

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO SCR 103, SCR 105, SCR 105.5, SCR
113 AND SCR 116 REGARDING
APPOINTMENT OF DISCIPLINARY
HEARING PANEL MEMBERS.

ADKT 0484

FILED

JUN 07 2013

TRACEY LINDSEAN
CLERK OF SUPREME COURT
BY *[Signature]*
CLERK DEPUTY CLERK

***ORDER AMENDING SUPREME COURT RULES 103,
105, 105.5, 113 AND 116***

WHEREAS, the Board of Governors of the State Bar of Nevada filed a petition requesting that this court consider amendments to Supreme Court Rules 103, 105, 105.5, 113, and 116; and

WHEREAS, this court solicited written public comment; and

WHEREAS, it appears to this court that amendment of the Supreme Court Rules is warranted, accordingly,

IT IS HEREBY ORDERED that Supreme Court Rules 103, 105, 105.5, 113 and 116 shall be amended and shall read as set forth in Exhibits A, B, C, D, and E.

IT IS FURTHER ORDERED that these rule amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and

dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

DATED this 7th day of June, 2013.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: All District Court Judges
Francis Flaherty, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

EXHIBIT A
AMENDMENT TO SCR 103

Rule 103. Disciplinary boards and hearing panels.

1. The board of governors shall appoint two disciplinary boards of at least 47 members each, one to serve the northern district and one to serve the southern district, as constituted in Rule 100. Each disciplinary board shall consist of at least 35 members of the bar of Nevada, other than persons holding judicial office or membership on the board of governors, and at least 12 non-lawyers. Each member shall reside in the district served by the board. The board of governors may appoint any additional members to serve on either disciplinary board as it deems necessary.

2. Members of the disciplinary boards shall serve at the pleasure of the board of governors, or for a term of three years, subject to reappointment for three additional terms. No member may serve on the disciplinary boards for more than a lifetime total of twelve years.

3. The board of governors shall appoint one attorney member as chair of each disciplinary board and another attorney member as vice chair to act in the absence or direction of the chair. The chair and vice chair shall serve for a term of one year, subject to reappointment for such additional terms as the board of governors may deem appropriate.

4. Disciplinary board members shall not receive compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

5. The chair of each disciplinary board shall preside over all motions or other requests relating to pending proceedings until such time as a hearing

panel chair is designated to preside over the proceeding, as provided in Rule 103(6).

6. The chair or vice chair of each disciplinary board shall designate hearing panels of five or three members, one of whom shall be a non-lawyer, and screening panels of three members, at least two of whom shall be members of the bar, as the chair or vice chair believes are necessary to preside over proceedings pending in the district. The chair or vice chair shall assign hearing cases to hearing panels and designate a lawyer as chair of each. The designated hearing panel chair shall preside over any and all motions or other requests. A formal hearing panel shall:

- (a) Conduct hearings on formal complaints of misconduct.
- (b) File its findings and recommendations with bar counsel's office.

7. Hearing panel members shall not participate in any proceeding in which a judge similarly situated would be required to abstain. Any member whose term expires while the member's panel is considering a complaint shall remain a member until its disposition.

8. The chairs of the hearing panels and screening panels shall deliver reprimands and sign all documents on behalf of the panel to carry out the provisions of Rules 102(6), 102(7), and 103(6).

9. A grievance received against a member of a disciplinary board and processed in accordance with Rule 105(1) shall be referred to the other disciplinary board.

EXHIBIT B
AMENDMENT TO SCR 105

Rule 105. Procedure on receipt of complaint.

1. Investigation.

(a) Investigation and screening panel review. Investigations shall be initiated and conducted by bar counsel or bar counsel's staff or other investigative personnel at bar counsel's direction prior or pursuant to the opening of a grievance file. At the conclusion of an investigation of a grievance file, bar counsel shall recommend in writing dismissal with or without prejudice, referral to diversion or mentoring pursuant to Rule 105.5, a letter of caution, a private reprimand, or the filing of a written complaint for formal hearing. The recommendation shall be promptly reviewed by a screening panel. A screening panel shall consist of three members of the disciplinary board, appointed by the chair or vice chair in accordance with Rule 103(6). Two of the three reviewers must be members of the bar. By majority vote they shall approve, reject, or modify the recommendation, or continue the matter for review by another screening panel.

