

**BOARD OF BAR OVERSEERS RULES – PROPOSED CHANGES
REDLINED (UNCHANGED SECTIONS DELETED)**

Section 1.2 Definitions

Subject to additional definitions contained in subsequent provisions of these Rules, the following words and phrases shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

ADMINISTRATOR: The Administrator as established by Section 5.5 of these Board Rules.

BAR COUNSEL: Bar Counsel or Bar Counsel's designee.

BOARD: The Board of Bar Overseers as appointed from time to time by the Supreme Judicial Court.

BOARD CHAIR: The Chair of the Board of Bar Overseers.

BOARD RULES: The provisions of the Rules of the Board of Bar Overseers of the Commonwealth of Massachusetts. Also referred to as "these Rules."

CHARGING MEMORANDUM: A confidential memorandum prepared by Bar Counsel solely for the consideration of a Reviewing Board Member when discipline is recommended which describes the investigation undertaken, the disciplinary charges to be brought, the facts uncovered by the investigation which support the charges, the Respondent's disciplinary history, if any, and Bar Counsel's reasons for recommending that discipline be imposed.

COMPLAINANT: Any person who has filed a ~~grievance or formal~~ complaint.

~~COMPLAINT: As used in Supreme Judicial Court Rule 4:01 shall mean, for purposes of these Rules, a grievance or formal complaint. A statement of alleged misconduct of or request for investigation filed with the Board or Bar Counsel pursuant to Sections 2.1 through 2.4 of these Rules.~~

COURT: Supreme Judicial Court of the Commonwealth of Massachusetts.

~~DISCIPLINARY DISTRICT: One of the six districts into which this Commonwealth is divided for disciplinary purposes as set forth in Section 2 of S.J.C. Rule 4:01.~~

~~DISCIPLINARY RULES: S.J.C. Rules 3:07, 3:08 and Chapter 4.~~

~~EXPEDITED HEARING: A proceeding under section 8(4) of S.J.C. Rule 4:01 following a lawyer's rejection of an admonition.~~

~~FORMAL CHARGES: Charges filed pursuant to Chapter 3 of these Rules in which Bar Counsel seeks public discipline.~~

~~FORMAL COMPLAINT: A grievance that has been docketed as a formal complaint pursuant to Section 2.4 of these Rules.~~

FORMAL PROCEEDING: A proceeding subject to Chapter 3 of these Board Rules in which Bar Counsel seeks public discipline or initiated after an expedited hearing resulting in a recommendation for public discipline.

~~GRIEVANCE: A statement of alleged misconduct or request for investigation filed with the Board or Bar Counsel pursuant to Sections 2.1 through 2.4 of these Rules.~~

HEARING COMMITTEE: A hearing committee appointed by the Board under section 5(3)(c) of S.J.C. Rule 4:01. Unless otherwise provided herein, the words "hearing committee" used throughout this rule shall also mean a hearing panel of the Board or a special hearing officer.

INFORMATION: Proceedings filed by the Board in the Supreme Judicial Court in any case where disbarment or suspension of a lawyer is sought or recommended or when a lawyer or Bar Counsel has appealed from a Board decision to administer a public reprimand or ~~admonition or~~ to dismiss a case or to administer an admonition after formal proceedings.

INVESTIGATION: Inquiry into facts under the direction of Bar Counsel or the Board with respect to alleged misconduct or to reinstatement.

NOTARIAL OFFICER: An officer authorized under Section 4.9~~12~~ of these Rules to take depositions for use before a hearing committee, hearing panel, or special hearing officer.

PARTIES: The parties to a proceeding under these Rules are Bar Counsel and the Respondent.

PETITION FOR DISCIPLINE: A formal pleading filed by Bar Counsel with the Board pursuant to section 8(3) of the Supreme Judicial Court Rule 4:01 requesting disciplinary action by the Board for alleged violations of~~under the Disciplinary Rules of Professional Conduct;~~ or Supreme Judicial Court Rule 4:01.

PROOF OF SERVICE: A certificate of service complying with Sections 3.11 and 3.12 of these Board Rules.

~~RESPONDENT-OR-RESPONDENT-ATTORNEY: A lawyer admitted to or engaging in the practice of law in this Commonwealth or any lawyer specially admitted by a Court of this Commonwealth for a particular proceeding, who in either case is alleged to have been guilty of misconduct in a grievance or formal complaint. In a reinstatement proceeding the term shall also include the lawyer or former lawyer seeking reinstatement.~~

REVIEWING BOARD MEMBER: A member of the Board who has been designated by the Board Chair to review recommendations submitted by Bar Counsel.

SPECIAL HEARING OFFICER: A lawyer appointed by the Board 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.

Section 2.1 Initiation of Investigations

(a) **At Direction of Board.** Upon the order of the Board, Bar Counsel shall undertake and complete an investigation of the conduct of any lawyer as may be specified in the order.

(b) By Bar Counsel

(1) Bar Counsel shall undertake and complete an investigation of all matters involving alleged violations of the ~~Disciplinary~~ Rules of Professional Conduct filed in accordance with Section 2.2 of these Rules, provided that Bar Counsel need not ~~pursue~~~~entertain~~ any ~~grievance~~ matter that Bar Counsel in his or her discretion determines to be frivolous or to fall outside the Board's jurisdiction or to involve allegations that do not warrant further action. Bar Counsel need not investigate any complaint arising out of acts or omissions occurring more than six years prior to the date of the ~~grievance~~complaint.

(2) Bar Counsel may undertake an investigation of any conduct by a lawyer which may violate the ~~Disciplinary~~ Rules of Professional Conduct.

Section 2.2 Contents of ~~Grievance~~Complaint

Each ~~grievance~~ complaint relating to alleged misconduct of a lawyer shall be in writing and signed by the complainant and shall contain a brief statement of the facts upon which the ~~grievance~~ complaint is based. Verifications of the ~~grievance~~ complaint shall not be required. If necessary, Bar Counsel will assist the complainant in reducing the ~~grievance~~ complaint to writing.

Section 2.3 ~~Distribution of Grievance Forms~~[Reserved]

~~Bar Counsel shall furnish forms to each person who requests one. Such forms also may be made available to the public through the offices of the clerks of court in each county and through such other offices as may be designated by the Board.~~

Section 2.4 ~~Preliminary Screening and Filing of~~ ~~Grievance~~Complaints Against Bar Counsel and the Board

Grievances Complaints against the Bar Counsel, Assistant Bar Counsel or any member of the Board involving alleged violations of the ~~Disciplinary~~ Rules of Professional Conduct shall be submitted directly to the Board for disposition pursuant to Section 5.6(c)(2) of these Rules. ~~All other grievances complaints shall be assigned a file number consisting of the letter "B" or "C", the number of the disciplinary district, the last two digits of the calendar year in which the matter is filed, and the serial number of the matter in such calendar year, e.g., B1-97-1; C1-97-21-07-53.~~

~~Matters under investigation shall be initially docketed as grievances and labeled "B" unless (1) the matter appears to be grave, or (2) the lawyer complained of has been previously disciplined; or (3) the lawyer is the respondent in a petition for discipline; or (4) a formal complaint has been filed against the lawyer for a similar offense. In those cases the matter may be docketed as a formal complaint and labeled "C" at the sole discretion of Bar Counsel.~~

~~At any time during the pending of any investigation Bar Counsel, in his or her sole discretion, may redocket a grievance as a formal complaint for any of the following reasons:~~

- ~~(1) the matter appears to be grave,~~
- ~~(2) the lawyer complained of has been previously disciplined,~~
- ~~(3) the lawyer is the respondent in a petition for discipline,~~
- ~~(4) a formal complaint has been filed against the lawyer for a similar offense,~~
- ~~(5) the lawyer has failed to cooperate in the investigation of the matter,~~
- ~~(6) there is sufficient evidence of misconduct of the lawyer to justify treating the matter as a formal complaint.~~

Section 2.5 [Reserved]

Section 2.6 Notification to Respondent

Before making a recommendation of admonition, ~~public reprimand by agreement~~ or prosecution of formal charges as provided in Sections 2.7(23)(BA), ~~2.7(2)(C)~~ or 2.7(23)(DC) of these Rules, Bar Counsel shall forward to the Respondent a request for a statement of the Respondent's position, notifying the Respondent of:

- (1) the nature of the ~~grievance or~~ complaint, and, if the investigation has been initiated by the filing of a written grievance-complaint and unless Bar Counsel determines otherwise for good cause, the name and address of the complainant;
- (2) the Respondent's right and obligation to state his or her position with respect to the allegations against him or her within 20 days from the date of such notice unless a shorter time is fixed by Bar Counsel in such notice, and
- (3) the fact that a copy of the Respondent's reply to the grievance-complaint may be forwarded to the complainant.

