RULE 4:01 BAR DISCIPLINE
(As amended through – Mass. – (9/1/2009))

Section 1. Jurisdiction.

(1) Any lawyer or foreign legal consultant admitted to, or engaging in, the practice of law in this Commonwealth shall be subject to this court's exclusive disciplinary jurisdiction and the provisions of this rule as amended from time to time.

(2) Any Information, report, or other pleading filed in the Supreme Judicial Court pursuant to this rule shall be filed with the clerk of this court for Suffolk County. It shall be presented to the chief justice, who shall designate a justice to hear the matter.

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. The Board Chair or the Chair's designee shall consider the convenience of the complainant, witnesses, the Respondent and hearing committee in selecting a hearing location.

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.

(2) Failure to comply with (a) or (b) of subsection (1) or failure to file an answer as required by section 8(3) of this rule or to appear at a hearing before a hearing committee, special hearing officer, or panel of the Board shall result in the entry of an order of administrative suspension upon the Bar Counsel's filing with this Court of a petition for administrative suspension which sets forth the violation of this section and an affidavit of the Bar Counsel affirming that the lawyer was served

Deleted: Disciplinary Districts.

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.¶

Deleted: or any of the Disciplinary Rules Applicable to Practice as a Prosecutor or as a Defense Lawyer (see Rule 3:08)

with the request for information, the subpoena, the petition for discipline, or the notice of hearing in accordance with the provisions of section 21 of this rule; that the lawyer was afforded a reasonable period of time for compliance with the request for information or the subpoena, or to answer the petition, or with reasonable notice of the hearing and had failed to comply, to answer, or to appear; and that the request for information, subpoena, petition, or notice of hearing was accompanied by a statement advising the Respondent-lawyer that failure to comply with the request for information or subpoena, or to answer timely the petition, or to appear at the hearing would result in administrative suspension without further hearing.

(3) Any suspension under the provisions of subsection (2) above shall be effective forthwith upon entry of the suspension order and shall be subject to the provisions of section 17(4) of this rule. If not reinstated within thirty days after entry, the lawyer shall become subject to the other provisions of section 17 of this rule. As a condition precedent to reinstatement, such lawyer shall file with the Board and with the Bar Counsel an affidavit stating the extent to which he or she has complied with subsection (1) of this section and with the applicable provisions of section 17 of this rule. The lawyer shall also as a condition of reinstatement pay all expenses incurred by the Office of Bar Counsel and the Board in obtaining compliance with this section and in seeking suspension, including an administrative fee of twenty-five dollars.

Section 4. Types of Discipline.

Discipline of lawyers may be (a) by disbarment, resignation pursuant to section 15 of this rule, or suspension by this court; (b) by public reprimand by the Board; or (c) by admonition by the Bar Counsel.

Section 5. The Board of Bar Overseers.

(1) This court shall appoint a Board of Bar Overseers (Board) to act, as provided in this Chapter Four, with respect to the conduct and discipline of lawyers and in such matters as may be referred to the Board by any court or by any judge or justice. The Board shall consist of such number of members as the court may determine from time to time. The court, by order, shall request the submission of nominations to fill vacancies in such manner as it may determine. The Massachusetts Bar Association and each county bar association (including, for the purposes of this section, the Boston Bar Association as the bar association for Suffolk County) may submit to this court in writing the names of two nominees for each vacancy in the Board. Any lawyer may submit in writing the names of nominees. The court may, but need not, make appointments to the Board from the nominees so submitted and, in making appointments, shall give appropriate consideration to a reasonable geographical distribution of appointees among disciplinary districts. The court shall from time to time designate one member of the Board as Chair and

another as Vice Chair. The Vice Chair shall perform the duties of the Chair in the Chair's absence or incapacity to act.

(2) Appointments to the Board shall be for a term of four years. No member shall be appointed to more than two consecutive full terms but (a) a member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in addition to such part of a full term, and (b) a former member shall again be eligible for appointment after a lapse of one or more years. A member whose term has expired shall continue in office until a successor is appointed and, in any event, shall continue to serve on any hearing or appeal panel to which he or she has been appointed until the panel completes its duties and may be recalled to serve on the panel in the event of a remand by the Board or the Court.

