admonition be vacated and a hearing provided; the requirement that the Respondent-lawyer submit with the demand a written statement of objections to the factual allegations and disciplinary violations set forth in the summary and all matters in mitigation; that failure of the Respondent-lawyer to demand within fourteen days after service that the admonition be vacated and to submit a statement of objections constitutes consent to the admonition; and that failure to set forth matters in mitigation constitutes a waiver of the right to present evidence in mitigation at the hearing.

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(c) In the event of a demand that the admonition be vacated, the matter shall be disposed of in accordance with the procedure set forth in section 8(4) for expedited hearings.

(d) Eight years after the administration of an admonition, it shall be vacated, and the complaint which gave rise to it dismissed, unless during such period another complaint has resulted in the imposition of discipline or is then pending.

(3) **Formal Proceedings**.

(a) As to matters for which formal proceedings have been approved pursuant to section 8(1) of this rule, disciplinary proceedings shall be instituted by the Bar Counsel's filing a petition for discipline with the Board setting forth specific charges of alleged misconduct. A copy of the petition shall be served, together with a notice from the Board, setting a time for answer which shall not be less than twenty days after such service upon the Respondent-lawyer and advising the Respondent-lawyer that the failure to file an answer shall be grounds for administrative suspension pursuant to section 3(2) of this rule. The Respondent-lawyer shall file his or her answer with the Board and serve a copy thereof on the Bar Counsel. In the event the Respondent-lawyer fails to file a timely answer to the petition, the charges shall be deemed admitted. Averments in the petition are admitted when not denied in the answer.

(b) The matter shall be assigned to a hearing committee, to a special hearing officer, or to the Board or a panel of the Board, and the Board shall give notice to the Bar Counsel, and to the Respondent-lawyer's counsel, if any, and, if not, to the Respondent-lawyer of the date and place set for hearing. The notice of hearing shall be served at least fifteen days in advance thereof. The notice shall advise the Respondent-lawyer that the failure to appear for hearing will be grounds for administrative suspension pursuant to section 3(2) of this rule.

(c) In the event the Respondent-lawyer files an answer admitting the charges and does not request the opportunity to be heard in mitigation, the Bar Counsel and the Respondent-lawyer may jointly recommend to the Board that the Respondent-lawyer receive a public reprimand or a suspension. If the Board accepts a joint recommendation for a public reprimand, it shall issue such reprimand. If the Board accepts a joint recommendation for suspension, the Board shall file with the clerk of this court for Suffolk County an Information, together with the record of its proceedings. If the parties do not make such a joint recommendation, or if the Board rejects such recommendation, the matter shall be assigned to an appropriate hearing committee, to a special hearing officer, or to the Board or a

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panel of the Board, for hearing. A tie vote of the Board on such a recommendation shall constitute a rejection of the recommendation.

(d) The hearing committee, special hearing officer, or panel of the Board shall file promptly with the Board a written report containing its findings of fact, conclusions of law, and recommendations, together with a record of the proceedings before it.

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(4) **Expedited Hearing**

(a) When the Respondent-lawyer has requested a hearing within fourteen days of service of an admonition in accordance with the requirements of section 8(2) of this rule, Bar Counsel shall file the admonition summary with the Board, along with the Respondent-lawyer's demand for hearing and statement of objections and matters in mitigation, if any, and the matter shall be assigned to a special hearing officer. After hearing, the special hearing officer shall file with the Board a report containing his or her written findings of fact and conclusions of law, and shall recommend that: (1) the Respondent-lawyer receive an admonition, (2) the charges be dismissed, or (3) the matter warrants a more substantial sanction than admonition and should be remanded for formal proceedings in accordance with section 8(3) of this rule.

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(b) Respondent-lawyer and Bar Counsel shall have the right to seek review by the Board of the decision by the special hearing officer in accordance with the procedure set forth in subsection (5)(a) of this rule, but any such review shall be on the briefs only and there shall be no oral argument. In the event the Board determines that the matter shall be remanded for formal proceedings, it shall assign the matter to a hearing committee or special hearing officer other than the one who heard the case initially. The Board's decision shall otherwise be final and there shall be no right by either Bar Counsel or the Respondent-lawyer to demand after conclusion of an expedited hearing that an Information be filed.