Failure of the Respondent to cooperate with Bar Counsel's request and any subsequent investigation may result in disciplinary action or administrative suspension under Supreme Judicial Court Rule 4:01, section 3.

Section 2.7 Bar Counsel's Recommendation

Following completion of any investigation of the ~~grievance or formal~~ complaint ~~which that~~ he or she deems appropriate and after consideration of any statement of position filed by the Respondent, Bar Counsel may take any one of the following actions:

- ~~(1) Grievances.—If the matter has not been docketed as a formal complaint pursuant to Section 2.4 of these Rules, Bar Counsel may close the grievance and notify the complainant and the respondent that the grievance has been closed.~~
- ~~(A) Bar Counsel's notice to the complainant shall include a letter from the Board advising the complainant that he or she has a right to request review of the decision to close the grievance by a member of the Board and that such request must be made~~

~~in writing no later than 14 days after the date of the notification by Bar Counsel. Bar Counsel's notice may include, if appropriate, information concerning other forums for consideration of the grievance (as specified in paragraph (2)(E) of this section).~~

(1) Close the complaint or make a determination that a complaint need not be pursued~~entertained~~, subject to the notification requirements of Section 2.10.

(2) Close a matter after adjustment, informal conference, or reference to and completion of diversion to an alternative educational, remedial, or rehabilitative program.

~~(23) *Formal Complaints.* If the matter has been docketed as a formal complaint pursuant to Section 2.4 of these Rules, Bar Counsel may r~~R~~ecommend to the Board:~~

~~(A) that the formal complaint be dismissed; or~~

~~(B)~~A that an admonition be administered in those cases in which a violation of the ~~Disciplinary~~ Rules of Professional Conduct is found which is determined to be of insufficient gravity to warrant the prosecution of formal charges; or

~~(C)~~B that ~~formal discipline~~public discipline be imposed by agreement; or

~~(D)~~C that formal charges be instituted~~prosecuted; or~~

~~(E) that the matter be closed after adjustment, informal conference, or reference to a bar association for mediation.~~

Section 2.8 Review of Bar Counsel's Recommendation

(a) Recommendation Other Than That Formal Charges Be Prosecuted.

(1) Bar Counsel shall submit to a Reviewing Board Member, along with the file, Bar Counsel's recommendation that an admonition be administered, or any request from a complainant for review of Bar Counsel's determination not to entertain~~pursue or~~ to close a grievance-complaint pursuant to Section 2.7(1) and 2.10(1) of these Rules. ~~or Bar Counsel's recommendation that a complaint be dismissed or that an admonition be administered.~~ When Bar Counsel's recommendation is to administer an admonition, Bar Counsel shall prepare and provide to the Reviewing Board Member a charging memorandum.

(2) The Reviewing Board Member may adopt, reject, or modify Bar Counsel's recommendation. If the Reviewing Board Member modifies or rejects the recommendation of Bar Counsel, he or she shall set forth this determination and the reasons therefor on the recommendation form. The Reviewing Board Member may confer with Bar Counsel in making his or her determination.

(b) Recommendation That Formal Charges Be Prosecuted (No Agreement).

(1) *Bar Counsel's Recommendation.* When the prosecution of formal charges is recommended pursuant to Section 2.7(2)(C) ~~or (D)~~ or when Bar Counsel seeks to amend a previously approved petition for discipline by adding or deleting charges, Bar Counsel shall prepare a petition for discipline or an amended petition for discipline and a charging memorandum or revised charging memorandum.

(2) *Transmission of File.* Bar Counsel shall forward to the Reviewing Board Member the documents set forth in [subsection \(b\)\(1\)](#), ~~the parties' agreement, if any,~~ and the file.

(3) *Standard of Review.* In reviewing a recommendation to prosecute formal charges or to add or delete previously approved charges, the Reviewing Board Member shall make a determination

(A) whether the charging memorandum or revised charging memorandum supports the charges in the petition for discipline or the amended petition for discipline, and, if applicable, whether the revised charging memorandum adequately justifies the deletion of previously approved charges, and

(B) whether, if the charges in the petition for discipline or amended petition for discipline were to be proved by a preponderance of the evidence, the case would warrant public discipline.

(4) *Action by Reviewing Board Member.* The Reviewing Board Member may approve, modify, or reject Bar Counsel's recommendations under [subsection \(b\)\(1\)](#). If the Reviewing Board Member modifies or rejects Bar Counsel's recommendation, he or she shall set forth this determination and the reasons therefor on the recommendation forms. The Reviewing Board Member may confer with Bar Counsel in making his or her determination.

[\(5\) Use of Charging Memorandum. The Charging Memorandum shall be considered only by the Reviewing Board Member and by the Board Chair on appeal pursuant to Section 2.9 of these Rules and shall not be provided to the hearing committee, hearing panel, or special hearing officer, or to the Board.](#)

(c) **Recommendation that ~~Formal~~ Public Discipline be Imposed by Agreement.** When the parties recommend under Section 2.7(2)(~~CB~~) of these Rules that ~~formal discipline~~ public discipline be imposed by agreement, ~~and the Reviewing Board Member approves Bar Counsel's recommendation for the prosecution of formal charges pursuant to section (b)(1) of this rule,~~ Bar Counsel shall prepare a petition for discipline and the matter shall be referred directly to the Board under the procedures set forth in Section 3.19(d) and (e).

~~(d) The Charging Memorandum shall be considered only by the Reviewing Board Member and by the Board Chair on appeal pursuant to section 2.9 of these rules and shall not be provided to the Hearing Committee, Hearing Panel, or Special Hearing Officer, or to the Board.~~

Section 2.9 Appeal by Bar Counsel from Modification or Rejection of Recommendation

(a) **General Rule.** Bar Counsel may appeal to the Board Chair from a modification or rejection of his or her recommendation by the Reviewing Board Member.

The appeal shall state briefly the grounds relied upon by Bar Counsel for the appeal and shall be filed with the Board within 14 days after the decision by the Reviewing Board Member was noted, which time limit is jurisdictional.

(b) Action by Chair. The Board Chair shall consider the appeal and may in his or her discretion adopt, modify, or reject any action recommended by Bar Counsel or by the Reviewing Board Member.

(c) Review by Board. When Bar Counsel's recommendation is that formal charges be prosecuted, Bar Counsel may appeal the decision of the Board Chair to the full Board. The appeal shall state briefly the grounds relied upon by Bar Counsel for the appeal and shall be filed with the Board within 14 days after the decision of the Board Chair is filed, which time limit is jurisdictional. The Board Chair's determination as to Bar Counsel's recommendation of an admonition shall be final and not subject to objection under Section 2.9(e).

(d) Appeals Administrative. Appeals under this section shall be administrative and not adversary in nature. Copies of the appeal shall be available only to the Board, and the Respondent shall not be deemed a party to the appeal or have any right to be heard with respect thereto.

(e) Filing of Information. If Bar Counsel objects to having the matter concluded by dismissal, the Board shall file an Information pursuant to Section 3.58 of these Rules.

Section 2.10 Notification of Disposition of ~~Grievance or Formal~~ Complaint

~~(1) As to dispositions other than approval of recommendations that formal discipline be imposed by agreement or that formal charges be prosecuted~~When Bar Counsel determines not to investigate a complaint or to close a complaint, Bar Counsel shall notify the complainant that the complaint is not being entertainpursued, or, if a filed ~~has been opened,~~ ÷

~~(1) the complainant and the Respondent that the grievance complaint has been closed or the formal complaint has been dismissed; or,~~

(A) Bar Counsel's notice to the complainant shall include a letter from the Board advising the complainant that he or she has a right to request review of Bar Counsel's decision by a member of the Board and that such request must be made in writing no later than 14 days after the date of notification by Bar Counsel. Bar Counsel's notice may include, if appropriate, information concerning other forums for consideration of the complaint.

(B) If the complainant requests review of Bar Counsel's decision under this section, Bar Counsel shall transmit the file to the Board for review pursuant to Section 2.8 of these Rules.