(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;

(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;

(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;

(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;

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

Deleted: (h) shall file with this court annually, and at such other times as the court may order, a summary of each proceeding resulting in public reprimand under subsection (g) above;¶

(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;

(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;

(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 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.

(4) For any action requiring a vote of the Board, the Board shall act only with the concurrence of a majority of the Board who are present and voting, provided, however, that a quorum shall be present. A quorum shall consist of a majority of the Board, including members who are recused or abstain.

Section 6. Hearing Committees.

(1) Hearing committee members shall be appointed for a term of three years, and no member shall serve for more than two successive three-year terms. A member whose term has expired shall continue in office until a successor is appointed, and, in any event, shall continue to serve on any committee to which he or she has been appointed until the committee completes its duties and may be recalled to serve on the committee in the event of a remand by the Board or the court. A former member may be again appointed after the expiration of one year from his or her last service.

(2) The Board shall designate one member of each committee, who shall be a lawyer, to serve as Chair. The committee shall act only with a concurrence of a majority of its members who are present, provided, however, that two members shall constitute a quorum.

(3) Hearing committees

(a) shall conduct hearings on formal charges of misconduct upon reference by the Board or its Chair, and

(b) may recommend that the matter be concluded by dismissal, admonition, public reprimand, suspension, or disbarment.

(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 or admonition, or by diversion of such matters 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,

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;

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Section 7

(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.

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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,

(a) closing or declining to pursue a complaint and informing the complainant in writing of the reasons for not investigating a complaint or for closing the file and 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

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(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.

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

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

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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.

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(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 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.

(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.

(5) **Review by the Board.**

(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 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.

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(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 9. Immunity.

(1) Complaints submitted to the Board or to the Bar Counsel shall be confidential and absolutely privileged. The complainant shall be immune from civil liability based upon his or her complaint; provided, however, that such immunity from suit shall apply only to communications to the Board or the Bar Counsel and shall not apply to public disclosure of information contained in or relating to the complaint.

(2) The complainant and each witness giving sworn testimony or otherwise communicating with the Board or the Bar Counsel during the course of any investigation or proceedings under this rule shall be immune from civil liability based on any such testimony or communications; provided, however, that such immunity from suit shall apply only to testimony given or communications made to the Board or the Bar Counsel and shall not apply to public disclosure of information attested to or communicated during the course of the investigation or proceedings.

(3) The Board, members of the Board and its staff, members of hearing committees, special hearing officers, and the Bar Counsel and members of his or her staff shall be immune from liability for any conduct in the course of their official duties.

Section 10. Refusal of Complainant to Proceed; Compromise; or Restitution.

Abatement of an investigation into the conduct of a lawyer or other related proceedings shall not be required by the unwillingness or neglect of the complainant to cooperate in the investigation , or by any settlement, compromise or restitution. A lawyer shall not, as a condition of settlement, compromise or restitution, require the complainant to refrain from filing a complaint, to withdraw the complaint, or to fail to cooperate with the Bar Counsel.

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

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

Section 12. Lawyers Convicted of Crimes.

(1) The term "conviction" shall include any guilty verdict or finding of guilt and any admission to or finding of sufficient facts and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed.

(2) A conviction of a lawyer for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that lawyer based upon the conviction.

(3) The term "serious crime" shall include (a) any felony, and (b) any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, includes interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy, or solicitation of another, to commit a "serious crime."

(4) Upon the filing with this court of a certificate establishing a lawyer’s conviction of a serious crime ,this court shall enter an order to show cause why the lawyer should not be immediately suspended from the practice of law, regardless of the pendency of an appeal, pending final disposition of any disciplinary proceeding commenced upon such conviction. The court or a justice, after affording the lawyer opportunity to be heard, may make such order of suspension or restriction as protection of the public may make appropriate. The court shall also refer the matter to the Board to take appropriate action, which may include investigation by the Bar Counsel or the institution of a formal proceeding. A disciplinary proceeding so instituted need not be brought to hearing until all appeals from the conviction are concluded.

