

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-ninth day of March, in the year two thousand and twenty-two:

present,

<u>KIMBERLY S. BUDD</u>)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	
<u>DAVID A. LOWY</u>)	Justices
)	
<u>ELSPETH B. CYPHER</u>)	
)	
<u>SCOTT L. KAFKER</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
<u>SERGE GEORGES, JR.</u>)	

ORDERED: That Chapters Three and Four of the Rules of the Supreme Judicial Court are hereby amended as follows:

Rule 3:16:

By deleting Section 5 of Rule 3:16 and inserting in lieu thereof the following Section 5:

5. 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 the suspended lawyer 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.

Rule 4:01: By deleting Section 3(3) and inserting in lieu thereof the Section 3(3) attached hereto.

Rule 4:01: By deleting Section 7(5) and inserting in lieu thereof the Section 7(5) attached hereto.

Rule 4:01: By inserting the words "and Section 2.12 of the Rules of the Board of Bar Overseers" after the words "section 8(4)" in Section 8(2)(c).

Rule 4:01: By inserting the words "and Section 2.12 of the Rules of the Board of Bar Overseers," after the words "section 8(2) of this rule" in Section 8(4)(a).

Rule 4:01: By deleting Section 15 and inserting in lieu thereof the Section 15 attached hereto.

Rule 4:01:

By deleting the first sentence of Rule 4:01, Section 17(3) and inserting in lieu thereof the following sentence:

Section 17(3): Orders imposing temporary suspension shall be immediate and forthwith; orders imposing administrative suspension shall be effective as set forth in section 3(3); and orders imposing disbarment or term or indefinite 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.

Rule 4:01:

By deleting Rule 4:01, Section 17(4) and inserting in lieu thereof the following Section 17(4):

Section 17(4): 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.

Rule 4:02(2A):

By deleting the first sentence of Rule 4:02(2A)(a) and inserting in lieu thereof the following first sentence:

(2A)(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.

Rule 4:02(12):

By inserting the following new Rule 4:02(12):

(12) 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.

Rule 4:03(3):

By deleting the first sentence of Rule 4:03(3) and inserting in lieu thereof the following three sentences:

(3) 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.

The amendment accomplished by this order shall take effect on June 1, 2022.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	Chief Justice
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<u>FRANK M. GAZIANO</u>)	
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<u>DAVID A. LOWY</u>)	Justices
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<u>DALILA ARGAEZ WENDLANDT</u>)	
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<u>SERGE GEORGES, JR.</u>)	

Rule 4:01, Section 3(3)

Section 3(3): Any suspension under the provisions of subsection (2) above shall be effective fourteen days after entry, unless otherwise ordered by the court, and the suspended lawyer 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 sections 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 one hundred dollars.

Rule 4:01 Section 7(5)

(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 document be preserved in paper form 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 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 paper and electronic 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 paper and electronic 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;

Rule 4:01, Section 15

Section 15: (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 fourteen (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.