

NOTICE

The Rules Committee of the Board of Bar Overseers invites public comments on the following proposed changes to the SJC & BBO rules concerning the processing of bar discipline matters. The proposed changes are set forth in the attached documents.

SJC RULES

1. Amendments to Rules 3:16, § 5, Rule 4:01, § 17(3), Rule 4:01, § 17(4), and Rule 4:01, § 3(3) governing suspensions.
2. Amendments to Rule 4:01, § 7 governing Bar Counsel Record Retention.
3. Amendments to Rule 4:01, § 15 governing Resignations.
4. Amendments to Rule 4:02, §(2A) governing Insurance Disclosure.
5. Amendments to Rule 4:02, § 10 governing Dues.

BBO RULES

6. Amendments to Section 5.5 governing change of title from Administrator to Executive Director.
7. Amendments to Section 4.1 governing Resignations.
8. Amendments to Section 3.51 governing Appeal Briefs.
9. Amendments to Section 3.29 governing amendments to Presentation of Evidence.
10. Amendments to Section 5.10 governing Retention of Records by Bar Counsel.

PROPOSED TECHNICAL CHANGES

11. Amendments to Section 3.16(2), SJC Rule 4:01, §§ 8(2) and 8(4), Reinstatement Questionnaire, Section 3:50, and Section 3.53 governing proposed technical changes.

The committee will make its recommendations to the Justices of the Supreme Judicial Court following receipt and review of public comments. Comments are due by March 16, 2020 and should be directed to the BBO at rulechanges@massbbo.org. Comments received will be made available to the public.

First Proposal

I. SJC RULES

SUSPENSIONS

Explanation for proposed amendments to rules governing suspensions:

The Board recommends that the court approve amendments to the rules governing administrative suspensions. The amendments will bring consistency to the rules.

The impacted SJC Rules are: Rule 3:16, § 5, Rule 4:01, § 17(3) , Rule 4:01, § 17(4) , and Rule 4:01, § 3 (3).

In general, the B.B.O. may administratively suspend registrations in three circumstances: (1) when lawyers fail to timely renew their bar memberships and pay bar dues; (2) when lawyers admitted on or after September 1, 2013 fail to complete the Practicing with Professionalism class or; (3) when lawyers fail to cooperate with an investigation by the Office of Bar Counsel. Regardless of the cause of the suspension, the lawyer is precluded from practicing during its pendency, no differently than if the lawyer were suspended as a disciplinary sanction.

The proposed amended rules would clarify that an administrative suspension for failing to cooperate with bar counsel shall not be effective until fourteen days after entry of the order. This is accomplished by an amendment to S.J.C. Rule 4:01, § 3(3), which refers to Rule 4:01, § 3(1)(a) and (b), the latter of which provide for administrative suspension for failing to cooperate with bar counsel. In addition, amendments to Rule 4:01, § 17(3) and (4) would clarify that administrative suspensions take effect fourteen days after the order is entered.

S.J.C. Rule 4:03, § 3(3) imposes the same requirements where the administrative suspension is caused by the lawyer's failure to timely renew his or her registration and pay the annual registration fees. In addition, the same period of time would apply under S.J.C. Rule 3:16, § 5, relating to the Practicing with Professionalism class. In sum, in all three situations, the lawyers would have fourteen days to wind down their practices or fix the issue that caused the

suspension. This allows a final opportunity for compliance without negative impact to clients.

The amended rules would also make clear that, if the lawyer is not reinstated within fourteen days of the order, the other obligations of Rule 4:01, § 17(1), 17(5), and 17(6) shall commence. These rules deal with the suspended lawyer's responsibility to notify clients, courts, and opposing counsel of the suspension and to take other steps to transfer clients to other lawyers. The time periods in those rules begin upon the date of the effective date of the order. Thus, the amended rules give the lawyer fourteen days to remedy his or her noncompliance. If the situation is corrected during that time, no further action by the lawyer would be required. Only if the lawyer failed to comply within fourteen days would the notice and other provisions of Rule 4:01, 17 become relevant.

The rules, both current and proposed, do not provide an opportunity for the suspended lawyer to object to the suspension. It is the B.B.O.'s view that providing an opportunity to object would complicate and prolong what is typically a straightforward question of compliance. During the fourteen-day period after the order issues, the lawyer's focus should be on complying with his or her obligations rather than objecting to the order. In addition, an administrative suspension typically follows a series of warnings and notices from the B.B.O. to the lawyer about their noncompliance. It does not come as a surprise. If the lawyer had an issue with the prior notices, the ideal time to raise any questions or objections would have been at the time of the notice, not waiting until the administrative suspension order is issued.

S. J. C. Rule 3:16, § 5

Red-lined

Suspension. Any order suspending an attorney under the provisions of Section 4 above shall be effective fourteen days after entry, unless otherwise ordered by the court, and shall become subject to the provisions of Rule 4:01, Sections 17(3) and 17(4). If not reinstated within fourteen days after entry, the lawyer shall become subject to the other provisions of said Section 17. The time periods for complying with Rule 4:01, Sections 17(1), 17(5), and 17(6), shall begin upon the effective date of the order.