~~(2) the respondent to appear in person before Bar Counsel at a time and place fixed in the notice for the purpose of receiving an admonition, including in such notice a copy of Section 2.11(b) and the information called for by Section 2.11(e) of these Rules; or When the matter is being disposed of by an admonition, Bar Counsel shall serve the admonition on the respondent, together with a summary of the basis for the admonition and written notice of the respondent's right to demand in writing within fourteen days of the date of service that the admonition be vacated and a hearing provided, as set forth in Section 2.12. The notice served with the admonition shall advise the respondent that failure to demand within fourteen days that the admonition be vacated and to submit a written statement of objections as provided in Section 2.12 constitutes consent to the~~

~~admonition and that failure to set forth matters in mitigation constitutes waiver of the right to introduce evidence of mitigation at the hearing.~~

~~(32) the complainant and the respondent that the matter has been closed after adjustment, informal conference, or reference to a bar association for mediation. When the matter has been disposed of after adjustment, informal conference, or diversion to an alternative educational, remedial, or rehabilitative program referral for mediation, Bar Counsel shall so notify the complainant and the Respondent. that the matter has been closed.~~

~~Whenever a grievance has been closed and not docketed as a formal complaint, and has not been expunged under Section 4.2 of these Rules, the respondent shall be notified by Bar Counsel that in response to the question of whether a grievance or complaint has been filed against him or her, the lawyer is not entitled to answer in the negative but may answer with respect to the specific grievance that a grievance was filed but has since been closed and not docketed as a formal complaint.~~

~~If a matter has been dismissed or closed,~~ (43) In any event, Bar Counsel may notify the complainant, if appropriate, that the complainant may present his or her grievance complaint to another jurisdiction, to a fee disputes committee or to any other duly constituted forum for the consideration of the grievance complaint.

(54) If an admonition is administered, the complainant shall be notified after the admonition becomes final. If a public reprimand by agreement is imposed, an Information is filed by agreement of the parties with approval of the Board, or formal proceedings are commenced, the complainant shall be notified at the time that occurs.

SUBCHAPTER B. FINAL DISPOSITION WITHOUT FORMAL PROCEEDINGS

Section 2.11 Admonition

~~(a) General Rule. A lawyer who is given notice of admonition pursuant to Section 2.10 of these Rules shall appear in person before Bar Counsel, at a time and place fixed in such notice, for the purpose of receiving or refusing an admonition. If the An admonition is shall be administered by serving on the respondent the admonition, together with a summary of the basis of the admonition and a notice as provided in Section 2.10., a When the matter is being disposed of by an admonition, Bar Counsel shall make service of the admonition on the Respondent, together with a summary of the basis for the admonition and written notice of the Respondent's right to demand in writing within 14 days of the date of service that the admonition be vacated and a hearing provided, as set forth in Section 2.12. The notice served with the admonition shall advise the Respondent that failure to demand within 14 days that the admonition be vacated and to submit a written statement of objections as provided in Section 2.12 constitutes consent to the admonition and that failure to set forth matters in mitigation constitutes waiver of the right to introduce evidence of mitigation at the hearing. A record shall be made of the fact of and basis for the admonition, which record shall be retained as provided in Section 5.10 of these Rules.~~

~~(b) Failure to Appear. Failure of the respondent to appear in person on the scheduled date without good cause shall be deemed an act of professional misconduct in violation of Supreme Judicial Court Rule 4:01, Section 3(1)(c), and shall result in the institution of formal proceedings charging the respondent with the failure to appear and with the~~

~~misconduct for which the admonition was to be given. The intention of a respondent to demand under Section 2.12 that formal proceedings be instituted against him or her shall not constitute good cause for the failure of the respondent to appear.~~

~~(c) **Notice of Right to Formal Proceedings.** In connection with the admonition, the respondent shall be advised of his or her right to demand the institution of formal proceedings by:~~

- ~~(1) refusing to accept the admonition; or~~
- ~~(2) vacating the admonition after it has been administered.~~

Section 2.12 Demand by Respondent for ~~Disciplinary Proceedings~~Hearing ~~on when Admonition is Administered~~

~~(a) **General Rule.** A respondent shall not be entitled to appeal an admonition by Bar Counsel but may demand, as of right, that formal proceedings be instituted against him or her. A respondent may make such demand either by following the procedure specified in subsection (b)(1) of this section for refusing to accept the admonition; or by following the procedure specified in subsection (b)(2) of this section for vacating the admonition after it has been administered. In the event of a demand under subsection (b)(2) of this section, the admonition shall be vacated. In the event of a demand under either subsection (b)(1) or subsection (b)(2) of these Rules, a petition for discipline shall be filed and dealt with in the same manner as any other petition for discipline.~~

~~(b) **Procedure.**~~

~~(1) At the time of the respondent's appearance before Bar Counsel pursuant to Section 2.11(a) of these Rules, Bar Counsel shall present the respondent with a summary of the basis for the admonition. After review of the summary, the respondent may at that time refuse to accept the admonition and instead demand the imposition of formal proceedings under subsection (a) of this section by signing a statement so indicating. A form shall be available to the respondent for this purpose, and the respondent will be provided with a copy of the signed statement.~~

~~(2) A demand that an admonition be vacated and formal proceedings instituted under subsection (a) of this section shall be in writing, shall be filed with the Board within 30 days after the date on which the admonition was administered, which time limit is jurisdictional, and a copy shall be served on Bar Counsel.~~

(1) *General Provisions:* A Respondent shall be entitled to demand that an admonition be vacated and a hearing provided. The demand shall be in writing and shall be filed with the Board, and a copy served on Bar Counsel, within 14 days after the date of service of the admonition, which time limit is jurisdictional. The Respondent must submit with the demand a statement of objections to the factual allegations and disciplinary rule violations set forth in the summary served with the admonition pursuant to Section 2.11. The statement of objections must specify the reasons in detail for rejecting the admonition and include any matters in mitigation. Failure of the Respondent to demand within 14 days that the admonition be vacated and to provide a statement of objections constitutes consent to the admonition and failure to set forth matters in mitigation constitutes waiver of the right to introduce evidence of mitigation at hearing.

(2) Additional Procedural Requirements:

(a) All proceedings and the record shall be confidential pursuant to Section 3.22(b).

(b) No investigatory subpoenas shall be issued after expedited disciplinary proceedings are commenced.

(c) The matter shall be assigned to a special hearing officer and shall be set for hearing within 30 days of the filing of proceedings except for good cause shown.

(d) In addition to the notice of hearing requirements of Section 3.21, the notice of hearing for expedited hearings shall also set a date for the exchange between or among the parties of witness lists and exhibits that the party intends to use in his or her case-in-chief or for matters in aggravation or mitigation; a date for their exchange of objections to proposed witnesses and identified exhibits and supplemental designation of exhibits and witnesses; and a date for filing with the Board of final witness and exhibit lists and objections thereto, agreed exhibits, and any stipulations of the parties.

(e) Except for good cause shown, a prehearing conference shall not be held prior to an expedited disciplinary hearing.

(f) The burden of proof in such hearing shall be as set forth in Section 3.28.

(g) Except for good cause shown, no briefs or requests for findings and rulings shall be filed following an expedited disciplinary hearing.

CHAPTER 3. ~~FORMAL~~ DISCIPLINARY PROCEEDINGS

SUBCHAPTER A. PRELIMINARY PROVISIONS

Section 3.1 Construction of Chapter

This chapter is promulgated for the purpose of assisting Bar Counsel, the Respondent and the Board to develop the facts relating to, and to reach a just and proper determination of, ~~formal~~ complaints. The Board will not hold any action of a hearing committee, hearing panel, or special hearing officer invalid by reason of any nonprejudicial irregularity, or for any error not resulting in a miscarriage of justice.

Section 3.2 Procedure to Apply

Except where inconsistent with these Rules, ~~formal~~ proceedings before hearing committees, hearing panels, special hearing officers and the Board shall conform generally to the practice in adjudicatory proceedings under Chapter 30A of the General Laws (State Administrative Procedure).

Section 3.3 Filing: Timely Filing Required

Pleadings or other documents papers in formal proceedings required or permitted to shall be filed with at the office of the Board and copies sent or delivered by the filing party to each member of the hearing committee or panel or special hearing officer unless otherwise directed. under these Rules If the filing of a pleading or paper is subject to a time limit, it must be received for filing at the office of the Board within the time limits, if any, for such filing. Except as otherwise provided by these Rules, on motion filed

within the time limits established by this section, the Board Chair may shorten or extend the time for filing for good cause shown. The date of receipt by the office of the Board, and not the date of deposit in the mails, is determinative.

Section 3.4 Representation of Respondent

(a) Appearance Pro Se. When a Respondent appears in his or her own behalf in a ~~formal~~ disciplinary proceeding, the Respondent shall file with the Board, with proof of service upon Bar Counsel, an address, including a street address, at which any notice or other written communication may be sent and a telephone number where the Respondent can be reached.

(b) Representation of Respondent by Counsel. When a Respondent is represented by counsel in a ~~formal~~ disciplinary proceeding, counsel shall file with the Board, with proof of service upon Bar Counsel, a written notice of such appearance, which shall state his or her name, address and telephone number, the name and address of the Respondent on whose behalf he or she appears, and the caption and file number of the subject proceeding. Thereafter, any notice or other written communication required to be served on or furnished to a Respondent may be sent to the counsel of record for such Respondent at the stated address of the counsel in lieu of transmission to the Respondent.