(5) Upon receipt of a notice of a conviction of a lawyer for a crime not constituting a serious crime, this court may refer the matter to the Board to take appropriate action, which may include investigation by the Bar Counsel or the institution of a formal proceeding. This court need make no reference with respect to convictions for minor offenses.

(6) A lawyer suspended under the provisions of subsection (4) above will be reinstated immediately upon the filing of a certificate that the underlying conviction for a serious crime has been reversed or set aside, but the reinstatement need not terminate any formal proceedings then pending against the lawyer.

(7) The clerk of any court within the Commonwealth in which a lawyer is convicted shall transmit a certificate thereof to this court and to the Board within ten days of said conviction.

(8) Within ten days of a lawyer's conviction of a crime, as defined in subsection 12(1) of this rule, the lawyer shall notify the Bar Counsel of the conviction.

(9) Upon being advised that a lawyer has been convicted of (a) a crime within this Commonwealth and that no certificate has been filed under subsection (7) above, or (b) a crime in another jurisdiction, the Bar Counsel shall obtain a certificate of the conviction and transmit it or a copy to the court and to the Board.

Section 12A. Lawyer Constituting Threat of Harm to Clients.

Upon the filing with this court of a petition by the Bar Counsel alleging facts showing that a lawyer poses a threat of substantial harm to clients or prospective clients, or that the lawyer's whereabouts are unknown, this court shall enter an order to show cause why the lawyer should not be immediately suspended from the practice of law pending final disposition of any disciplinary proceeding commenced by the Bar Counsel. The court or a justice, after affording the lawyer opportunity to be heard, may make such order of suspension or restriction as protection of the public may make appropriate. In the interest of justice, the court, upon application of the lawyer, may terminate such suspension at any time after affording the Bar Counsel an opportunity to be heard.

Section 13. Disability Inactive Status.

(1) **Involuntary Commitment, Adjudication of Incompetence, or Transfer to Disability Inactive Status.** Where a lawyer has been judicially declared incompetent or committed to a mental hospital after a judicial hearing, or where a lawyer has been placed by court order under guardianship or conservatorship, or where a lawyer has been transferred to disability inactive status in another jurisdiction, the court, upon proper proof of the fact, shall enter an order transferring the lawyer to disability inactive status. A copy of such order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian or conservator, and the director of the institution to which the lawyer is committed.

(2) **Investigation of Incapacity**. The Bar Counsel shall investigate information that a lawyer's physical or mental condition may adversely

affect his or her ability to practice law, except information involving the physical or mental condition of the Bar Counsel, assistant Bar Counsel, or any member of the Board, which shall be forwarded to the Board for investigation and disposition. In the event that the lawyer admits that he or she is incapacitated, the court may, upon petition of the Bar Counsel, enter an order placing the lawyer on disability inactive status, accepting the lawyer's resignation, or temporarily suspending the lawyer from the practice of law. With the approval of the Board Chair or a member of the Board designated by the Chair, the Bar Counsel may initiate formal proceedings pursuant to subsection (4) of this section to determine whether the lawyer shall be transferred to disability inactive status.

(3) **Inability to Assist in Defense**. If during the course of a disciplinary investigation or proceeding under this rule the Respondent-lawyer alleges an inability to assist in the defense due to mental or physical incapacity, the court, upon petition by the Bar Counsel or the Respondent-lawyer, shall immediately transfer the Respondent-lawyer to disability inactive status until further order of the court. If the Bar Counsel contests the Respondent-lawyer's allegation, then a determination shall be made concerning the incapacity pursuant to subsection (4) of this section.

(4) Proceedings to Determine Incapacity.