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(5) **Review by the Board**

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(a) Upon receipt of a hearing committee's, special hearing officer's, or hearing panel's report after formal proceedings, if there is objection by the Respondent-lawyer or by the Bar Counsel to the findings and recommendations, the Board shall set dates for submission of briefs and for any further hearing which the Board in its discretion deems necessary. The Board shall review, and may revise, the findings of fact, conclusions of law and recommendation of the hearing committee, special hearing officer, or hearing panel, paying due respect to the role

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of the hearing committee, the special hearing officer, or the panel as the sole judge of the credibility of the testimony presented at the hearing.

(b) In the event that the Board determines that the proceedings should be dismissed, it shall so notify the Respondent-lawyer.

(c) In the event that the Board determines that the proceedings should be concluded by admonition or public reprimand, it shall so notify the Respondent-lawyer.

(6) **Review by the Supreme Judicial Court.** The Board shall file an Information whenever it shall determine that formal proceedings should be concluded by suspension or disbarment or whenever either the Bar Counsel or the Respondent-lawyer objects to having formal proceedings concluded by dismissal, admonition or by public reprimand, by filing a written demand with the Board for the filing of an Information within twenty days after the date of the notice of the Board's action, which time limit shall be jurisdictional. The subsidiary facts found by the Board and contained in its report filed with the Information shall be upheld if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties.

(7) **Disbarment by Consent.** A lawyer accused of professional misconduct who does not wish to contest the charges may waive the foregoing provisions of this section and consent to the entry of a judgment of disbarment. Upon satisfying itself that the lawyer has given such consent freely and voluntarily, with full awareness of the implications of consenting to disbarment, and has acknowledged under oath that the material facts upon which the charges are based are true or can be proved by a preponderance of the evidence, the court may enter a judgment disbarring the lawyer from the practice of law.

Section 11. Matters Involving Related Pending Civil, Criminal, or Administrative Proceedings.

The investigation or prosecution of complaints involving material allegations which are substantially similar to the material allegations of pending criminal, civil, administrative, or bar disciplinary proceedings in this or another jurisdiction shall not be deferred unless the Board or a single member designated by the Chair, in its discretion, or the court, for good cause shown, shall authorize such deferment, as to which either the court or the Board may impose conditions.

The acquittal of the Respondent-lawyer on criminal charges, or a verdict, judgment, or ruling in the lawyer's favor in civil, administrative, or bar disciplinary proceedings shall not

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require abatement of a disciplinary investigation predicated upon the same or substantially similar material allegations.

Section 17. Action by Attorneys after Disbarment, Suspension, Resignation or Transfer to Disability Inactive Status.

(7) Except as provided in section 18(5) of this rule, no lawyer who is disbarred or suspended, or who has resigned or been placed on disability inactive status under the provisions of this rule shall engage in legal or paralegal work, and no lawyer or law firm shall knowingly employ or otherwise engage, directly or indirectly, in any capacity, a person who is suspended or disbarred by any court or has resigned due to allegations of misconduct or who has been placed on disability inactive status.

(8) Any lawyer who is disbarred, suspended for a definite or an indefinite period, or who has resigned and who is found by the court to have violated the provisions of this rule by engaging in legal or unauthorized paralegal work prior to reinstatement under this rule may not be reinstated until after the expiration of a specified term determined by the court after a finding that the lawyer has violated the provisions of this rule. A lawyer on disability inactive status who knowingly violates the provisions of this rule by engaging in legal or paralegal work shall be removed from disability inactive status and temporarily suspended pending the outcome of the disciplinary investigation and proceedings.

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Section 18. Reinstatement.

(1) Eligibility for Reinstatement -- Short-term suspensions.

(a) A lawyer who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the court and serving upon the Bar Counsel an affidavit stating that the lawyer (i) has fully complied with the requirements of the suspension order, (ii) has paid any required fees and costs, and (iii) has repaid the Clients' Security Board any funds awarded on account of the lawyer's misconduct.

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(b) A lawyer who has been suspended for more than six months but not more than one year pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the court and serving upon the Bar Counsel an affidavit stating that the lawyer (i) has fully complied with the requirements of the suspension order, (ii) has taken the Multi-State Professional Responsibility Examination during the period of suspension and received a passing grade as established by the Board of Bar Examiners, (iii) has paid any required fees and costs, and (iv) has

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repaid the Clients' Security Board any funds awarded on account of the lawyer's misconduct.

(c) Reinstatement under this subsection (1) will be effective automatically ten days after the filing of the affidavit unless the Bar Counsel, prior to the expiration of the ten-day period, files a notice of objections with the court. In such instances, the court shall hold a hearing to determine if the filing of a petition for reinstatement and a reinstatement hearing as provided elsewhere in this section 18 shall be required.