(b) Notice and election. The attorney shall be notified by bar counsel in writing of a decision by a screening panel to issue a private reprimand and shall be served with the notification and letter of private reprimand in the manner prescribed by Rule 109(1). The attorney shall have [~~fourteen (14)~~ 14 days after receipt of the notice within which to serve on bar counsel written objections to the issuance of the private reprimand along with the basis of the objections. The attorney shall include with his or her written objections a statement electing either (i) a formal hearing before a [~~five (5) member~~] five-member panel of the appropriate disciplinary board on a

written complaint filed by bar counsel; or (ii) an informal hearing before a ~~[three (3) member]~~ three-member panel of the appropriate disciplinary board.

(c) Hearing. Upon receipt by bar counsel of written objections to the issuance of a private reprimand and a statement of election by the attorney within the time prescribed, the matter shall be set for a formal or informal hearing in accordance with the attorney's election. A formal hearing shall proceed in accordance with Rule 105(2). At an informal hearing the attorney shall be given the opportunity to appear, to present oral argument, and to present evidence related to the written objections or any relevant issue. Rule 105(2)(a) applies to an informal hearing. The issuance of a private reprimand not objected to by the attorney within ~~[fourteen (14)]~~ 14 days of notice or imposed after an informal hearing shall be final and shall not be appealable. A screening panel member who has reviewed bar counsel's recommendation on a grievance shall not be appointed to an informal or formal hearing panel for any subsequent and related proceedings. Except in matters requiring dismissal because the grievance is frivolous or clearly unfounded on its face, or falls outside the disciplinary board's jurisdiction, or is resolved informally pursuant to Rule 104(2), a panel shall not make a finding of misconduct until the attorney has been given an opportunity to respond to the allegations against the attorney.

(d) Appeal of a screening panel's dismissal of a grievance. Bar counsel may appeal a decision to dismiss a grievance to a ~~[five member]~~ five-member panel appointed by the chair or vice chair of the respective northern or southern disciplinary board. The chair of the respective board shall be one of the five members on the panel and shall serve as chair of the panel. The panel shall determine whether the decision is supported by the record and is

in the best interests of justice. Such an appeal must be filed with bar counsel's office and served upon the chair of the appropriate disciplinary board within 20 days of receipt of the decision by filing and serving a petition, together with the record of the matter being appealed. The petition shall contain the name and address of the appropriate northern or southern disciplinary board chair and identify the chair as the person to whom the petition must be sent. The chair shall issue an order advising the attorney or bar counsel of when any answering or other brief is due. The panel shall decide the matter on the record without oral argument or appearance and shall issue a written decision.

2. **Commencement of formal proceedings.** Formal disciplinary proceedings are commenced by bar counsel filing a written complaint in the name of the state bar. The complaint shall be sufficiently clear and specific to inform the attorney of the charges against him or her and the underlying conduct supporting the charges. A copy of the complaint shall be served on the attorney and it shall direct that a verified response or answer be served on bar counsel within 20 days of service; the original shall be filed with bar counsel's office. The time to respond may be extended once by the chair for not more than 20 days for good cause or upon stipulation of the parties. In the event the attorney fails to plead, the charges shall be deemed admitted; provided, however, that an attorney who fails to respond within the time provided may thereafter obtain permission of the appropriate **[disciplinary board]** chair to do so, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.

(a) Challenges to and ad hoc appointments of panel members. The complaint shall be served with the list of members of the appropriate disciplinary board. The attorney, or each if more than one, and bar counsel

may exercise five peremptory challenges each to the people on the list by delivering such in writing to bar counsel on or before the date a response to the complaint is due.

Challenges to any member for cause under Rule 103(7) shall be made as soon as possible after receiving either actual or constructive notice of the grounds for disqualification, and shall be made by motion to the chair in accordance with these rules. In no event will a motion seeking the disqualification of a member be timely if the member has already heard, considered or ruled upon any contested matter, except as to grounds based on fraud or like illegal conduct of which the challenging party had no notice until after the contested matter was considered. Any challenge that is not raised in a timely manner shall be deemed waived.

The chair or vice chair may make ad hoc appointments to replace designated panel members in the event challenges or disqualification reduce the number to less than the number required for the hearing panel. Ad hoc appointees shall be subject to disqualification under Rule 103(7) and any remaining peremptory challenges unexercised by either the attorney(s) or bar counsel. A hearing panel as finally constituted shall include a non-lawyer.