(a) Proceedings to adjudicate contested allegations of disability or incapacity shall be held before a hearing committee, special hearing officer, or a panel of the Board and shall be commenced upon petition by the Bar Counsel. The proceedings shall be conducted in the same manner as disciplinary hearings and shall be open to the public as provided in section 20.

(b) The court, board, hearing committee, special hearing officer, or hearing panel may require the examination of the Respondent-lawyer by qualified medical experts designated by them.

(c) The Court or the Board may appoint a lawyer to represent the Respondent-lawyer if the lawyer is without adequate representation.

(d) The hearing committee, special hearing officer, or panel of the Board shall report promptly to the Board its findings and recommendations, together with a record of the proceedings before it. The lawyer and the Bar Counsel shall have the rights of appeal provided for in section 8 of this rule. The Board shall file an Information with the clerk of this court for Suffolk County together with its recommendation and the record of the proceedings before it.

(e) If, after hearing and upon due consideration of the record including the recommendation of the Board as provided in subsection (6) of section 8 of this rule, the court concludes that the Respondent is

incapacitated from continuing to practice law, it shall enter an order transferring the Respondent to disability inactive status until further order of the court.

(f) Disciplinary proceedings shall not be stayed unless the court finds that the Respondent-lawyer is so incapacitated by reason of mental or physical infirmity that he or she is incapable of assisting in his or her defense as provided in subsection (3) of this section. If the court determines the Respondent-lawyer's claim of incapacity to defend to be invalid, the disciplinary investigation or proceedings shall resume, and the court shall immediately temporarily suspend the Respondent-lawyer from the practice of law pending final disposition of the matter. The court may direct that the expense of the independent examinations be paid by the lawyer.

(5) **Public Notice of Transfer to Disability Inactive Status.** The Board shall cause a notice of transfer to disability inactive status to be published in the same manner as a disciplinary sanction imposed under section 8 of this rule is published.

(6) Reinstatement from Disability Inactive Status.

(a) Reinstatements from disability inactive status shall be subject to the provisions of section 18 of this rule except as herein provided.

(b) A lawyer shall be entitled to petition for transfer to active status from disability inactive status once a year or at such intervals as this court may direct in the order transferring the Respondent to disability inactive status or any modifications thereof.

(c) The Board, upon referral from the court, may direct an examination of the lawyer by qualified medical experts designated by the Board.

(d) Where a lawyer placed on disability inactive status under subsection (1) of this section has been judicially declared to be competent or returned to active status by the other jurisdiction, this court, after hearing, may dispense with referring the matter to the Board pursuant to subsection (5) of section 18 for the taking of further evidence that his or her disability has been removed and may immediately direct the lawyer's reinstatement to active status upon such terms as are deemed proper and advisable.

(e) A lawyer seeking reinstatement under this section shall have the burden of demonstrating that his or her physical or mental condition does not adversely affect the lawyer's ability to practice law and that he or she has the competency and learning in law required for admission to practice.

(7) **Waiver of Privilege**. A lawyer who files for reinstatement pursuant to the provisions of subsection (6) of this section or who alleges incapacity to defend himself or herself in a disciplinary investigation or proceedings

pursuant to the provisions of subsection (3) shall be required to disclose the name of each medical provider, hospital, or other institution by whom or in which the lawyer has been examined or treated since the time of transfer to disability inactive status or during the period of the alleged incapacity. The lawyer shall furnish to this court and to the Bar Counsel written consent to the release of information and records relating to the disability upon request by the court or Board, court- or Board-appointed medical experts, or the Bar Counsel.

Section 14. Appointment of Commissioner to Protect Clients' Interests When Lawyer Disappears or Dies, or is Placed on Disability Inactive Status.

(1) Whenever a lawyer is placed on disability inactive status, or disappears or dies, and no partner, executor, or other responsible party capable of conducting the lawyer’s affairs is known to exist, this court, after giving the Bar Counsel an opportunity to be heard and upon proper proof of the fact, may appoint a lawyer or lawyers as commissioner to make an inventory of the files of the inactive, disappearing, or deceased lawyer and to take appropriate action to protect the interests of clients of the inactive, disappearing, or deceased lawyer, as well as such lawyer's interest.