Deleted:
Deleted: suspended
Deleted: e
Deleted: , upon entry of the suspension order, and
Deleted: i
Deleted: thirty

Clean

Suspension. Any order suspending an attorney under the provisions of Section 4 above shall be effective fourteen days after entry, unless otherwise ordered by the court, and shall become subject to the provisions of Rule 4:01, Sections 17(3) and 17(4). If not reinstated within fourteen days after entry, the lawyer shall become subject to the other provisions of said Section 17. The time periods for complying with Rule 4:01, Sections 17(1), 17(5), and 17(6), shall begin upon the effective date of the order.

S. J. C. Rule 4:01 § 17(3)

Red-lined

Orders imposing temporary suspension shall be immediate and forthwith; administrative orders shall be effective as set forth in subsection 3(3), 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.

Deleted: ,

Clean

Orders imposing temporary suspension shall be immediate and forthwith, administrative orders shall be effective as set forth in subsection 3(3), 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.

S. J. C. Rule 4:01, § 17(4)

Red-lined

The Board shall promptly transmit a copy of the order of temporary suspension, administrative suspension, term or indefinite 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.

Clean

The Board shall promptly transmit a copy of the order of temporary suspension, administrative 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.

In addition, the other rules regarding administrative suspension for failure to complete the Practicing with Professionalism Course (SJC Rule 3:16, § 5) and for failure to pay the annual registration fee (SJC Rule 4:03(3)), would need to be revised to conform to these changes.

S. J. C. Rule 4:01, § 3 (3)

Red-Lined

(3) Any suspension under the provisions of subsection (2) above shall be effective fourteen days after entry, unless otherwise ordered by the court, and, shall be subject to the provisions of Sections 17(3) and 17(4) of this rule. If not reinstated within fourteen days after entry, the lawyer shall become subject to the other provisions of section 17 of this rule. The time periods for complying with subsections 17(1), 17(5) and 17(6), shall begin upon the effective date of the order. As a condition precedent to reinstatement, such lawyer shall file with the Court with a copy to the Board and to 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

Deleted: shall be effective forthwith upon entry of the suspension order and

Deleted:

Deleted: thirty

Deleted: , and t

Deleted:

Deleted: Board and

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 \$100.

Clean

(3) Any suspension under the provisions of subsection (2) above shall be effective fourteen days after entry, unless otherwise ordered by the court, and shall be subject to the provisions of Sections 17(3) and 17(4) of this rule. If not reinstated within fourteen days after entry, the lawyer shall become subject to the other provisions of section 17 of this rule. The time periods for complying with subsections 17(1), 17(5) and 17(6), shall begin upon the effective date of the order. As a condition precedent to reinstatement, such lawyer shall file with the Court with a copy to the Board and to 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 \$100.

Deleted: twenty-five dollars

S. J. C. Rule 4:03(3)

Red-lined

Any order suspending an attorney under the provisions of subsection 2 above shall be effective fourteen days after entry, unless otherwise ordered by the court, and shall become subject to the provisions of Rule 4:01, Sections 17(3) and 17(4). If not reinstated within fourteen days after entry, the lawyer shall become subject to the other provisions of said Section 17. The time periods for complying with Rule 4:01, Sections 17 (1), 17(5), and 17(6), shall begin upon the effective date of the order.

Deleted: suspended

Deleted:

Deleted: , upon entry of the suspension order, and i

Deleted: thirty

Clean

Any order suspending an attorney under the provisions of subsection 2 above shall be effective fourteen days after entry, unless otherwise ordered by the court, and shall become subject to the provisions of Rule 4:01, Sections 17(3) and 17(4). If not reinstated within fourteen days after entry, the lawyer shall become

subject to the other provisions of said Section 17. The time periods for complying with Rule 4:01, Sections 17 (1), 17(5), and 17(6), shall begin upon the effective date of the order.

Second Proposal

BAR COUNSEL RECORD RETENTION

Explanation for proposed amendments to Bar Counsel Record Retention:

In 2018 the Supreme Judicial Court approved a new Rule of Professional Conduct, Rule 1.15A, which governs the retention and destruction of documents by lawyers. In light of those changes, the Board, specifically the Office of Bar Counsel, seeks to make its own guidelines conform to the Rules of Professional Conduct. Accordingly, the Board seeks to amend the rules to provide clear guidance for Bar Counsel regarding document retention.

S.J.C. Rule 4:01, § 7

Red-Lined

The Bar Counsel ...

