

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 In the Matter of an Amendment to)
4 Supreme Court Rule 120 regarding)
5 cost awards in disciplinary matters.)

FILED

ADKT NO.: 0516 SEP 14 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

6
7 **PETITION**

8 The Board of Governors of the State Bar of Nevada (State Bar) hereby
9 petitions this Court to amend its rules regarding costs in disciplinary proceedings.

10 In January 2016, the Board of Governors convened a six (6) member
11 taskforce to consider (i) inconsistencies in cost awards by Discipline Hearing Panels
12 created by the discretion afforded those Panels and (ii) issues concerning the
13 amount of costs awarded. Staff reviewed cost recovery rules from thirty-two (32)
14 jurisdictions and the task force met several times to review recommendations. The
15 results were reported to the Board of Governors at their June 2016 meeting and the
16 changes outlined below were adopted unanimously.

17 The current structure of SCR 120 often results in a small fraction of costs
18 being awarded or no recoupment of administrative costs. The proposed amendments
19 would (i) limit the variation in costs assessed against disciplined attorneys by
20 different Hearing Panel groups, and (ii) provide an increase in the total costs
21 awarded over time.

22 The imposition of a reasonable and consistent assessment for direct
23 administrative costs strikes a balance between the need to shift more of the costs of
24 the discipline system onto offending attorneys without interfering with the
25 fundamental fairness of the process.

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1 3. *In addition to any costs assessed as provided for herein, an*
2 *attorney subjected to discipline shall be assessed administrative*
3 *costs allocable to the proceeding, but in any case, shall not be less*
4 *than the following amounts:*

4	<i>Reprimand:</i>	<i>\$1,500</i>
5	<i>Suspension:</i>	<i>\$2,500</i>
6	<i>Disbarment:</i>	<i>\$3,000</i>

7 4. *A final assessment for costs and fees shall have the force and effect*
8 *of a civil judgment against the disciplined attorney and shall be*
9 *subject to all legally-available post-judgment enforcement*
10 *remedies and procedure.*

11 5. *In addition, in any matter where any attorney is required to apply*
12 *for reinstatement, administrative costs shall be assessed in any*
13 *amount not less than \$2,500 and the attorney shall also be*
14 *required to pay all costs previously assessed but not yet paid prior*
15 *to the processing of the application for reinstatement.*

16 6. *Failure to pay within sixty (60) days from receipt of billing*
17 *statement from the Office of Bar Counsel or Order from the*
18 *Supreme Court, shall result in further disciplinary action. An*
19 *additional fee of \$250 for every thirty (30) days payment is*
20 *delinquent. Failure to pay shall result in administrative*
21 *suspension.*

22 **B. Costs and Fees Defined**

23 The proposed amendment clarifies that the term “costs” includes, but is not
24 limited to, reporter's fees, investigation fees, witness expenses, service costs,
25 publication costs, and any other fees or costs deemed reasonable by the panel and
 allocable to the proceeding.

 The proposed amendment provides for a separate imposition of
 “administrative costs” that would represent, a small portion of the bar counsel
 administrative expenses allocable to the prosecution of disciplinary matters.

1 **C. Cost and Fee Awards Should Be Mandatory**

2 In 2014 and 2015, the Office of Bar Counsel (“OBC”) processed an average
3 of 1,500 grievances per year.¹ In that same time period, 2014 and 2015, the OBC
4 also held an average of 95 hearings which resulted in the issuance of approximately
5 95 sanctions per year against Respondent attorneys. Through the proposed
6 amendment to SCR 120, the State Bar is seeking to transfer a small portion of the
7 expense of discipline from the rule-abiding attorneys to the offending attorneys in
8 a consistent and predictable manner.

9 **D. Award of Costs Should Be Mandatory**

10 The proposed amendment would not add any category of expenses to the cost
11 provision of SCR 120(1). The amendment would only make the award of such
12 costs a requirement in disciplinary proceedings.

13 The establishment of a mandatory cost award will result in more consistency,
14 and predictability, in the disciplinary process. With 120 members on the Northern
15 and Southern Disciplinary Boards, there is great diversity of opinion among those
16 who decide discipline matters and ultimately decide what, if any, sanctions to
17 impose. It would benefit the system, and the disciplined attorneys, to have a more
18 predictable system for the award of costs in disciplinary matters.

19 The award of out-of-pocket costs against a disciplined attorney is fairly
20 common – over half of the state bars in the United States provide for their recovery
21 in disciplinary matters.²

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23
24 ¹ See State Bar of Nevada Annual Report 2014 and Annual Report 2015, respectively.

25 ² Alaska, Alabama, Arizona, California, Colorado, Florida, Idaho, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington and Wyoming.

1 The proposed amendment would codify the requirement that some of such
2 costs is the responsibility of the disciplined attorney. Moreover, the proposed
3 amendment would result in consistent, more predictable, consequences for
4 disciplined attorneys.