(c) Service. Any notice or pleading required to be served on the Respondent personally under these Rules may be served in hand or by addressing it by certified, registered, or first class mail to the address furnished by the Respondent during the proceeding. If the Respondent has not furnished an address during the proceeding, service may be made by addressing it by certified, registered, or first class mail to the address furnished in the last registration statement filed by the Respondent in accordance with Supreme Judicial Court Rule 4:02. Service by mail is complete upon mailing.

(d) Assistance in Obtaining Counsel for a Respondent. If a Respondent in a ~~formal~~ disciplinary proceeding desires counsel and cannot afford to retain counsel, then, upon application, the Board will seek to assist the Respondent to obtain counsel either at a reduced or no cost. Nothing in this subsection (d) accords any substantive right to the Respondent with respect to the appointment or payment of counsel.

(e) Policies Relating to Conflicts of Interest.

(1) No member of the Board, or partner or associate of a Board member, shall appear as counsel for a Respondent in a disciplinary proceeding, provided that no partner or associate of a Board member shall be required to withdraw from a disciplinary proceeding pending at the time the Board member commences his or her term.

(2) No member of any hearing committee or hearing panel, and no special hearing officer shall appear as counsel for a Respondent in a disciplinary proceeding.

(3) No partner or associate of a hearing committee member shall appear as counsel for a Respondent in a disciplinary proceeding before the hearing committee on which the said hearing committee member serves. No partner or associate of a special hearing officer shall appear as counsel for a Respondent in a disciplinary proceeding before the special hearing officer.

(4) No member of the Board or of any hearing committee shall appear voluntarily or make a submission as a character witness in a disciplinary or reinstatement proceeding.

Section 3.5 Format of Pleadings and Documents

(a) **Typewritten Format.** Pleadings or other documents filed in ~~formal~~ disciplinary proceedings, ~~if not printed,~~ shall be typed ~~written~~ on letter size paper, ~~cut or folded to letter size~~ 8½ inches wide by 11 inches long. ~~The impression shall be on only one side of the paper and shall be double spaced, except that quotations in excess of a few lines may be single spaced and indented. Mimeographed, photostatted or otherwise reproduced copies will be accepted as typewritten, provided all copies are clearly legible.~~

(b) **Binding.** Pleadings and other documents, other than correspondence, shall be bound by staples only ~~or otherwise~~.

(c) **Incorporation by Reference.** Any document on file with the Board in a ~~formal~~ disciplinary proceeding may be incorporated by reference into a subsequently filed pleading or other document.

(d) **Identification.** Pleadings or other documents filed in a ~~formal~~ disciplinary proceeding shall set forth:

- (1) The caption and docket number of the proceeding.
- (2) A brief descriptive title of the pleading or document.

(e) **Copies.** All pleadings or other documents filed in a ~~formal~~ disciplinary proceeding (other than correspondence) shall be filed with the Board. In any matter pending before a hearing committee, a hearing panel, or a special hearing officer, a conformed copy of each such paper, including all exhibits, if any, shall be furnished to the special hearing officer and to each member of the hearing committee or hearing panel. Whenever necessary or convenient, the Board, the hearing committee, the hearing panel, or the special hearing officer may order that a greater or lesser number of copies be filed.

Section 3.6 Execution

(a) **Signature.** Except as may be otherwise ordered or requested by the Board the original of each pleading or other document shall be signed in ink by the party or the party's counsel, and shall show the office address and telephone number of such party or counsel. All other copies filed shall be fully conformed thereto.

(b) **Effect.** The signature of the person subscribing any document filed in a ~~formal~~ disciplinary proceeding constitutes a certificate that the signer has read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, the signer believes them to be true.

(c) **Verification.** No written statement in any proceeding required to be verified by affidavit shall be required to be verified by oath or affirmation if it contains or is verified by a written declaration that it is made under the penalties of perjury.

Section 3.7 Continuances

(a) **Avoidance of Delay.** All ~~formal~~ disciplinary proceedings under these Rules shall be as expeditious as possible, and all time limits shall be mandatory and not discretionary.

(b) **Continuances.** The chair of a hearing committee or hearing panel, or a special hearing officer, may grant an extension of time in a ~~formal~~ disciplinary proceeding ~~before the hearing committee.~~

(c) **Absence of Hearing Committee or Hearing Panel Member.** The absence of a committee or panel member from any hearing shall not be cause for continuing the hearing as long as a quorum of the hearing committee or panel is present. Such member may participate fully in all deliberations of the committee so long as the transcript of the hearing at which he or she was absent is available to him or her.

Section 3.9 Service of Documents by a Party

All pleadings, briefs and other documents filed in ~~formal~~ disciplinary proceedings, when filed or tendered to the Board for filing, shall be served upon all parties to the proceeding. Such service shall be made by delivery in person or by mail.

Section 3.12 Form of Certificate of Service

I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding. Dated this _____ day of _____, 19____.

(Signature)

Counsel for _____

SUBCHAPTER B. PRE-HEARING AND HEARING PROCEEDINGS

Section 3.13 Institution of ~~Formal~~ Disciplinary Proceedings

(a) Bar Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under Section 3.14 of these Rules in either of the following cases:

(1) Pursuant to a referral from the Supreme Judicial Court under Bar Disciplinary Rule 4:01, sections 12(4) and (5), following the conviction of the Respondent for a crime.

(2) Pursuant to a determination to institute formal proceedings made under Chapter 2 of these Rules.

(b) When the Respondent vacates an admonition and demands a hearing, Bar Counsel shall institute expedited disciplinary proceedings under section 8(4) of S.J.C. Rule 4:01 and Section 2.120(2) of these Rules. ~~by filing the admonition summary with the Board, along with the respondent's demand for hearing and statement of objections. The matter shall then be assigned to a special hearing officer and shall be set for hearing within 30 days of the filing of proceedings except for good cause shown. Except as~~

~~provided in Section 3.21, other sections of Subchapter B of this Chapter 3 (Sections 3.14 to 3.20) shall not apply to expedited disciplinary hearings.~~

Section 3.17 Discovery

(a) Scope. Within 20 days following the filing of an answer, Bar Counsel and the Respondent shall exchange the names and addresses of all persons having knowledge of facts relevant to the proceedings. Bar Counsel and the Respondent shall, within 10 days, comply with reasonable requests made within 30 days following the filing of an answer for (1) non-privileged information and evidence relevant to the charges or the Respondent, and (2) other material upon good cause shown to the chair of the hearing committee, hearing panel or special hearing officer. Applications for depositions may be made pursuant to Sections 4.9 or 4.10.

(b) Resolution of Disputes. Any dispute arising under this rule shall be resolved by the chair of the hearing committee or hearing panel or by the special hearing officer, as the case may be, upon written application. All discovery orders by the chair or special hearing officer are interlocutory and may not be appealed or reviewed prior to the filing of a hearing report.

~~(a) Within thirty days after the answer is filed or earlier upon written request by the respondent, Bar Counsel shall deliver to the respondent a copy of any statement or testimony of the respondent which has been stenographically or electronically recorded, whether or not the testimony was given in response to a subpoena.~~

~~(b) Upon motion, the Board chair or the hearing committee, hearing panel, or special hearing officer before which the matter is pending shall order that the parties exchange copies of any statement or testimony of a person whom the party intends to call as a witness which statement or testimony has been stenographically or electronically recorded or given as an affidavit, whether or not the statement or testimony was given in response to a subpoena.~~

~~(c) Upon request by the respondent, Bar Counsel shall permit the respondent to discover, inspect, and copy any books, records, correspondence, documents, or other material produced in response to a subpoena issued pursuant to Section 4.4 of these rules.~~

~~(d) This rule does not authorize discovery of those portions of records, reports, correspondence, memoranda, or internal documents of Bar Counsel or the respondent's attorney which are only the legal research, opinions, theories, or conclusions of Bar Counsel or Bar Counsel's staff or of the respondent's attorney.~~

Section 3.18 Pre-Hearing Motions

(a) ~~Motions Other Than Motions to Dismiss~~ General Provisions.

(1) Pre-hearing All motions shall be filed with the Board and served upon the opposing party at least ~~fourteen~~ 10 days before the hearing, except upon a showing that the basis for the motion was not earlier known to or ascertainable by the moving party.

(2) The opposing A party wishing to respond to a motion must file a response within ~~shall have 7~~ days to file a response thereto after service of the motion. The time for filing

~~a response shall not be shortened or extended except for good cause shown. Upon the filing of any such response, or upon the expiration of the seven days, the motion shall be submitted to a member of the Board for determination. The Board member may refer the motion to the chair of the assigned hearing committee or hearing panel or to the special hearing officer for determination.~~

(3) No motion or response grounded on facts shall be considered unless the facts are verified by affidavit, are established by the pleadings or the record, or are agreed to by the parties in writing.