(2) The commissioner so appointed shall not disclose any information contained in any files listed in such inventory without the consent of the client to whom such file relates except as necessary to carry out the order of this court to make such inventory. The commissioner shall be reimbursed for reasonable expenses and may be awarded fair compensation. The commissioner's expenses and fees shall be paid by the lawyer unless otherwise ordered by the court.

Section 15. Resignations by Lawyers under Disciplinary Investigation.

(1) A lawyer who is the subject of an investigation under this Chapter Four may submit a resignation by delivering to the Board an affidavit stating that he or she desires to resign, and that:

(a) the resignation is freely and voluntarily rendered; the lawyer is not being subjected to coercion or duress and is fully aware of the implications of submitting the resignation;

(b) the lawyer is aware that there is currently pending an investigation into allegations that he or she has been guilty of misconduct, the nature of which shall be specifically set forth; and

(c) the lawyer acknowledges that the material facts, or specified material portions of them, upon which the complaint is predicated are true or can be proved by a preponderance of the evidence.

(d) the lawyer waives the right to hearing as provided by this rule.

(2) Upon receipt of the required affidavit, the Board shall file it, together with its recommendation thereon, with this court which may enter an order.

(3) All proceedings under this section shall be public as provided in section 20 of this rule.

(4) Any lawyer whose resignation under this section has been accepted must comply with the provisions of section 17 of this rule regarding notice.

Section 16. Reciprocal Discipline.

(1) Upon receipt of a certified copy of an order that a lawyer admitted to practice in this Commonwealth has been suspended or disbarred from the practice of law in another jurisdiction (including any federal court and any state or federal administrative body or tribunal) or has resigned during the pendency of a disciplinary investigation or proceeding, this court shall issue a notice directed to the Respondent-lawyer containing: (a) a copy of the order from the other jurisdiction; and (b) an order directing that the Respondent-lawyer inform the court within thirty days from service of the notice of any claim that the imposition of the identical or other discipline in this Commonwealth would be unwarranted and the reasons therefor. The Bar Counsel shall cause this notice to be served on the Respondent-lawyer in accordance with this rule.

(2) In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth may (but need not) be deferred.

(3) Upon the expiration of thirty days from service of the notice under subsection (1) above, the court, after hearing, may enter such order as the facts brought to its attention may justify. The judgment of suspension or disbarment shall be conclusive evidence of the misconduct unless the Bar Counsel or the Respondent-lawyer establishes, or the court concludes, that the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard or there was significant infirmity of proof establishing the misconduct. The court may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth.

(4) Upon receipt of a certified copy of an order that a lawyer admitted to practice in this Commonwealth has been subjected to public discipline other than suspension or disbarment in another jurisdiction (including any federal court and any state or federal administrative body or tribunal), the Board and the clerk of this court for Suffolk County shall

file it and make it available to the public to the extent that the record of any other public disciplinary proceeding would be made available.

(5) A final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or an admission in connection with a resignation in another jurisdiction may be treated as establishing the misconduct for purposes of a disciplinary proceeding in the Commonwealth.

(6) A lawyer subject to public or private discipline in another jurisdiction (including any federal court and any state or federal administrative body or tribunal), or whose right to practice law has otherwise been curtailed or limited in such other jurisdiction, shall provide certified copies of the order imposing such discipline or other disposition to the Board and to the Bar Counsel within ten days of the issuance of such order.

(7) A lawyer admitted to practice in this Commonwealth who is denied admission to the bar of another jurisdiction (including any federal court and any state or federal administrative body or tribunal), for reasons other than failure to pass the bar examination, shall provide certified copies of any such decision, notice or order to the Board and the Bar Counsel within ten days of its issuance.