(5) shall maintain permanent records of all matters presented to him or her and the disposition thereof, except that

(a) the Bar Counsel may maintain records in electronic form, unless another Rule or applicable law requires that a particular paper document be physically preserved for legal effectiveness;

(b) the Bar Counsel may destroy the paper records of a complaint against a lawyer six years after the date of the lawyer's death;

(c) the Bar Counsel may destroy the paper records of a complaint against a lawyer six years after an admonition has been vacated, and the complaint which gave rise to it is dismissed, pursuant to SJC Rule 4.01, Section 8(2)(d);

(d) the Bar Counsel may destroy the paper records of a complaint against a lawyer fifteen years after the final disposition of a matter that has resulted in public discipline (specifically, the lawyer's suspension or disbarment, the lawyer's

Formatted: Normal, Left, Indent: First line: 48 px

Deleted: (a)

Formatted: Normal, Left, Indent: First line: 48 px

Deleted: b

resignation pursuant to Section 15 of this rule, or the imposition of a public reprimand against the lawyer);

(e) 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

Deleted: c

(f) 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.

Deleted: d

Clean

The Bar Counsel ...

(5) shall maintain permanent records of all matters presented to him or her and the disposition thereof, except that

(a) the Bar Counsel may maintain records in electronic form, unless another Rule or applicable law requires that a particular paper document be physically preserved for legal effectiveness;

(b) the Bar Counsel may destroy the paper records of a complaint against a lawyer six years after the date of the lawyer's death;

(c) the Bar Counsel may destroy the paper records of a complaint against a lawyer fifteen years after the final disposition of a matter that has resulted in public discipline (specifically, the lawyer's suspension or disbarment, the lawyer's resignation pursuant to Section 15 of this rule, or the imposition of a public reprimand against the lawyer);

(d) in cases ending in admonition, the Bar Counsel may destroy the paper records of a complaint against a lawyer six years after an admonition has been

vacated, and the complaint which gave rise to it is dismissed, pursuant to SJC Rule 4.01, Section 8(2)(d);

(e) 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

(f) 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.

Third Proposal

RESIGNATIONS

Resignations by lawyers under disciplinary investigation

Explanation for the proposed amendments governing resignations:

Most resignations are submitted pursuant to an agreement with Bar Counsel but a lawyer may submit the affidavit of resignation directly to the Board and serve it on bar counsel. Another significant change would be to require a recommendation from Bar Counsel that explains whether the admitted conduct would typically result in disbarment or in a lesser sanction. It also proposes that the Board be permitted to order a hearing or investigation, or require a further explanation from the parties. Finally, it retains some of the language of the current subsection 15(2), whereby the Board files the affidavit with the Court, but now adds that the entire record of the proceedings is filed if a hearing has been held. It further would expand upon the language of the current subsection 15(4) to specify that the Board may recommend that the Court reject the affidavit as submitted, accept the resignation and disbar the attorney, or accept the resignation as a disciplinary sanction. While there has not always been complete consistency, generally a lawyer who resigns but whose conduct would not normally result in disbarment has the affidavit accepted “as a disciplinary sanction,” but the Court order does not say the lawyer has been “disbarred.” See, e.g., *Matter of Lawrence Mehl*, BD-2017-053 (Jan. 11, 2018) (accepting affidavit of resignation as a disciplinary sanction; respondent intentionally misused client funds but made restitution, so it would normally be an indefinite suspension rather than a disbarment, under matter of *Matter of Schoepfer*, 426 Mass. 183 (1997)). However, the sanctions for disciplinary resignations and disbarments are and will remain the same: under SJC Rule 4:01, Section 18(2)(a) a respondent cannot petition for reinstatement for eight years from the effective date of the order (less three months to allow for the time it often takes to process a reinstatement petition and schedule it for a hearing, to avoid adding that three months to the sanction).

In conjunction with this, the Board recommends a corresponding change to BBO Rules Section 4.1, “Resignation by Lawyers Under Disciplinary Investigation,” which cross-references SJC Rule 4:01, Section 15. (See discussion below regarding B.B.O. Rule 4.1)

S. J. C. Rule 4:01, § 15

Red-lined

(1) A lawyer who is the subject of an investigation under this Chapter Four may reach an agreement with Bar Counsel on the language of an affidavit of resignation, which shall be filed with the Board along with a recommendation from Bar Counsel (including information sufficient to explain the recommendation) as to whether the facts admitted would typically result in disbarment or if they would typically result in a lesser public sanction. In the alternative, a lawyer may submit a resignation by delivering to the Board an affidavit stating that the lawyer desires to resign and serve it on Bar Counsel, who shall within 14 days, or such further time as may be allowed by a Board Member, file a response. In either event, the affidavit shall state 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 the lawyer has been guilty of misconduct, the nature of which shall be specifically set forth;
- (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; and
- (d) the lawyer waives the right to hearing as provided by this rule.

(2) The Board may order any hearing or investigation it deems appropriate or may order the parties to provide further explanation. Upon reaching its determination, the Board shall file its recommendation and the entire record of any hearing with the Court. The Board may recommend that the Court reject the affidavit of resignation as submitted, accept the resignation and disbar the resigning lawyer, or accept the resignation as a disciplinary sanction. If the Court accepts the resignation, any reinstatement after resignation will be handled by the Board in accordance with the provisions of sections 15 and 18 of this rule.

(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.