~~(4) All motions other than motions filed pursuant to subsections (b) or (c) of this section shall be determined by the chair of the hearing committee or hearing panel or special hearing officer. Upon the filing of any such response, or upon the expiration of the seven days, the motion shall be submitted to a member of the Board for determination. The Board member may refer the motion to the chair of the assigned hearing committee or hearing panel or to the special hearing officer for determination.~~

~~(5) All motions shall be determined on the papers, without hearing or oral argument. A hearing on the motion may be held at the discretion of the Board member, special hearing officer, or hearing committee or panel chair as the case may be.~~

(6) Except as to the allowance of a motion to dismiss under subsection (b) and as to rulings that the moving party alleges exceed the jurisdiction or authority of the Board Chair, the chair of the hearing committee or panel, or special hearing officer, or Board Chair, rulings on motions shall control the subsequent course of the proceeding and shall not be appealed or reviewed prior to the issuance of the hearing report.

(b) Motions to Dismiss.

~~(1) All m~~Motions to dismiss the petition for discipline or any charges contained therein shall be determined by the Chair of the Board or the Chair's designee another member of the Board designated by the Board Chair.

~~(2) The filing of such a motion to dismiss shall not stay a scheduled hearing except by order of the Board Chair or other member of the Board designated by the Board Chair except for good cause shown. However, the Chair of the Board or the Chair's designee may stay such hearing upon application therefor in his or her discretion.~~

~~(3) If a motion to dismiss filed by Bar Counsel is denied, any of the parties may appeal such denial to the Board, which shall determine the matter at its next meeting. A party may appeal from a dismissal of a petition or charge by filing a brief on appeal within 7 days after service of the decision. An opposing party may file a response within 7 days after service of such appeal. The appeal shall be decided by the Board at its next meeting after the response period has expired. Dismissal of a charge does not stay proceedings on other charges in the petition for discipline.~~

~~(4) If a motion to dismiss filed by the respondent is allowed, Bar Counsel may appeal such determination to the Board, which shall determine the matter at its next meeting.~~

(c) Motions for Issue Preclusion. Motions for the application of issue preclusion shall be determined by the Chair of the Board or the Board Chair's designee.

Section 3.20 ~~Date and~~ Place of Hearing

~~The date, time and place of hearing on a petition for discipline shall be determined by the special hearing officer or the chair of the hearing committee or hearing panel in consultation with the Board Chair or the Chair's designee and after consideration of any recommendations by the other members of the hearing committee or panel, Bar Counsel, and, if available, the respondent or the respondent's counsel. The date so fixed shall be such as to carry out the policy of avoiding delay. 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.~~

Section 3.21 Notice of Hearing

~~For both formal and expedited proceedings, t~~The Board Chair or the Chair's designee shall give notice to the ~~parties~~respondent, the respondent's counsel, and Bar Counsel of the date and place set for hearing.

The notice of hearing shall be served at least 15 days in advance thereof and shall advise the Respondent that the Respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence in his or her own behalf. The notice shall further advise the Respondent that failure to appear at a hearing shall be deemed an act of professional misconduct in violation of Supreme Judicial Court Rule 4:01, section 3(1)(c), and shall be grounds for administrative suspension pursuant to Supreme Judicial Court Rule 4:01, section 3(2).

~~For expedited disciplinary hearings under Section 3.13(b), the notice of hearing shall also set a date for the exchange between or among the parties of witness lists and exhibits that the party intends to use in his or her case in chief or for matters in aggravation or mitigation; a date for their exchange of objections to proposed witnesses and identified exhibits and supplemental designation of exhibits and witnesses; and a date for filing with the Board of final witnesses and exhibit lists and objections thereto, agreed exhibits, and any stipulations of the parties.~~

SUBCHAPTER C. HEARINGS

Section 3.22 Public Access to Proceedings; Protective Orders

(a) Except as otherwise provided in this section and in Supreme Judicial Court Rule 4:01, section 20, the Board and Bar Counsel shall keep confidential all information involving allegations of misconduct by a lawyer.

~~(b) Expedited disciplinary hearings pursuant to Supreme Judicial Court Rule 4:01, section 8(4) and Section 2.123.13(b) of these Rules shall be confidential. If, after hearing, the special hearing officer recommends that the matter be remanded for formal proceedings, the matter becomes public when a petition for discipline is served as set forth in subsection (c) of this rule.~~

~~(bc) Twenty days after the~~Upon the service of a petition for discipline pursuant to Section 3.15 of these Rules, the Board's proceedings are open to the public, except for:

(1) deliberations of the hearing committee, the hearing panel, the special hearing officer or the Board, and documents reflective of those deliberations, including without limitation charging memoranda, draft reports, and minutes of Board meetings;

(2) information with respect to which the Board has issued a protective order under paragraph (ed) hereof;

(3) information with respect to which the Supreme Judicial Court has issued a protective order on appeal from a Board decision denying such order; or

(4) further proceedings following the recommendation by a hearing committee, a hearing panel, a special hearing officer or an appeal panel, or following an order of the Board or the Supreme Judicial Court, that an admonition be imposed or that a petition for discipline be dismissed. In such event, the record shall be sealed and the proceedings shall be closed until and unless the Board or the Supreme Judicial Court orders otherwise.

(ed) In order to protect the interests of a complainant, witness, third party, or Respondent-attorney, the Board may, upon application of Bar Counsel or any affected person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application. If bar discipline or other professional discipline has been imposed on the Respondent on a prior occasion, in this Commonwealth or elsewhere, the fact that the discipline imposed is or has been confidential shall not constitute good cause for the issuance of a protective order. Bar Counsel or any affected person may appeal from an order granting or denying an application for a protective order by filing a notice of appeal with the Clerk of the Supreme Judicial Court for Suffolk County within 7 days after the date of the notice of the Board's action, which time limit shall be jurisdictional. The pendency of such an appeal shall not be grounds to stay proceedings before a hearing committee, a hearing panel, a special hearing officer, or any panel of the Board.

Section 3.23 ~~Initiation of~~ Mandatory Prehearing Conferences ~~to Expedite Hearings~~

(a) **General ~~Rule~~Provisions**-. ~~The hearing committee, hearing panel, or special hearing officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the respondent and Bar Counsel to attend. Due notice of the time and place of such conference shall be given to the respondent and Bar Counsel. The conference may be conducted by the chair of a hearing committee or panel or by any member of the committee or panel designated in writing by the chair.~~

(1) In all cases, except for matters arising from a conviction of a crime and expedited hearings pursuant to Section 2.12, a prehearing conference shall be held. A prehearing conference shall be held in conviction cases if a party requests such a conference within 30 days after the answer is filed. Except for good cause shown, a prehearing conference shall not be held prior to an expedited disciplinary hearing pursuant to Section 3.13(b)2.12 of these rules.

(2) The conference shall be conducted by the chair of the hearing committee or hearing panel or the special hearing officer. Additional conferences may be held as necessary to expedite proceedings.

(3) All participants, including the Respondent, the Respondent's attorney if whether or not the Respondent is represented by counsel, and Bar Counsel shall attend the prehearing trial conference.

(4) The parties and counsel shall be fully prepared for a useful discussion and resolution, to the extent possible, of all ~~problems involved in the proceeding, both~~ procedural and substantive ~~issues in the proceeding,~~ and shall be fully authorized to make commitments ~~with respect thereto regarding those matters.~~ ~~Such preparation shall include, among other things, advance study of all relevant material, and advance informal communication between the participants, including request for additional data and information, to the extent it appears feasible and desirable.~~

(5) Except as to orders that the moving party alleges exceed the jurisdiction or authority of the chair of the hearing committee or panel, ~~or~~ special hearing officer, or Board Chair, orders entered at a prehearing conference shall control the subsequent course of the proceeding and shall not be appealed or reviewed prior to the issuance of the hearing report.

(6) Prehearing deadlines set at a prehearing conference shall not be extended except for good cause shown.

(b) Purpose of ~~Mandatory~~ Prehearing Conference and Action at Conference. At the mandatory prehearing conference, the following matters may be considered and orders thereon entered:

(1) Settling any discovery disputes within the jurisdiction of the hearing committee, hearing panel or special hearing officer.

(2) Identifying contested issues.

(3) Obtaining admissions or stipulations as to facts not in dispute, the authenticity of documents, and other matters that might properly shorten the hearing.

(4) Limiting the number of witnesses.

(5) Setting deadlines for the completion of any approved depositions ordered by or under the supervision of the chair of the hearing committee or panel or special hearing officer and for filing motions in limine and other prehearing motions.