(b) Assignment for hearing [~~;~~ ~~venue. Following~~] panel and chair. Within 30 days, following service of a responsive pleading, or upon failure to plead, the matter shall be assigned by the chair or vice chair of the disciplinary board to a hearing panel[.] chair, who shall preside over any and all motions or other requests as provided by SCR 103(6) and the subsequent hearing. Thereafter, the remaining hearing panel members shall be assigned by the chair or vice chair of the disciplinary board.

(c) Venue. Venue shall be the county in which the attorney resides or maintains his or her principal office for the practice of law, where the alleged

offense was committed or where the parties have stipulated. If the attorney neither resides nor maintains his or her principal office in Nevada, or has left the state to avoid proceedings under these rules, the hearing may be conducted in any county designated by the chair of the disciplinary board.

~~[(e)]~~ (d) Time to conduct hearing; notice of hearing; discovery of evidence against attorney. The hearing panel shall conduct a hearing within 45 days of assignment and give the attorney at least 30 days' written notice of its time and place. The notice shall be served in the same manner as the complaint, and shall inform the attorney that he or she is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice shall be accompanied by a summary prepared by bar counsel of the evidence against the attorney, and the names of the witnesses bar counsel intends to call for other than impeachment, together with a brief statement of the facts to which each will testify, all of which may be inspected up to 3 days prior to the hearing. Witnesses or evidence, other than for impeachment, which became known to bar counsel thereafter, and which bar counsel intends to use at the hearing, shall be promptly disclosed to the attorney. For good cause shown, the chair may allow additional time, not to exceed 90 days, to conduct the hearing.

~~[(d)]~~ (e) Quorum; time for decision of panel; votes required to impose discipline. Any five members of the panel shall be a quorum. The hearing panel shall render a written decision within 30 days of the conclusion of the hearing, unless post-hearing briefs are requested by either bar counsel or the attorney and allowed by the panel or requested by the chair, in which event the decision shall be rendered within 60 days of the conclusion of the hearing. The decision shall be served pursuant to Rule 109(1), accompanied by the panel's findings and recommendation, all of which shall be filed with bar

counsel's office. A decision to impose or recommend discipline requires the concurrence of four members of the panel.

~~[(e)]~~ (f) Rules of evidence; support of panel's decision. The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel. Evidentiary rulings shall be made by the chair of the panel, if one has been designated, or by the chair of the appropriate disciplinary board prior to such a designation. The findings of the panel must be supported by clear and convincing evidence.

~~[(f)]~~ (g) Court reporter. All formal hearings shall be reported by a certified court reporter, which cost may be assessed against the attorney pursuant to Rule 120. Any party desiring to have any other disciplinary proceedings reported must arrange in advance for a certified court reporter at the party's own expense.

3. Review by supreme court.

(a) Time and manner of appeal. A decision of a hearing panel shall be served on the attorney, and service shall be deemed Notice of Entry of Decision for appeal purposes. Except as provided in Rule 105(3)(b), a decision is final and effective 30 days from service, unless an appeal is taken within that time. To the extent not inconsistent with these rules, an appeal from a decision of a hearing panel shall be treated as would an appeal from a civil judgment of a district court and is governed by the Nevada Rules of Appellate Procedure.

(b) De novo review of public discipline. Except for disbarments by consent pursuant to Rule 112 or a public reprimand agreed to in writing by the attorney pursuant to Rule 113, a decision recommending a public reprimand, suspension or disbarment shall be automatically reviewed by the supreme court. Review under this paragraph shall be commenced by bar

counsel forwarding the record of the hearing panel proceedings to the court within 30 days of entry of the decision. Receipt of the record in such cases shall be acknowledged in writing by the clerk of the supreme court.

The attorney and bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court of any intent to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the disciplinary proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

4. Rules of procedure. The chairs, after consulting with their respective disciplinary boards, may adopt rules of procedure, subject to approval by the board of governors.

EXHIBIT C
AMENDMENT TO SCR 105.5

Rule 105.5. Diversion and mentoring programs.

1. **Participation in diversion or mentoring program.** As an alternative to or in conjunction with disciplinary sanctions, an attorney deemed eligible by the appropriate disciplinary board panel may participate in an approved diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct. Participation in a diversion or mentoring program may be offered by bar counsel or ordered by a panel only in cases where there is little likelihood that the attorney will harm the public during the period of participation and where the conditions of the program can be reasonably supervised.

(a) **Mentors.** Mentors in diversion or mentoring programs shall be approved or selected by bar counsel and shall serve on a voluntary basis. Only attorneys in good standing with no pending disciplinary matters may serve as mentors. Any mentor who has no personal interest in the attorney's participation, and did not represent the attorney in underlying proceedings, may be eligible to receive educational credits for services provided under this rule, after (i) the attorney's successful completion of such a program, and (ii) the mentor's application to the board of continuing legal education.