Formatted: Font: 14 pt, Font color: Auto

Deleted:

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Deleted: he or she

Deleted: ,

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Deleted: he or she

Formatted: Font: 14 pt, Font color: Auto

Deleted: and

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Deleted:

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Deleted: (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 ¶

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Formatted: Font: 14 pt, Font color: Auto

Clean

(1) A lawyer who is the subject of an investigation under this Chapter Four may reach an agreement with Bar Counsel on the language of an affidavit of resignation, which shall be filed with the Board along with a recommendation from Bar Counsel (including information sufficient to explain the recommendation) as to whether the facts admitted would typically result in disbarment or if they would typically result in a lesser public sanction. In the alternative, a lawyer may submit a resignation by delivering to the Board an affidavit stating that the lawyer desires to resign and serve it on Bar Counsel, who shall within 14 days, or such further time as may be allowed by a Board Member, file a response. In either event, the affidavit shall state 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 the lawyer has been guilty of misconduct, the nature of which shall be specifically set forth;

(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; and

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

(2) The Board may order any hearing or investigation it deems appropriate or may order the parties to provide further explanation. Upon reaching its determination, the Board shall file its recommendation and the entire record of any hearing with the Court. The Board may recommend that the Court reject the affidavit of resignation as submitted, accept the resignation and disbar the resigning lawyer, or accept the resignation as a disciplinary sanction. If the Court accepts the resignation, any reinstatement after resignation will be handled by the Board in accordance with the provisions of sections 15 and 18 of this rule.

(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.

Fourth Proposal

INSURANCE DISCLOSURE

Professional liability insurance disclosure

Explanation for proposed amendments to rules governing insurance disclosure:

There have been several cases of bar discipline in which lawyers falsely stated they had professional liability insurance and later claimed they “thought” they had insurance or “forgot” it had lapsed, or they had failed to make installment payments. E.g., *Matter of Days*, 30 Mass. Att’y Disc. R. 89 (2014). To avoid this, the Board recommends that the registration department require each registering attorney to provide certain specific information on the attorney’s annual registration form that would help ensure that the representation is accurate: the name and address of the insurance carrier, the policy number, and the start and end dates of the policy. Since Rule 4:02, section 2A(a) specifies what information can be collected, if the Court agrees, it would have to be amended in order for additional information to be required. Please note that other professional licensure Boards, most notably the Board of Registration in Medicine, have collected this information (and more) for many years.¹

S. J. C. Rule 4:02, § (2A)

Red-lined

(a) Each attorney shall, as part of the annual filing required by subsection (1) of this rule and on forms provided by the Board for this purpose, certify whether he or she is currently covered by professional liability insurance and provide the following additional information concerning such insurance: the name and address of the carrier, the policy number, and the start and end dates of the policy. Each attorney currently registered as active in the practice of law in this Commonwealth who reports being covered by professional liability insurance shall notify the Board in writing within thirty days if the insurance policy providing coverage lapses or terminates for any reason without immediate renewal or replacement with substitute coverage.

¹ Please note that Rule 4:01, section 15, refers to “lawyers” while Rules 4:02 and 4:03 both refer to “attorneys.” The proposed amendments do not attempt to reconcile these differences.

Clean

- (a) Each attorney shall, as part of the annual filing required by subsection (1) of this rule and on forms provided by the Board for this purpose, certify whether the attorney is currently covered by professional liability insurance and provide the following additional information concerning such insurance: the name and address of the carrier, the policy number, and the start and end dates of the policy. Each attorney currently registered as active in the practice of law in this Commonwealth who reports being covered by professional liability insurance shall notify the Board in writing within thirty days if the insurance policy providing coverage lapses or terminates for any reason without immediate renewal or replacement with substitute coverage.

Fifth Proposal

DUES CATEGORY

Explanation for the proposed amendments governing dues:

Consistent with some other licensing Boards, the Board proposes that an attorney who is currently on active duty in any branch of the United States Armed Forces, but who is not serving as an attorney in the military, may apply to be relieved from the payment of fees imposed pursuant to Rule 4:03 for any registration cycle during which, in whole or in part, the attorney maintains such status. Since Rule 4:02 defines the permissible dues categories, the creation of the proposed category would require a change in Rule 4:02. The Board recommends that, if adopted, the new dues category be section (10), and that the current sections (10) and (11) be renumbered accordingly.

S. J. C. Rule 4:02, § 10

New dues category for active duty military

The current dues categories under SJC Rule 4:02 are as follows:

§ (4) inactive status

§ (5) retirement

§ (6) judicial status

§ (7) clerk status

§ (8) pro bono status

§ (9) in-house counsel status

The remaining sections of Rule 4:02 are (10) (residential address confidential) and (11) use by courts of attorneys' business physical and electronic mailing addresses).

The new section should probably be inserted as the new (10) with the remaining sections renumbered accordingly. The proposed language is as follows and tracks the language of the other “status” definitions:

(10) Active duty military status

Any attorney admitted to practice law in the Commonwealth who is currently on active duty in any branch of the United States Armed Forces but who is not serving as an attorney in the military may advise the Board in writing and under oath of the attorney’s status in the military. Upon the filing of such notice, the attorney will be placed on active duty military status and will be relieved from the payment of fees imposed pursuant to Rule 4:03 for any registration cycle during which, in whole or in part, the attorney maintains such status.