(6) Establishing a date for the exchange between or among the parties of witness and exhibit lists and exhibits intended for use in the party's case-in-chief or for matters in aggravation and mitigation; a date for the parties' exchange of objections to proposed witnesses and exhibits and supplemental designation of witnesses and exhibits; and a date for filing final witness and exhibit lists and objections thereto, agreed exhibits, and any stipulations of the parties.

(a) When a party proposes to introduce testimony from an expert witness, the party shall be required to disclose the qualifications of the expert and the subject matter on which the expert is expected to testify and to state the substance of facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(b) When the Respondent has placed his or her physical or mental status in issue, the Respondent shall identify and disclose to Bar Counsel in writing the dates and nature of every condition that the Respondent claims may have affected his or her professional conduct or is otherwise in issue and for which he or she has received consultation, evaluation, treatment, counseling or other services. For each such condition, the Respondent shall provide to Bar Counsel (1) the name and address

of every hospital, doctor, therapist, counselor and other provider from whom the Respondent received any services, (2) all hospital, medical, psychiatric, psychological, counseling and other records and reports in the Respondent's possession and control, (3) an executed release, in a form acceptable to the provider, authorizing Bar Counsel or Bar Counsel's representatives to communicate with and received all available records and information from each provider.

(c) The objections to a witness or exhibit must be specified, and, if an objection is made to the authenticity of a proposed exhibit, must be further supported by a specified good faith basis questioning the authenticity of the document. Objections not made timely and in accordance with these requirements and the prehearing orders are waived. -A party shall be precluded from calling any witness and introducing in evidence any document not disclosed by that party in accordance with these requirements and the prehearing orders, except upon a showing that the witness or exhibit was not earlier known to or ascertainable by the party or for other good cause shown.

(7) Confirming or rescheduling the hearing date., subject to the requirements of Section 3.20.

(8) Such other matters as may properly be dealt with ~~in expediting~~ to assist in the prompt and orderly conduct and disposition of the proceeding.

Section 3.24 ~~[Reserved]~~ Prehearing Conferences to Expedite Hearings

~~At any prehearing conference which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered the possibility of the following:~~

~~(1) The simplification of the issues.~~

~~(2) The exchange of exhibits proposed to be offered in evidence and the identity and addresses of all witnesses each party plans to call in its case in chief. When a party proposes to introduce testimony from an expert witness, the party shall be required to disclose the qualifications of the expert and the subject matter on which the expert is expected to testify and to state the substance of facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.~~

~~(3) The obtaining of admissions as to, or stipulations of, facts not in dispute, the authenticity of documents, or other matters which might properly shorten the hearing.~~

~~(4) The limitation of the number of witnesses.~~

~~(5) The discovery or production of data, including the production of medical or psychological records when the respondent places his or her medical or psychological condition in issue in the case.~~

~~(6) Such other matters as may properly be dealt with to aid in expediting the prompt and orderly conduct and disposition of the proceeding.~~

Section 3.28 ~~Order of Procedure~~ Burden of Proof

In all disciplinary proceedings ~~upon a petition for discipline~~ Bar Counsel shall have the burden of proof by a preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The Respondent shall have the burden of proof by a preponderance of the evidence on affirmative defenses and matters in mitigation.

Section 3.42 ~~Oral Closing~~ Argument

~~At the close of the taking of testimony in each proceeding, the hearing committee, hearing panel, or special hearing officer may hear oral argument on the issues in the proceeding.~~ If the hearing committee, hearing panel, or special hearing officer decides to entertain closing argument, it shall do so directly following the taking of testimony in each proceeding except for good cause shown.

Section 3.43 Time for Filing of Briefs

~~Unless waived by the parties and the hearing committee, hearing panel, or special hearing officer at the close of the hearing, briefs may be filed with the hearing committee, hearing panel, or special hearing officer and served pursuant to Section 3.9 of these Rules at such times as may be fixed by the chair thereof. Except for good cause shown, no briefs or requests for findings and rulings shall be filed following an expedited disciplinary hearing.~~ After a formal disciplinary proceeding, any party may file a brief and requests for findings and rulings with the hearing committee, hearing panel, or special hearing officer within 30 days of the receipt of the final transcript of the hearing or such other shorter period of time as may be fixed by the chair or the special hearing officer. No extensions shall be granted for the filing of proposed findings and rulings or briefs except for good cause shown.

SUBCHAPTER ~~D~~C. REVIEW BY BOARD

Section 3.50 Procedure on Appeal

(a) Procedure to Object to Report of Hearing Committee, Hearing Panel, or Special Hearing Officer. Any party objecting to the findings or recommendations of a hearing committee, hearing panel, or special hearing officer shall, within 20 days after the service of a copy of the report or within such other longer or shorter time as may reasonably be fixed by a Board member, file a brief on appeal. A brief opposing the appeal, and raising any cross-appeal, may be filed in response to a brief on appeal within 20 days after the filing of a brief on appeal or within such other longer or shorter time as may reasonably be fixed by a Board member. If a cross-appeal is claimed in a brief opposing the appeal, the party filing the original appeal may file a brief in response to the cross-appeal within 20 days after the filing of the cross-appeal or within such other longer or shorter time as may reasonably be fixed by a Board member. No further response will be entertained unless allowed or requested by the Board or a Board member.

(b) Oral Argument. Appeals from expedited hearings shall be decided upon the papers. For formal proceedings, oral argument shall be deemed waived unless expressly requested in a brief on appeal or brief opposing appeal. Oral argument shall be permitted

[at the discretion of the Board.](#) The Board or the Appeal Panel ~~may order that oral argument be held and~~ may restrict the issues which may be argued orally.

(c) Waiver of Objections. A party will be conclusively deemed to have waived all objections to the findings, conclusions and recommendations of the hearing committee, hearing panel, or special hearing officer and to have stipulated to the waiver of oral argument and submission of briefs unless the party files an appeal as provided in subsection (a) of this section.

(d) Assignment of Appeals. If there is an appeal from the findings and recommendations of a hearing committee, hearing panel, or special hearing officer, the Board shall either hear the matter itself or assign it to an appeal panel of three members of the Board to be designated by the Board or the Chair of the Board.

(e) Procedure Before an Appeal Panel of the Board. If a matter is heard before an appeal panel of the Board, such panel may determine the matter upon the record and the briefs before it or after any oral argument or may remand the case to the hearing committee, hearing panel, or special hearing officer for the taking of further evidence. The appeal panel shall promptly report its findings of fact, conclusions of law and recommendations to the Board. Such report shall be served upon the Bar Counsel and the Respondent, either of whom may, within 7 days thereafter, file with the Board objections to such report. Opposition to such objections may be filed with the Board within 7 days after the service of said objections on the opposing party.

(f) Review of the Appeal Panel Report by the Board. Following the filing of a panel report and the expiration of the time allowed for the filing of objections thereto, the Board shall review the matter on the entire record including previously filed briefs and objections. Members of the [appeal](#) panel shall not be disqualified from participation in the deliberations and voting of the Board. The Board may remand the matter to the hearing committee, the hearing panel, or the special hearing officer for the taking of further evidence.

(g) Procedure on Appeal When the Matter Has Been Heard by a Hearing Panel of the Board. If an appeal has been filed from the findings and recommendations of a hearing panel of the Board, the Board may determine such appeal on the record and briefs before it or after any oral argument that it in its own discretion deems necessary. Members of the panel shall be disqualified from participation in the deliberations and voting of the Board. The Board may remand the matter to the hearing panel for the taking of further evidence.

Section 3.51 Content and Form of Briefs on Appeal

(a) Briefs on Appeal.

(1) The briefs on appeal shall contain:

(i) A short statement of the case.

(ii) A summary of the basic position of the party filing.

(iii) The grounds upon which the appeal rests.

(iv) The argument in support of the appeal with appropriate references to the record and legal authorities.

(2) There may also be included specific findings and conclusions proposed in lieu of those from which the appeal is being taken and any proposed additional findings and conclusions.

(3) Appeal from a recommended disposition shall specify the portions thereof from which the appeal is being taken, and may set forth a disposition suggested in lieu of that recommended by the hearing committee, hearing panel, or special hearing officer.

(b) Briefs Opposing Appeals. Briefs opposing appeals shall generally follow the same style prescribed for briefs on appeal, but may omit a statement of the case so far as it is correctly stated in the brief on appeal.

(c) Copies Format and Number of Briefs. ~~One original~~ ~~Fifteen copies~~ of each brief shall be filed with the Board ~~and a copy in addition to the copies~~ served on the opposing parties. Briefs shall be stapled, not bound.