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

(1) In every case where a lawyer has been disbarred, suspended, temporarily suspended, or placed on disability inactive status, or where a lawyer has resigned pursuant to the provisions of section 15 of this rule, the lawyer shall, within fourteen days of the date of entry of the disbarment, suspension, temporary suspension, transfer to disability inactive status, or resignation, take the following actions:

(a) file a notice of withdrawal as of the effective date thereof with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs (c) and (d) of this subsection, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

(b) resign as of the effective date thereof all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs (c) and (d) of this subsection, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

(c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has resigned or that the lawyer has been disbarred, suspended, temporarily suspended, or transferred to disability

inactive status; that he or she is disqualified from acting as a lawyer after the effective date thereof; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

(d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has resigned, been disbarred, suspended, or transferred to disability inactive status and, as a consequence, is disqualified from acting as a lawyer after the effective date thereof;

(e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

(f) refund any part of any fees paid in advance that have not been earned;

(g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his or her possession, custody or control.

(h) give such other notice of the court's action as the court may direct in the public interest.

Unless otherwise ordered by the Court, all notices required by this section shall be served by certified mail, return receipt requested, in a form approved by the Board.

(2) Whenever the court deems it necessary, it may appoint a commissioner to take appropriate action in lieu of, or in addition to, the action directed in subsection (1) of this section. The appointment of the commissioner shall be at the expense of the lawyer unless otherwise ordered by the court.

(3) Orders imposing temporary suspension shall be immediate and forthwith, and orders imposing disbarment or suspension or accepting the resignation of the lawyer or placing a lawyer on disability inactive status shall be effective thirty days after entry, unless otherwise ordered by the court. After entry of such order, the lawyer shall not accept any new retainer or engage as lawyer for another in any new case or matter of any nature. During the period between the entry date of the order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(4) The Board shall promptly transmit a copy of the order of temporary suspension, suspension, disbarment, resignation, or transfer to disability inactive status to the clerk of each court in the Commonwealth, state or

federal, in which it has reason to believe the disciplined lawyer has been engaged in practice.

(5) Within twenty-one days after the entry date of the disbarment, suspension, temporary suspension, resignation, or disability inactive status order, the lawyer shall file with the office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of the Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be

(a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court.

(b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of the order any client, trust or fiduciary funds;

(c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of the order or thereafter;

(d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the Bar Counsel, including copies of checks and other instruments;

(e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;

(f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice provisions of this rule.

(6) Within twenty-one days after the entry date of the disbarment, suspension, temporary suspension, resignation, or disability inactive status order, the lawyer shall file with the Clerk of this court for Suffolk County:

(a) a copy of the affidavit of compliance required by subsection 5, above.

(b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;

(c) the residence or other street address where communications to the lawyer may thereafter be directed.

(7) Except as provided in section 18(3) 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.

Deleted: at least ten years from the order of the court

Deleted: A lawyer who has been suspended for a specific period and who is found by the court so to have violated the provisions of this rule may not be reinstated until after the expiration of at least at least two times the term of the suspension, measured from the date of the order finding that the lawyer has violated the provisions of this rule.

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.

(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 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.

(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.

(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.

(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

Deleted: Respondent-lawyer

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 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 the requirement of a 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.

Section 19. Expenses.

The salary of the Bar Counsel, the Bar Counsel's expenses, the expenses of the Board, hearing committees, and special hearing officers, and other expenses incurred in the administration of this rule, may be paid by the Board out of the funds collected under the provisions of Rule 4:03, or, where the court deems that appropriate, from state funds as the court may order. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition, and shall file a copy of such audit with this court.

Section 20. Confidentiality and Public Proceedings.

(1) Except as the Court shall otherwise order or as otherwise provided in this rule, the Board and the Bar Counsel shall keep confidential all information involving allegations of misconduct by a lawyer and all information that a lawyer's physical or mental condition may adversely affect his or her ability to practice law until the occurrence of one of the following events:

(a) Submission of a resignation pursuant to section 15 of this rule.

(b) Submission of a recommendation that formal discipline be imposed by agreement

(c) Service upon the Respondent-lawyer of a petition for discipline instituting formal charges against the lawyer or of a petition seeking to place the lawyer on disability inactive status.