Sixth Proposal

II. BBO RULES

CHANGE OF TITLE FROM ADMINISTRATOR TO EXECUTIVE DIRECTOR

Explanation for the proposed amendments governing change of title from Administrator to Executive Director

Currently, BBO Rules Section 5.5 refers to an “Administrator.” The Board had hired an Executive Director over the former Administrator; however, there is no longer an Administrator and the two positions have merged. Therefore, the Board recommends changing the title, as it appears in Section 5.5, from “the Administrator” to “the Executive Director.”

Section 5.5: The Administrator

Red-lined

The Board shall appoint an Executive Director who shall perform the duties assigned by the Board and imposed by these Rules.

Deleted: Administrator

Clean

The Board shall appoint an Executive Director who shall perform the duties assigned by the Board and imposed by these Rules.

Seventh Proposal

RESIGNATIONS

Resignation by Lawyers under Disciplinary Investigation

Explanation for the proposed amendments governing resignations:

The Board recommends that Section 4.1 of the BBO Rules be revised to correspond to the recommended change to SJC Rule 4:01, Section 15, which is cross-referenced by the BBO Rule. (See discussion above regarding S.J.C. Rule 4:01, § 15).

Section 4.1

Red-lined

A lawyer who wishes to resign in accordance with Supreme Judicial Court Rule 4:01, Section 15, may reach an agreement with Bar Counsel on the language of an affidavit of resignation, which shall be filed with the Board along with a recommendation from Bar Counsel (including information sufficient to explain the recommendation) as to whether the facts admitted would typically result in disbarment or if they would typically result in a lesser public sanction. In the alternative, a lawyer may file a request for resignation and an affidavit with the Board and serve them on Bar Counsel, who shall within 14 days, or such further time as may be allowed by a Board Member, file a response.

The Board may order any hearing or investigation it deems appropriate, or may order the parties to provide further explanation. Upon reaching its determination, the Board shall file its recommendation and the entire record of any hearing with the Court. The Board may recommend that the Court reject the affidavit of resignation as submitted, accept the resignation and disbar the resigning attorney, or accept the resignation as a disciplinary sanction. If the Court accepts the resignation, reinstatement after resignation will be handled by the Board in accordance with S.J.C. Rule 4:01, Sections 15 and 18.

Deleted: shall

Deleted: The Board shall

Deleted: the request and affidavit

Deleted: seven

Deleted: member

Deleted: with the Board a statement containing Bar Counsel's recommendation and the reasons therefor, such statement to be served upon the Respondent

Deleted:

Deleted: held with the Court

Clean

A lawyer who wishes to resign in accordance with Supreme Judicial Court Rule 4:01, Section 15, may reach an agreement with Bar Counsel on the language

of an affidavit of resignation, which shall be filed with the Board along with a recommendation from Bar Counsel (including information sufficient to explain the recommendation) as to whether the facts admitted would typically result in disbarment or if they would typically result in a lesser public sanction. In the alternative, a lawyer may file a request for resignation and an affidavit with the Board and serve them on Bar Counsel, who shall within 14 days, or such further time as may be allowed by a Board Member, file a response.

The Board may order any hearing or investigation it deems appropriate, or may order the parties to provide further explanation. Upon reaching its determination, the Board shall file its recommendation and the entire record of any hearing with the Court. The Board may recommend that the Court reject the affidavit of resignation as submitted, accept the resignation and disbar the resigning attorney, or accept the resignation as a disciplinary sanction. If the Court accepts the resignation, reinstatement after resignation will be handled by the Board in accordance with S.J.C. Rule 4:01, Sections 15 and 18.

Eighth Proposal

APPEAL BRIEFS

Content and Form of Briefs on Appeal

Explanation for the proposed amendments governing appeal briefs:

The Board recommends expanding BBO Rules, Section 3.51, to provide more detail and guidance to parties concerning BBO appeals. The proposal also provides a presumptive page limit of thirty pages, establishes font size and margins, and advises parties not to bind or staple their briefs as they will be scanned. It also specifically permits electronic filing as an alternative. As a formatting matter, it creates headings for the subsections within the rule. Some of the proposed new language derives from Mass. R. App. P. 20(a), but it was felt that not as much detail was required for bar discipline cases. Please note that if adopted, this would formalize some of what is currently Board Policy #25 as a BBO Rule.

Section 3.51

Red-lined

(a) Briefs on Appeal.

(1) **Content.** The brief 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 citations to supporting legal authorities and with specific references to the pages of the record or exhibits where supporting evidence appears, using the Bates numbers when applicable.
- (v) If there is no record support for an argument, this should be identified accordingly. If the brief argues for a good faith modification or change in the existing law or usual disciplinary sanction, this position should be clearly stated.

(2) **Proposed Findings and Conclusions.** The brief may also include specific findings and conclusions proposed in lieu of those from which the appeal is being taken and any proposed additional findings and conclusions.