(b) **Confidentiality.** All services provided by a mentor under this rule and any related documents and/or communications shall remain confidential, as provided for in Rule 121. A mentor shall observe the duties of confidentiality in Nevada Rule of Professional Conduct (RPC) 1.6. Any related information provided to a mentor, and subsequently provided to bar

counsel, will be used solely to assess an attorney's compliance and progress, and may be provided to a hearing panel for that purpose, but will not be released to any other person(s). Further, such limited access to this information pursuant to a diversion or mentoring program shall not constitute a breach of confidentiality under RPC 1.6, based upon the supervisory nature of a mentor's services and bar counsel's duty to monitor such matters.

2. Diversion contract or mentoring agreement. The terms shall be stated in a written diversion contract or mentoring agreement between bar counsel, the attorney, his or her counsel, if any, the mentor, if any, and any other person(s) a party thereto. The contract or agreement will specify the person(s) responsible for supervising the attorney's compliance with the terms and conditions of the contract or agreement. The existence of a diversion contract or mentoring agreement under this rule is subject to the provisions of Rule 121.

3. Rejection of a diversion or mentoring program. An attorney may reject a panel's order for diversion or mentoring as an alternative to, or in conjunction with, disciplinary sanctions.

(a) If an attorney rejects or fails to respond within 14 days to a panel's order directing participation in a diversion or mentoring program, the matter shall be presented to the next available screening panel with bar counsel's recommendation.

(b) If an attorney rejects or fails to respond within 14 days of notice of a panel's order offering participation in a diversion or mentoring program as an alternative to disciplinary sanctions or proceedings, the alternative shall be imposed. Thereafter, bar counsel shall promptly process the matter in accordance with Rule 105.

(c) If an attorney fails to cooperate fully in the development and/or execution of a diversion contract or mentoring agreement, that failure shall be deemed a rejection in accordance with Rule 105.5(3).

4. Acceptance of a diversion or mentoring program. Within 14 days of the attorney's receipt of a panel's order under this rule, the attorney must provide bar counsel with a written notice of his or her agreement to participate. Upon receipt of that notice, bar counsel shall promptly notify any grievant(s) in writing that the attorney has agreed to participate in a diversion or mentoring program. When applicable, such notice shall further advise the grievant(s) of the confidentiality provisions of Rule 121.

5. Time for filing; extensions. The written diversion contract or mentoring agreement must be fully executed within 30 days of acceptance by the attorney. This requirement shall only be extended by written agreement between bar counsel and the attorney due to extraordinary circumstances. The party requesting the extension shall prepare the written agreement.

6. Breach of a diversion contract or mentoring agreement. If bar counsel determines that an attorney has breached a contract or agreement executed under this rule, and unless the contract or agreement dictates otherwise, bar counsel shall notify the attorney of the alleged breach and ~~[provide the attorney with 14 days after receipt of such notice to submit a written response]~~ after receipt of such notice, provide the attorney with 14 days to submit a written response. Bar counsel may withdraw the notice of alleged breach based upon the written response and related communications.

(a) Informal hearing. If the notice is not withdrawn, bar counsel shall request the chair or vice chair of the appropriate disciplinary board to assign a three-member informal hearing panel to hear the matter and issue an

order. Bar counsel shall notify the attorney of such request by serving the notice of informal hearing on the attorney. The informal hearing panel shall convene within 30 days of the request. In informal proceedings brought under this rule, bar counsel shall have the burden by a preponderance of the evidence to establish any breach of the contract or agreement, and an attorney shall have the burden by a preponderance of the evidence to establish justification for any such breach. Where there is an alleged breach of a contract or agreement executed pursuant to an order of the supreme court, bar counsel may move the court directly for any relief deemed appropriate.

(b) If an informal hearing panel finds a breach to be material and without justification, the panel shall terminate the contract or agreement and reactivate any underlying grievance(s) to be processed through any course deemed appropriate under Rule 105. If the contract or agreement was effectuated as an alternative to disciplinary sanctions, the panel shall terminate the contract or agreement and impose the applicable alternative sanctions.

(c) If the informal hearing panel finds that no breach occurred, or that the breach was immaterial or with justification, the panel may modify the existing contract or agreement or direct the parties to proceed in accordance with it.