This section shall not prevent the members of the Board or the Bar Counsel from disclosing such information to this Court or as they deem necessary to carry out their duties under this rule.

(2) Notwithstanding subsection (1) of this section, the Bar Counsel or the Board may disclose the pendency, subject matter, and status of an investigation if:

(a) the Respondent-lawyer has formally waived confidentiality or made the matter public;

(b) the investigation is predicated upon a conviction of the Respondent-lawyer for a serious crime as defined in section 12 herein;

(c) the investigation is based upon allegations that have become generally known to the public; or

(d) there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession.

(3) Upon the submission of an affidavit of resignation pursuant to section 15 of this rule or upon the submission of a stipulation between the Bar Counsel and the Respondent-lawyer which recommends public discipline or after the service upon the Respondent-lawyer of a petition for discipline instituting formal disciplinary charges or of a petition seeking to place the lawyer on disability inactive status, the proceedings are open to the public except for:

(a) deliberations of the hearing committee, the special hearing officer, the hearing panel, the appeal panel, the Board, or this court;

(b) information with respect to which the Board has issued a protective order under subsection (4) hereof;

(c) information with respect to which this court has issued a protective order on appeal from a Board decision denying such order under subsection (4) hereof; or

(d) further proceedings following the recommendation by a hearing committee, a special hearing officer, a hearing panel, or an appeal panel, or following an order of the Board or this 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 this court orders otherwise.

(4) In order to protect the interests of a complainant, witness, third party, or Respondent-lawyer, the Board may, upon application of the Bar Counsel or any affected person and for good cause shown, issue a protective order prohibiting the public 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-lawyer 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. The 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 this court for Suffolk County within seven 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 special hearing officer, or any panel of the Board.

(5) The provisions of this section shall not be construed to prohibit the Board from notifying a complainant concerning the Board's disposition of the complaint and the reasons therefor, or to deny access to relevant information to the Clients' Security Board, or to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice or considering reciprocal disciplinary action, or to law enforcement agencies investigating qualifications for government employment where discipline under this Chapter Four has been imposed, or, except as the court may direct, where the proceedings are pending and the Board in its discretion believes disclosure is warranted. In addition, the clerk of this court for Suffolk County shall transmit notice of all public discipline imposed by this court to the National Discipline Data Bank maintained by the American Bar Association.

(6) When an investigation by the Bar Counsel or the Board concerns allegations of a serious crime as defined in section 12 herein, or disciplinary charges in another jurisdiction, the Bar Counsel or the Board may disclose information not otherwise public under this rule to the appropriate agency responsible for criminal or disciplinary enforcement and exchange such information with such agency during the course of its investigation of the same lawyer. When requested by an appropriate disciplinary agency investigating disciplinary charges in another

jurisdiction, the Bar Counsel or the Board may also disclose the existence of any prior discipline.

Section 21. Service.

Any notice or pleading required to be served under this Chapter Four may be served upon the Respondent-lawyer in hand or by addressing it by certified, registered or first class mail to the address furnished in the last registration statement filed by the Respondent-lawyer in accordance with Rule 4:02. Service by mail is complete upon mailing.

Section 22. Subpoena Power.

(1) Upon request by the Bar Counsel or a Respondent-lawyer for testimony or the production of evidence at a hearing, or upon request by the Bar Counsel for testimony or the production of evidence at any stage of an investigation, witnesses may be summoned by subpoenas issued at the direction of a Board member, the Chair of a hearing committee, or a special hearing officer. Witnesses shall be examined under oath or affirmation. Testimony may be taken by a hearing committee, a special hearing officer, or a hearing panel outside the Commonwealth if the ends of justice so require. Where appropriate, testimony may be taken within or without the Commonwealth by deposition or by Commission. So far as practicable a stenographic, electronic, or videotape record shall be made and preserved for a reasonable time.

(2) Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, and where the issuance of a subpoena has been duly approved under the law of the other jurisdiction, a member of the Board may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.

Section 23. Costs.