Deleted: briefs

Deleted: appropriate references to the record and legal authorities...

Deleted: There

Deleted: be included

(3) Appeals from Dispositions. An 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) Format and Number of Briefs.

(1) The brief is limited to 30 pages, double-spaced, minimum twelve-point font, with one-inch (1") margins all around. A longer brief may only be filed with leave of the Board Chair or the Chair's designee.

(2) The brief should not be stapled or bound, as it will be scanned; a binder clip is sufficient.

(3) One original of each brief shall be filed with the Board and a copy served on the opposing party. The brief may be filed with the Board electronically, with one hard copy.

Deleted: (3) Appeal

Formatted: Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Deleted: ¶

Formatted: Font: 14 pt

Formatted: Font: 14 pt

Formatted: Font: 14 pt

Deleted: Briefs shall be stapled, not bound

Formatted: Font: 14 pt

Clean

(a) Briefs on Appeal.

(1) **Content.** The brief 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 citations to supporting legal authorities and with specific references to the pages of the record or exhibits where supporting evidence appears, using the Bates numbers when applicable.
- (v) If there is no record support for an argument, this should be identified accordingly. If the brief argues for a good faith modification or change in the existing law or usual disciplinary sanction, this position should be clearly stated.

(2) **Proposed Findings and Conclusions.** The brief may also include specific findings and conclusions proposed in lieu of those from which the appeal is being taken and any proposed additional findings and conclusions.

(3) **Appeals from Dispositions.** An 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) Format and Number of Briefs.

(1) The brief is limited to 30 pages, double-spaced, minimum twelve-point font, with one-inch (1") margins all around. A longer brief may only be filed with leave of the Board Chair or the Chair's designee.

(2) The brief should not be stapled or bound, as it will be scanned; a binder clip is sufficient.

(3) One original of each brief shall be filed with the Board and a copy served on the opposing party. The brief may be filed with the Board electronically, with one hard copy.

Ninth Proposal

Presentation of Evidence

Explanation for proposed amendments to the rules governing presentation of evidence:

While parties at bar disciplinary proceedings sometime request that a witness testify live from a remote location, there is no rule that specifically governs this. Fed. R. Civ. P. 43(a) has a general provision permitting remote live testimony and makes broad reference to “appropriate safeguards.” However, the Board reviewed a number of scholarly articles and local rules in various jurisdictions; based on that review, it recommends that some of these safeguards be specifically spelled out and further, that a standard of “good cause” be shown. Finally, the Board recommends going beyond the federal rule and imposing requirements to facilitate the logistics of hearings, including a notary at the witness’s location, a mechanism for the remote witness to be shown, and asked questions about, proposed exhibits, chalks, or other documents, and securing an interpreter or translator if needed. If adopted, the new rule would be a new subsection (c) to BBO Rules, Section 3.29.

Section 3.29

Deleted: §

(c) Hearing Testimony by a Witness from a Remote Location.

- (1) **In General.** For good cause shown, which shall include but not be limited to the unavailability of a witness who is ill or beyond subpoena power, or for whom travel to the hearing would impose an undue hardship, the parties may agree, or the Board, hearing committee, hearing panel, or special hearing officer may order, that a witness may testify at a hearing by contemporaneous transmission from a different location.
- (2) **Appropriate safeguards.** An order allowing remote live testimony may impose such appropriate safeguards as are deemed necessary. The notary public or other such person, authorized to administer oaths, must be present at the witness’s location to verify the witness’s identity and to swear in the witness (and if necessary, any translator or interpreter for the witness).

(3) Responsibilities of the offering party. It shall be the responsibility of the party offering the remote witness to (1) arrange for the notary public or other officer at the location of the remote witness; (2) provide for the appropriate means of secure and stable two-way audio and visual communication between the remote witness and the hearing room; (3) provide a mechanism for the remote witness to be shown, and asked questions about, exhibits, proposed exhibits, chalks, or other documents or materials; and (4) provide, if necessary, any translator or interpreter for the witness.

Tenth Proposal

Retention of Records by Bar Counsel

Explanation for proposed amendments to the rules governing retention of records by Bar Counsel:

The following amendments are intended simply to make this rule consistent with SJC Rule 4:01 §7(5), which concerns Bar Counsel's document retention. In general, the amendments will enable the Office of Bar Counsel to destroy certain records after a specified time: 15 years in most cases and six years after the death of a lawyer or after an admonition has been vacated. The amended rules also clarify that records may be preserved electronically. The amendments to the Rules of the Board of Bar Overseers simply conform the Board's rules to the amended court rules.

Section 5.10

Red-lined

Bar Counsel shall maintain permanent records of all matters presented to the Office of the Bar Counsel and the disposition thereof, except as provided in SJC Rule 4:01, Sections 7(5) and Section 4.2 of these Rules. Bar Counsel need not retain correspondence, memoranda, transcripts and other similar documents which underlie the final disposition of a matter by dismissal or closing.