Section 3.57 ~~Public Reprimand~~ Demand for Filing of Information

~~(a) **Notice to Respondent.** (a) In the event that the Respondent or Bar Counsel is unwilling to accede to the Board determines~~ determination of the Board that the formal proceedings should be concluded by dismissal, admonition, or public reprimand, the party aggrieved may demand that the Board file an Information. The demand shall be in writing and shall be filed with the Board within 20 days after the date of service of the Board's vote and memorandum, which time limit is jurisdictional. the Board shall notify the respondent to appear in person before a Board member for the public reprimand, and Bar Counsel shall notify the complainant.

~~(b) **Appearance of Respondent.** The respondent shall appear before the Board in person at the time and place fixed in the notice for the purpose of receiving the public reprimand from a member of the Board as designated by the Chair or Vice Chair. A permanent record shall be made of the fact of and basis for the public reprimand. The fact of the receipt of such reprimand shall not affect the good standing of the respondent as an attorney.~~

~~(c) **Failure to Appear.** In the event that the respondent neglects or refuses to appear for the purpose of public reprimand without good cause, the Board shall proceed against the respondent in accordance with Section 3.58 of these Rules.~~

(b) The decision of the Board following an appeal by either party from the determination of a special hearing officer after an expedited disciplinary hearing shall be final and there shall be no right by either Bar Counsel or the Respondent to demand that an Information be filed.

SUBCHAPTER B. EXPUNCTION

Section 4.2 Expunction of Records

(a) Expunction Upon the Expiration of Six Years. The records of a matter that Bar Counsel in his or her discretion has determined does not warrant investigation pursuant to Section 2.1(b)(1), and of a grievance complaint against a lawyer which that has been closed and not subsequently reopened, ~~and the records of a complaint against a lawyer which has been dismissed and not subsequently reopened,~~ shall be destroyed and expunged following the expiration of six years from the date the grievance complaint

was closed ~~or the complaint dismissed~~ unless ~~in either case Bar Counsel or the lawyer against whom the grievance or a complaint was~~ has been filed ~~has objected to its destruction and expunction in the intervening six--year period.~~ In the event of an objection by the lawyer a complaint is so filed or reopened, the records shall be ~~retained~~ 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.~~ An objection by Bar Counsel shall be made in writing to a Reviewing Board Member and shall be accompanied by a memorandum of reasons which shall include a request that such records continue to be retained for a specified period not to exceed two years. A copy of the objection and memorandum shall be served on the lawyer, who shall be given an opportunity to respond. The Reviewing Board Member may grant, modify or deny the request of Bar Counsel.

(b) Expunction Upon Request. ~~A lawyer who wishes to have the records of a grievance or complaint against him or her destroyed and expunged in accordance with Supreme Judicial Court Rule 4:01, Section 7(5), shall file a request for expunction with Bar Counsel. Bar Counsel shall forward such request with a recommendation to a Reviewing Board Member. If Bar Counsel and the Reviewing Board Member concur with the request, it shall be granted. If Bar Counsel and the Reviewing Board Member concur that the request be denied, it shall be denied. If the Reviewing Board Member and Bar Counsel do not concur, the matter shall be referred to the Board Chair for final determination.~~ Reserved.

(c) Expunction for Bank Error. In the event a ~~grievance or~~ complaint has been docketed solely on account of a report made by a financial institution that it has dishonored an instrument presented against a lawyer's trust account and it is established that the instrument was dishonored solely due to error on the part of the financial institution, the lawyer shall be entitled, upon request made after the closing of the complaint, to have the records of the ~~grievance or~~ complaint destroyed and expunged ~~in accordance with Supreme Judicial Court Rule 4:01, Section 7(5).~~

(d) Procedure. Whenever, pursuant to the preceding subparagraphs (a); ~~(b);~~ and (c), records are to be destroyed and expunged, Bar Counsel shall destroy all records within Bar Counsel's custody and control that indicate that the ~~grievance or~~ complaint was filed against the lawyer, and shall destroy all records and files pertaining thereto. Bar Counsel may separately maintain any investigative records that may pertain to matters other than the specific ~~grievance or~~ complaint against the lawyer, but such records shall not bear any indication of the specific ~~grievance or~~ complaint expunged.

(e) Nonapplicability. This section does not apply to the records of a complaint which gave rise to an admonition even if such complaint has been dismissed pursuant to Section 4.3(a) of these Rules.

SUBCHAPTER C. VACATING AN ADMONITION

Section 4.3 Vacating an Admonition and Dismissal of the Underlying Complaint

(a) Vacating and Dismissal Upon the Expiration of Eight Years. Upon the expiration of eight years from the receipt of an admonition by a lawyer, if Bar Counsel determines that there has been no intervening disciplinary action taken with reference to

the lawyer and there is no ~~grievance or~~ complaint then pending against him or her, Bar Counsel shall vacate the admonition and dismiss the complaint which gave rise to it.

SUBCHAPTER D. SUBPOENAS

Section 4.4 Investigatory Subpoenas

(a) At any stage of the investigation, Bar Counsel may request that the Board issue a subpoena requiring the attendance and testimony of a witness, including the Respondent, and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the investigation.

(b) The request shall be made in writing to a member of the Board, who may forthwith issue the subpoena.

(c) The subpoena shall require a witness to appear before Bar Counsel at a specified date and time and shall specify any evidence to be produced. Bar Counsel may take the testimony electronically or otherwise. Respondent shall not be entitled to be present, but Bar Counsel shall provide Respondent with a copy of any recorded testimony prior to any hearing on a petition for discipline.

(d) If a subpoena is issued subsequent to the filing of a petition for discipline and if the testimony is to be recorded electronically or otherwise, the Respondent shall be entitled to be present and participate in the examination of any such witness whose testimony is to be recorded and in the examination of any documents produced by such subpoena. No investigatory subpoenas shall be issued after expedited disciplinary proceedings are commenced pursuant to Section ~~3.13(b)~~2.12 of these Rules.

Section 4.5 Hearing Subpoenas

(a) Bar Counsel and the Respondent may request that the hearing committee, hearing panel, ~~or~~ special hearing officer, or the Board issue a subpoena requiring the attendance and testimony of a witness, including the Respondent, and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding.

(b) The request shall be made in writing to a member of the hearing committee or panel, or to the special hearing officer, or to a member of the Board who may forthwith issue the subpoena.

(c) The subpoena shall require a witness to appear before the Board, a hearing panel, the hearing committee, or the special hearing officer, or at a deposition conducted pursuant to Sections 4.9 to 4.16 of these Rules, at a specified date and time. The subpoena ~~and~~ shall also specify the evidence, if any, to be produced and the date for production, which may be prior to the hearing. The parties shall each be entitled to inspect or copy any materials produced pursuant to such subpoena.

(d) The Board, the hearing committee, hearing panel, or special hearing officer may, on its own motion, subpoena any witness to appear and give testimony or produce evidence at any hearing.

SUBCHAPTER E. DEPOSITIONS ~~WHEN PERSONAL APPEARANCE IMPRACTICAL~~

Section 4.9 Availability of Depositions

(a) **Discovery Depositions.** -After the institution of formal disciplinary proceedings pursuant to Rule 4:01, section 8(3), and the filing of an answer by the Respondent, a party may obtain discovery by deposition upon oral examination, subject to the following terms and conditions:

- (1) Any party may file a written notice and application with the Board Chair or the Chair's designee pursuant to Section 4.11(a), requesting the deposition upon oral examination, or by telephone or audio-visual means, of any person and that any evidence, including books, records, correspondence or documents, relating to the matter be produced at the same time. Any other party may file and serve a response to an application within 7 days after service of the application.
- (2) The Board Chair or the Chair's designee may allow an application to take a discovery deposition only upon a showing of a substantial need for the deposition in the preparation of the applicant's case, taking into consideration:
 - (A) The nature and complexity of the case and the need to assure an expeditious, economical and fair proceeding.
 - (B) Whether the information sought or its substantial equivalent has been provided or was available by other means, taking into consideration the formal or informal discovery that has already occurred.
 - (C) The prevention of embarrassment, oppression, or undue burden, including economic burden, that the deposition may cause the deponent.

The order permitting the deposition may specify or restrict the subject matter upon which the deponent may be examined.

(b) **Discovery depositions** shall be conducted as set forth in Sections 4.11 through 4.15, subject to such terms and conditions as the Board Chair or the Chair's designee may order, including supervision, length, location, and timing of the deposition. Depositions must be completed within 21 days prior to the commencement of hearing, unless otherwise ordered for good cause shown.