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(d) The right to automatic reinstatement under this subsection (1) shall not apply to any lawyer who fails to file the required affidavit within six months after the original term of suspension has expired. In such a case the lawyer must file a petition for reinstatement under paragraph (2) of this section.

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(2) Eligibility for Reinstatement -- Disbarment, Resignation, and Long-term Suspensions.

(a) Except as the court by order may direct, a lawyer who has been disbarred, or whose resignation has been allowed under section 15 of this rule, may not petition for reinstatement until three months prior to the expiration of at least eight years from the effective date of the order of disbarment or allowance of resignation.

(b) Except as the court by order may direct, a lawyer who has been suspended for an indefinite period may not petition for reinstatement until the expiration of at least three months prior to five years from the effective date of the order of suspension.

(c) Except as the court by order may direct, a lawyer who has been suspended for a specific period of more than one year may not petition for reinstatement until three months prior to the expiration of the period specified in the order of suspension.

(3) Employment as paralegal.

At any time after the expiration of the period of suspension specified in an order of suspension, or after the expiration of four years in a case in which an indefinite suspension has been ordered, or after the expiration of seven years in a case in which disbarment has been ordered or a resignation has been allowed under section 15 of this rule, a lawyer may move for leave to engage in employment as a paralegal. When the term of suspension or disbarment or resignation has been extended pursuant to the provisions of section 17(8) of this rule, the lawyer may not petition to be employed as a paralegal until the expiration of the extended term. The court may allow such motion subject to whatever conditions it deems necessary to protect the public interest, the integrity and standing of the bar, and the administration of justice.

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(4) Petitions for Reinstatement.

Petitions for reinstatement required under this section 18 and those required under section 13 of this rule shall be filed with the clerk of this court for Suffolk County and

(a) shall state whether the petitioner has complied with all the terms and conditions of the order imposing suspension or disbarment, accepting a resignation, or placing the petitioner on disability inactive status, as the case may be;

(b) shall state whether the petitioner has paid any costs assessed by the court under section 23 of this rule;

(c) shall state the extent to which the petitioner has made restitution to, or otherwise made whole, all clients or others injured by the petitioner's misconduct;

(d) shall state whether the petitioner has repaid the Clients' Security Board any funds awarded on account of the petitioner's misconduct;

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(e) shall state that the petitioner has taken the Multi-State Professional Responsibility Examination after entry of the order of suspension, disbarment, or acceptance of resignation, and has received a passing grade as established by the Board of Bar Examiners;

(f) shall state that the petitioner has posted with the Board any bond it has required under paragraph 6 of this section 18; and

(g) shall state that the petitioner has filed with the Board and served upon the Bar Counsel copies of the petition and the completed questionnaire required by the Board under its rules.

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(5) Procedure on Petitions for Reinstatement.

The clerk shall transmit a copy of the petition for reinstatement to the Board within three days after filing. Except with the written consent of the Board or the Bar Counsel, no hearing upon the merits of such a petition shall be held prior to the expiration of the full term of suspension, indefinite suspension, disbarment, or resignation pursuant to section 15 of this rule and in no event earlier than sixty days after transmittal of the petition to the Board or such further time as the court may allow to permit reasonable consideration of the petition by the Board. Upon receipt of such a petition the Board may hear the petition itself or may refer it to an appropriate hearing committee, to a special hearing officer, or to a panel of the Board designated by the Chair. On any petition the Board, the hearing committee, special hearing officer, or panel shall promptly hear the petitioner who shall have the burden of demonstrating that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest. On any petition referred, the hearing committee, special hearing officer, or panel shall

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transmit to the Board its findings and recommendations, together with any record. The Board shall file the Board's recommendations and findings with the court, together with any record. The subsidiary facts found by the Board shall be upheld if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties.

(6) Costs and Expenses.

The court in its discretion may direct that the petitioning lawyer pay all necessary expenses incurred in connection with a petition for reinstatement, and the Board may require the posting of a reasonable bond to cover such expenses before acting on any petition assigned for hearing under this section 18.

(7) Waiver of Hearing.

The court may on motion of the Bar Counsel assented to by the Board and the petitioner waive hearing under this section and allow the petition for reinstatement.

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(8) Further Petitions for Reinstatement.

Except as the court by order may direct, no lawyer shall be permitted to reapply for reinstatement or readmission within one year following the final disposition of an adverse judgment upon a petition for reinstatement or readmission.