Clean

Bar Counsel shall maintain permanent records of all matters presented to the Office of the Bar Counsel and the disposition thereof, except as provided in SJC Rule 4:01, Sections 7(5) and Section 4.2 of these Rules. Bar Counsel need not retain correspondence, memoranda, transcripts and other similar documents which underlie the final disposition of a matter by dismissal or closing.

Deleted: Tenth Proposal¶

¶

Admonition and Public Reprimand¶

¶

Explanation for proposed amendments to the rules governing admonitions and public reprimands:¶

¶

ADD EXPLANATION HERE¶

¶

Section 3.56 ¶

¶

Red-lined¶

¶

(b) Permanent Record A permanent record shall be made of the fact of and basis for the admonition or public reprimand, except as provided in SJC Rule 4:01, Sections 7(5) (b) and 8(2)(d) and BBO Rule § 4 3(a) The fact of the receipt of an admonition or public reprimand shall not affect the good standing of the Respondent as a lawyer ¶

Clean¶

¶

(b) Permanent Record A permanent record shall be made of the fact of and basis for the admonition or public reprimand, except as provided in SJC Rule 4:01, Section 7(5) The fact of the receipt of an admonition or public reprimand shall not affect the good standing of the Respondent as a lawyer ¶

Formatted: Left, Indent: Left: 0 px, Right: 58 px

Deleted: ¶

¶

¶

¶

¶

¶

¶

¶

¶

¶

¶

¶

¶

Deleted: Eleventh

Deleted: and 8(2)(d),

Deleted: s

Deleted: and 4 3(a)

Admonition and Public Reprimand

Section 3.56

Red-lined

(b) Permanent Record. A permanent record shall be made of the fact of and basis for the admonition or public reprimand, except as provided in SJC Rule 4:01, Sections 7(5). The fact of the receipt of an admonition or public reprimand shall not affect the good standing of the Respondent as a lawyer.

Deleted: ¶

Deleted: (b) and 8(2)(d) and BBO Rule § 4 3(a)

Clean

(b) Permanent Record. A permanent record shall be made of the fact of and basis for the admonition or public reprimand, except as provided in SJC Rule 4:01, Section 7(5). The fact of the receipt of an admonition or public reprimand shall not affect the good standing of the Respondent as a lawyer.

Formatted: Left

Deleted: ¶

III. PROPOSED TECHNICAL CHANGES

of the Rules of the Board of Bar Overseers

Explanation for proposed amendments to the rules governing proposed technical changes:

Section Rule 3.16(2)

The intention of this paragraph is to set forth the procedure for motions to amend pleadings. The underlined words are surplusage, serve no purpose, and cause the sentence to be ungrammatical and confusing. We recommend that they be deleted to provide clarity.

Section 3.16 of the Rules of the Board of Bar Overseers deals generally with amendments of pleadings or other filings. Section (2) of the rule addresses in part amendments after a hearing committee, hearing panel, or hearing officer has been appointed. Section (2), in its entirety, currently reads as follows (underlining added):

(2) After the appointment of a hearing committee, hearing panel, or special hearing officer, a motion by Bar Counsel to amend a petition for discipline by deleting charges or, with respect to a motion to amend filed at any time by the respondent, motions to amend the pleadings or other filings shall be decided in accordance with the provisions of Section 3.18 of these Rules concerning motions not reserved for action by the Board. A request by Bar Counsel to bring additional charges against a Respondent shall be presented to a Reviewing Board Member in accordance with Section 2.8(b) of these Rules. A motion to amend a petition to consolidate for hearing any such newly-approved charges with the charges in a previously approved petition shall be presented to and decided by the

hearing committee, hearing panel, or special hearing officer.

S.J.C. Rule 4:01, §§ 8(2) and 8(4)

Sections 8.2 and 8.4 of Rule 4:01 of the Supreme Judicial Court Rules govern expedited hearings, including hearings when a respondent seeks to challenge the issuance of an admonition by bar counsel. As currently written, Section 8.4(a) refers in its third line to, “the requirements of Section 8(2) of this rule.” In addition to referring to Section 8(2), Section 8(4)(a) should refer to Section 2.12 of the Rules of the Board of Bar Overseers, which sets forth the procedure for challenging an admonition. The omission of this reference could cause respondents to miss the requirements and deadlines of the B.B.O. rule. Similarly, Section 8(2)(c) refers to the “procedures set forth in section 8(4) for expedited hearings.” This is in error. The reference should be to B.B.O. Rules § 2.12.

Below, are sections (2) and (4) with the proposed new language underlined:

(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 in accordance with the procedure set forth in section 8(4) and Section 2.12 of the Rules of the Board of Bar Overseers for expedited hearings.

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

(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 and Section 2.12 of the Rules of the Board of Bar Overseers, 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.

Reinstatement Questionnaire

When lawyers who have been suspended or disbarred seek reinstatement to the bar, they must, among other things, complete a Reinstatement Questionnaire. The text of the questionnaire is set forth as Appendix 1 to the Rules of the Board of Bar Overseers. The identical version of the questionnaire is also available from the Board in hard copy.