~~(e)~~ **Section 4.10 Testimonial Depositions of Unavailable Witnesses.**

~~(a) **General Rule.** Where appropriate, testimony may be taken within or without the Commonwealth by deposition or by commission.~~

~~(b) **Procedure on Deposition.** No deposition may be received in evidence if it is taken without the approval of the Board or the hearing committee, hearing panel, or special hearing officer to which a proceeding has been referred.~~

~~(e) Approval of Hearing Committee, Hearing Panel, or Special Hearing Officer.~~ Such hearing committee, hearing panel, or special hearing officer shall approve the taking of testimony by deposition in those cases where 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. ~~The complete record of the testimony so taken shall be made and preserved.~~

~~(d) a~~ **Depositions Prior to the Commencement of Formal Proceedings to Preserve Testimony.** If at any stage of the investigation ~~by bar counsel~~Bar Counsel prior to the filing of a petition for discipline it appears that a prospective witness may no longer be subject to service of a subpoena or may become unable to attend or testify at a hearing because of age, illness or other infirmity, Bar Counsel or the Respondent may request that the Board order a deposition to preserve the testimony of the witness. The request shall be made in writing to the Board Chair or the Chair's designee pursuant to Section 4.11(a). If the Chair or the Chair's designee deems it to be in the interest of justice that the testimony of the prospective witness be taken and preserved, he or she shall order that the testimony of the witness be taken by deposition and that any evidence, including books, records, correspondence or documents, relating to any matter in question in the investigation be produced at the same time.

(b) **Depositions After Commencement of Formal Proceedings.** After the institution of formal disciplinary proceedings pursuant to Rule 4:01, section 8(3), and the filing of an answer by the Respondent, applications for the taking of testimony by deposition of those witnesses not subject to service of a subpoena or unable to attend a hearing due to age, illness or other infirmity shall be approved by the Board Chair or the Chair's designee or by the hearing committee, hearing panel, or special hearing officer to which the matter has been referred. Depositions must be completed within 21 days prior to the commencement of the hearing, unless otherwise ordered for good cause shown.

~~(3)~~ **Notice and Application.** A written notice and application to take a testimonial deposition pursuant to subsections ~~(e)(1a)~~ and ~~(e)(2b)~~ when the matter has not been referred to a special hearing officer, hearing committee, or hearing panel shall be submitted by the party proposing to take such deposition to the other parties and to the Board Chair. Otherwise, written notice and application shall be submitted to the other parties and to the special hearing officer, hearing committee or hearing panel.

~~(4)~~ **Testimonial Depositions** under this section ~~(e)~~ shall be conducted as set forth in Sections 4.11 through 4.15.

Section 4.10 — ~~Reserved~~ Notice and Application

~~Unless notice is waived, or the hearing committee, hearing panel, or special hearing officer specifically directs, no deposition shall be taken except after at least ten days'~~

~~notice to the parties if the deposition is to be taken within this Commonwealth, and fifteen days' notice when a deposition is to be taken elsewhere. A written notice and application to take evidence by deposition shall be submitted by the party proposing to take such deposition to the other parties and to the hearing committee, hearing panel, or special hearing officer or to the Board. In such notice and application, the party desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason that such deposition should be taken. The other parties may, within the time stated in this section, make any appropriate response to such notice and application.~~

Section 4.11 Application for and Authorization of Taking Deposition

(a) In any application to take a deposition filed pursuant to Sections 4.9 and 4.10 and in addition to any other requirements specified by these Rules, the party desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason that such deposition should be taken. Any other party may file and serve a response to an application within seven days after service of the application.

(b) If an application for the taking of a deposition ~~so warrants~~ is allowed, the Board Chair or the Chair's designee, or the special hearing officer, hearing committee, or hearing panel to which application was made under Section 4.910(3c), within a reasonable time in advance of the time fixed for taking testimony, ~~the hearing committee, hearing panel, or special hearing officer or the Board~~ will issue and serve upon the parties an authorization form naming the witness whose deposition is to be taken, and the time, place and notarial officer before whom the witness is to testify, but such time, place and notarial officer so specified may or may not be the same as those named in the notice and application. If required, the Board Chair or the Chair's designee shall issue a subpoena to compel the witness's attendance at the deposition.

(c) Upon motion, the Board Chair or the Chair's designee may enter protective orders regarding further terms and conditions under which depositions may be taken, including without limitation, the number, length, time and place, the scope or subject matter and the allocation of expenses. The Board Chair or the Chair's designee may also order that depositions cease. After the petition for discipline and answer have been referred to a special hearing officer, hearing committee or hearing panel, the special hearing officer or chair of the committee or panel may enter the same orders and take the same actions pursuant to this paragraph as the Board Chair.

Section 4.12 Officer Before Whom Deposition is Taken

(a) Within the United States. A deposition may be taken before the Board Chair or the Chair's designee, a single member of the hearing committee or hearing panel, or before

the special hearing officer, or before a person authorized under either section 2(a) or section 2(b) of Rule 1:02(A) of the Supreme Judicial Court insofar as these sections deal with depositions to be taken within the United States or before any other person authorized to administer oaths not being counsel for any of the parties, or interested in the proceeding or investigation, according to such designation as may be made in the authorization form.

(b) In Foreign Countries. Where such deposition is taken in a foreign country, it may be taken before a secretary of an embassy or legation, consul general, consul, vice-consul or consular agent of the United States or before such persons as authorized by section 2(b) of Rule 1:02(A) of the Supreme Judicial Court insofar as this section deals with depositions to be taken in foreign countries, or before such person or officer as may be designated in the authorization form or agreed upon by the parties by stipulation in writing filed with and approved by the hearing committee, hearing panel, or special hearing officer.

Section 4.13 Oath and Reduction to Writing

(a) General Rule. Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which he or she shall testify, before any questions are put or testimony given. The testimony shall be reduced to writing by the notarial officer, or under the notarial officer's direction. When the testimony is fully transcribed the deposition shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the notarial officer with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness, the notarial officer shall certify it in the usual form and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the hearing committee, hearing panel, or special hearing officer or the Board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(b) Transmission.

(1) ~~Unless~~ For depositions taken pursuant to Section 4.109(e)(2b) and unless otherwise directed in the authorization form, after the deposition has been certified, it shall, together with the number of copies specified in the authorization, the copies being made by such notarial officer or under the notarial officer's direction, be forwarded by such notarial officer in a sealed envelope addressed to the office of the Board at Boston, Massachusetts, with sufficient stamps for postage affixed. Upon receipt thereof, the Board shall file the original in the proceeding and shall forward a copy to each party, the special hearing officer, and to each member of the hearing committee or panel.

(2) For all other depositions, the party taking the deposition shall give prompt notice of its receipt to all other parties. Upon payment of the reasonable charges therefor, the notarial officer shall furnish a copy of the deposition to any party or the deponent.

Section 4.14 Scope and Conduct of Examination

~~Unless otherwise directed in the authorization form, t~~The witness may be examined regarding any matter not privileged ~~which~~ that is relevant to the subject matter of the proceedings and is within the areas of inquiry specified by the order permitting the deposition. Parties shall have the right of cross-examination and objection. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate.

(a) If a deposition is not being taken in the presence of the special hearing officer, member of the hearing committee or member of the Board, ~~o~~ objections to questions or evidence shall be noted by the notarial officer upon the deposition, but the notarial officer shall not have the power to decide on the competency, materiality or relevancy of the evidence. ~~Objections-In such cases,~~ objections to the competency of a witness or to the competency, relevancy or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition.

(b) If a deposition is being taken in the presence of the special hearing officer, member of the hearing committee or member of the Board, the individual so presiding shall rule on all objections. It is not grounds for objection at a discovery deposition that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence and is within the scope of the order permitting the deposition. The fact that an objection is overruled will not preclude a party from raising the same objection at hearing and the fact that an objection is allowed will not preclude a party from examining the witness on the same subject matter at hearing.

Section 4.15 Status of Deposition as Part of Record

No part of a deposition taken pursuant to Section 4.9 of this rule shall constitute a part of the record in the proceeding, unless offered in evidence before the hearing committee, hearing panel, or special hearing officer. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be admitted in evidence. ~~used against any party who was present or represented at the taking of the deposition or who had notice thereof. If only part of a deposition is offered in evidence by a party, a party with an adverse interest may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. The introduction in evidence of the deposition or any part thereof for any purpose other than contradicting or impeaching the witness makes the person deposed the witness of the party introducing the deposition.~~

Section 4.16 [Reserved]

Section 5.6 Communications and Filings Generally

(c) **Transmission of ~~Grievances~~Complaints.**

(1) Except as otherwise provided in this subsection, all ~~grievances~~complaints received by the Board against lawyers shall be transmitted forthwith to the Bar Counsel.

(2) ~~Grievances~~Complaints received against Bar Counsel, Assistant Bar Counsel or any member of the Board or its staff involving alleged violations of the Disciplinary Rules shall be transmitted directly to the Board.