7. **Costs.** The attorney shall pay any costs associated with participation in a diversion or mentoring program, including but not limited to laboratory testing, professional accounting or evaluation, treatment, and the costs of any informal hearing under this rule. The attorney shall not be assessed any fees or costs for a mentor's or bar counsel's services.

8. **Completion and expungement.** After the term of a contract or agreement under this rule has concluded, bar counsel shall notify the attorney of such completion and, when applicable, any underlying grievance(s) and related records shall be dismissed and processed in accordance with Rule 121. After a grievance file has been dismissed under this rule, bar counsel shall respond to any related inquiries by stating that there is no record of such a matter, unless otherwise directed by the attorney. Likewise, the attorney may respond to such an inquiry by stating that any allegations or complaints that may have been filed with bar counsel's office were dismissed. However, this rule does not supersede the provisions of Rule 121 and does not apply to successful completion of a program ordered in conjunction with disciplinary sanctions or ordered in lieu of more severe disciplinary sanctions, unless otherwise noted in the contract or agreement.

EXHIBIT D
AMENDMENT TO SCR 113

Rule 113. Discipline by consent.

1. **Conditional plea.** An attorney against whom a grievance or complaint has been made may tender a conditional guilty plea to the charge(s) in exchange for a stated form of discipline. The tendered plea shall be filed with bar counsel's office and approved, modified or rejected by a hearing panel if the matter has already been assigned for hearing, or by a three-member hearing panel, appointed by the chair[,] or vice chair, if the matter has not been assigned. The tendered plea is subject to final approval or rejection by the supreme court if the stated form of discipline includes disbarment or suspension.

2. **Continuance and abatement of proceedings.** A continuance in a proceeding on the basis of a tendered plea shall be granted only with the concurrence of bar counsel. Approval of a tendered plea by a panel, and, if required, by the court shall abate the proceedings, and the panel's decision shall be predicated on the charge(s) made against the attorney and the tendered plea.

3. **Review by court.** If the stated form of discipline includes disbarment or suspension, bar counsel shall forward the record of the proceedings before it to the supreme court within 30 days of entry of the decision. The record filed with the supreme court shall indicate on its title page that the matter concerns a proceeding under this rule. The matter shall be submitted for review on the record without briefing or oral argument unless otherwise ordered by the court.

4. **Public reprimand.** If the stated form of discipline includes neither a suspension nor disbarment, the matter shall not be submitted to the supreme court for approval. The state bar shall issue the public reprimand and publish the public reprimand in accordance with Rule 121.1.

EXHIBIT E

AMENDMENT TO SCR 116

Rule 116. Reinstatement.

1. **Order of supreme court required.** An attorney suspended as discipline for more than 6 months may not resume practice unless reinstated by order of the supreme court.

2. **Procedure for reinstatement.** Petitions for reinstatement by a suspended attorney shall be filed with bar counsel's office, which shall promptly refer the petition to the chair of the appropriate disciplinary board. The chair or vice chair shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, conduct a hearing. The attorney has the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest. Within 60 days after the hearing concludes, bar counsel shall file the record of the proceedings, together with the panel's findings and recommendation, with the supreme court. Receipt of the record shall be acknowledged in writing by the supreme court clerk.

The attorney or bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court if he or she intends to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of

good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the reinstatement proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

3. **Bar counsel to appear.** In proceedings for reinstatement, bar counsel shall represent the state bar and submit any evidence and produce any witnesses relevant to the petition.

4. **Tender of costs in advance.** Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit of \$1,000 to cover anticipated costs of the reinstatement proceeding.

5. **Decision on reinstatement; conditions.** If the attorney does not meet the burden of proof to justify reinstatement, the petition shall be dismissed by the hearing panel. If the attorney meets the burden of proof, the hearing panel's recommendation for reinstatement shall be entered. Reinstatement may be conditioned upon the attorney's payment of the costs of the proceeding, restitution to parties injured by the petitioner's misconduct, including the Client Security Fund, any further conditions deemed appropriate by the panel, and such proof of competency as may be required by the supreme court, which proof may include certification by the bar examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. If an attorney has been continuously suspended for 5 years or more at the time a petition for reinstatement is filed, irrespective of the term of suspension initially imposed, successful completion of the examination for admission to practice shall be a mandatory condition of reinstatement.

6. **Successive petitions.** A petition for reinstatement under this rule shall not be filed within 1 year following an adverse judgment on a petition

for reinstatement filed by the same attorney, unless otherwise ordered by the court.