Part II, Section 4 of the Reinstatement Questionnaire relates to emotional disorders, addiction, or substance abuse. It provides as follows (underlining added):

4. Emotional Disorder/Addiction/Substance Abuse Information

If you have been incapacitated from employment or from carrying out employment due to any physical or emotional impairment, alcoholism, use of prescription or nonprescription drugs, or other reason since the effective date of the discipline; or if you are seeking reinstatement from an order

transferring you to disability inactive status; or if you raised in mitigation during any proceeding regarding your license to practice law or any other profession a claim that your physical or mental condition caused or contributed to the alleged misconduct. Describe the nature of the impairment or disability, its effect on your ability to obtain or maintain employment, and the treatment sought to address the impairment or disability. Provide the name and address of each institution and provider who has provided or who is providing treatment or consultation to you, the dates of treatment, and your current diagnosis or prognosis.

There is a grammatical error in the rule, which has been brought to our attention by petitioners and their counsel, and which could cause confusion. The first sentence is a fragment. Rather than a period (“.”) after the words “alleged misconduct” in the underlined ninth line, there should be a comma (“,”), so that the sentence reads: “contributed to the alleged misconduct, describe the nature of the impairment or disability ...” The remainder of the section may remain the same.

Section 3.50 Procedure on Appeal

Red-lined

(The reader should also refer to Board Policy Number 25 concerning appeal briefs and oral arguments).

(a) Procedure to Object to Report of Hearing Committee, **Hearing Panel, or Special Hearing Officer**. Any party objecting to the findings, conclusions, 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 file and serve on all parties or their counsel (if the party is represented) a Notice of Appeal, indicating the party appealing and the decision from which the appeal is taken. The appealing party must file their brief on appeal no later than forty (40) days after the filing of the Notice of Appeal. A brief opposing the appeal, and raising any cross-appeal, may be filed in response to a brief on appeal within 30 days after the filing of a brief on appeal. 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. No further response will be entertained unless allowed or requested by the Board or a Board member. Upon good cause shown, the Chair of the Board

Formatted: Indent: Left: 96 px

Formatted: Font: Not Bold

Deleted: 2

Deleted: or within such other longer or shorter time as may reasonably be fixed by a Board member,

Deleted: brief on appeal

Deleted:

Deleted: 2

Deleted: or within such other longer or shorter time as may reasonably be fixed by a Board member

Deleted: or within such other longer or shorter time as may reasonably be fixed by a Board member

and/or his or her designee may fix a longer or shorter time for the filing deadlines within this section.

(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 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) 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, conclusions, 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. The Board may remand the matter to the hearing panel for the taking of further evidence.

Clean

Section 3.50 Procedure on Appeal

(The reader should also refer to Board Policy Number 25 concerning appeal briefs and oral arguments).

(a) Procedure to Object to Report of Hearing Committee, Hearing Panel, or Special Hearing Officer. Any party objecting to the findings, conclusions, 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 file and serve on all parties or their counsel (if the party is represented) a Notice of Appeal, indicating the party appealing and the decision from which the appeal is taken. The appealing party must file their brief on appeal no later than forty (40) days after the filing of the Notice of Appeal. A brief opposing the appeal, and raising any cross-appeal, may be filed in response to a brief on appeal within 30 days after the filing of a brief on appeal. 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. No further response will be entertained unless allowed or requested by the Board or a Board member. Upon good cause shown, the Chair of the Board and/or his or her designee may fix a longer or shorter time for the filing deadlines within this section.

Deleted: or the Appeal Panel

Deleted: (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 ¶

¶
Section 3 50¶

(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 seven days thereafter, file with the Board objections to such report. Opposition to such objections may be filed with the Board within seven 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 ¶

Deleted: g

(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 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) 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, conclusions, 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. The Board may remand the matter to the hearing panel for the taking of further evidence.

Section 3.53 Action by Board

Formatted: Underline

Red-Lined

The Board shall review and may adopt the findings of fact or conclusions of law made by the hearing committee, hearing panel, or special hearing officer or revise any findings which it determines to be erroneous, paying due respect to the role of the hearing committee, hearing panel, or special hearing officer as the sole judge of the credibility of the testimony presented at the hearing. The Board may adopt or modify the recommendation of the hearing committee, hearing or appeal panel, or special hearing officer. Whenever the Board modifies the findings, conclusions, or recommendations, it shall state the reasons therefor in its vote or in a memorandum.

Clean

Section 3.53 Action by Board

The Board shall review and may adopt the findings of fact or conclusions of law made by the hearing committee, hearing panel, or special hearing officer or revise any findings which it determines to be erroneous, paying due respect to the role of the hearing committee, hearing panel, or special hearing officer as the sole judge of the credibility of the testimony presented at the hearing. The Board may adopt or modify the recommendation of the hearing committee, hearing or appeal panel, or special hearing officer. Whenever the Board modifies the findings, conclusions, or recommendations, it shall state the reasons therefor in its vote or in a memorandum.