The court, in its discretion, may direct that a Respondent-lawyer pay the costs incurred in connection with the processing of a disciplinary proceeding and Information, as well as the costs incurred by the Bar Counsel and the Board in attempting to gain information from the Respondent-lawyer in connection with the processing of a complaint against said lawyer.

Section 24. Restitution.

The court or the Board, in its discretion, may order a Respondent-lawyer to make restitution to those persons financially injured by his or her conduct and to reimburse the Clients' Security Fund for any payments made on account of misappropriation.

History

Chapter added: 365 Mass. 695 (1974)

Amendments:

Order	Effective Date	Sections Affected
368 Mass. 899 (1975)	1/1/76	1; 3; 5(3)(b), (i), (k), (l); 6(1); 21
370 Mass. 906 (1976)	4/20/76	20(2)
370 Mass. 915 (1976)	9/1/76	3; 9(1)
373 Mass. 924 (1977)	10/11/77	5(3)(c), (e); 6(1); 8(2); 12(4)
376 Mass. 941 (1978)	9/1/78	7(5); 8(1), (3); 11(1); 18(4); 20(2)
381 Mass. 784 (1980)	9/1/80	3; 8; 12(4), (5); 13(2), (3), (4), (5), (7); 15(4); 17(6); 18(1), (4); 20(4); 23
382 Mass. 698 (1980)	1/1/81	3
386 Mass. 1235 (1982)	4/30/82	5(2)
387 Mass. 1217 (1982)	8/30/82	5(2)
394 Mass. 1105 (1985)	3/1/85	5(3)(b); 7(1), (2), (4), (5); 8(1), (2); 8(4); 12A; 13; 14(1); 17; 18(3), (4); 20(1); 22; 24
397 Mass. 1211 (1986)	5/1/86	9
402 Mass. 1301 (1988)	7/1/88	12(1); 16(1), (4), (5), (6)
411 Mass. 1312 (1991)	9/3/91	5(2); 8(2); 20(1), (3), (4)
414 Mass. 1303 (1993)	2/1/93	13(7) (technical amendment)
415 Mass. 1301 (1993)	7/1/93	3; 4; 5(3); 6; 8(1), (2), (3); 9; 20
416 Mass. 1318 (1993)	12/6/93	5(2)
425 Mass. 1301 (1997)	7/1/97	Entire rule rewritten
426 Mass. 1301 (1998)	12/2/97 1/1/98	17(7) (technical amendment) 3(1) (technical amendment)
430 Mass. 1314 (1999)	10/27/99	3(2); 5(3)(i)
430 Mass. 1319 (1999)	1/1/00	1(1)
430 Mass. 1328 (1999)	1/3/00	18 rewritten
432 Mass. 1301 (2000)	1/2/01	7(5), rewritten; 8(4), Information may be demanded to appeal from AD, PC or dismissal
435 Mass. 1301 (2001)	1/1/02	8, requirement for approval of stipulation by single member deleted 13, Reciprocal inactive status
438 Mass. 1301 (2002)	12/2/02	20, eliminated 20-day waiting period
Mass. (2009)	9/1/09	Extensive changes: the major changes, with the primary sections affected, are Elimination of Disciplinary Districts (§ 2) Formal provision for Pre-trial Diversion (§§ 3, 7, 8)

Order	Effective Date	Sections Affected
		Elimination of the requirement that Bar Counsel open a file for frivolous complaints (§§ 7, 8) Elimination of Grievances (B files) (§§ 7, 8) Requirement that Bar Counsel notify complainant in writing of reasons for closing file. (§8) Changes in Admonition procedure: Admonitions imposed by written notice; expedited hearing for vacated Admonitions. (§8) Suspension no longer doubled for practice after suspension; increase in discretion of court. (§ 17) Grace period for lawyer suspended for brief period to request automatic reinstatement increased from three to six months after expiration of suspension. (§ 18) Petition for Reinstatement may be filed three months before expiration of suspension period (but not heard until suspension expires.) (§ 18)