5 **E. Award of Administrative Fee Should Be Mandatory**

6 Similar to the award of hard, fixed costs, a mandatory award of an
7 administrative cost would provide consistent, predictable consequences for
8 disciplined attorneys across Nevada. The use of an administrative cost, instead of
9 individually allocable bar counsel and staff salaries, also serves to provide a
10 consistent and predictable expectation for attorneys facing discipline.

11 **F. The Administrative Cost Assessment**

12 Fifteen of the states reviewed by the State Bar's Taskforce provide for the
13 assessment of an "administrative cost" in addition to an award of actual costs of the
14 proceeding. These states vary in how they determine the administrative fee to be
15 assessed in any given disciplinary proceeding. Several States impose a flat fee
16 irrespective of the nature of the proceedings. Other jurisdictions examined used a
17 sliding scale based on the type of discipline imposed or the level of review.

18 Examples include the following:

19	Louisiana	Admonition	\$250
20		Discipline by consent	\$1,000
		Reprimand	\$1,000
21		Suspension	\$1,500
22		Disbarment	\$2,000
23	Missouri	Reprimand	\$750
24		Suspension	\$1,000
25		Disbarment	\$2,000

1	Washington	Admonition	\$750
		Order w/o review by Board	\$1,500
2		Order w/review by Board	\$2,000
		Appeal to S. Ct. no briefing required	\$2,500
3		Appeal to S. Ct. briefing required	\$3,000

4 The proposed amendment to SCR 120 imposes an administrative fee based
5 on the sanction imposed, as follows:

6	Reprimand:	\$1,500
7	Suspension:	\$2,500
8	Disbarment:	\$3,000

9 These amounts are not small to most attorneys. However, they are but a small
10 fraction of the actual costs incurred. The OBC carries out several functions other
11 than discipline hearings, such as the ethics hot line, referrals on attorney advertising,
12 assistance with CLE and publications and reporting to the Board of Governors. But,
13 the majority of the OBC budget is dedicated to the investigation and prosecution of
14 discipline cases.³

15 **G. There is a Need for Enforcement Capabilities for Cost Awards**

16 In 2015, a total of \$99,833 in costs was assessed against disciplined attorneys
17 at Formal Hearings. In the same time period, \$34,877 was collected. Some of the
18 difference in the figures is the result of deferred collection agreements, but the State
19 Bar needs a mechanism to hold disciplined attorneys more accountable for their
20 obligations.

21 Currently, the best prospect the State Bar has to enforce SCR 120 award
22 (without implementing a collections process), is when a suspended attorney seeks
23 reinstatement. This is not a consistent, or ultimately reliable, method by which to
24 enforce the final Order of the Nevada Supreme Court. Other enforcement methods

25 ³ The costs of the State Bar's discipline function have increased significantly and rapidly. In 2015, the cost of operating the Office of Bar Counsel (OBC) is \$2,218,500. This is a 32.3% increase over the last two (2) years.

1 require the State Bar to expend vital resources on civil suits. The State Bar should
2 focus its energy on protection of the public, the Courts and the improvement of the
3 legal profession, not collections. By the proposed amendment, the State Bar seeks
4 a method by which SCR 120 costs and administrative cost awards can be enforced
5 in an efficient and consistent manner.

6 For this reason, the State Bar proposes the addition of SCR 120(4) through
7 SCR 120(6) as set forth in Exhibit A.

8 **CONCLUSION**

9 The State Bar Board of Governors respectfully seeks amendment of Rule 120
10 of the Nevada Supreme Court Rules as set forth in Exhibit A, attached hereto.

11
12 RESPECTFULLY SUBMITTED this 9 day of September, 2016.

13
14 STATE BAR OF NEVADA
15 BOARD OF GOVERNORS

16 

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25

EXHIBIT A

EXHIBIT A

1. An attorney subjected to discipline or seeking reinstatement under these rules *shall* be assessed the costs, in full or in part, of the proceeding, including, but not limited to, reporter's fees, investigation fees, ~~bar counsel and staff's salaries~~, witness expenses, service costs, publication costs, and any other fees or costs deemed reasonable by the panel and allocable to the proceeding.
2. If, for any reason, bar counsel is disqualified or has a conflict of interest, the board of governors shall appoint an attorney, ad hoc, to act in the place of bar counsel.
3. *In addition to any costs assessed as provided for herein, an attorney subjected to discipline shall be assessed administrative costs allocable to the proceeding, but in any case, shall not be less than the following amounts:*

<i>Reprimand:</i>	<i>\$1,500</i>
<i>Suspension:</i>	<i>\$2,500</i>
<i>Disbarment:</i>	<i>\$3,000</i>

4. *A final assessment for costs and fees shall have the force and effect of a civil judgment against the disciplined attorney and shall be subject to all legally-available post-judgment enforcement remedies and procedure.*
5. *In addition, in any matter where any attorney is required to apply for reinstatement, administrative costs shall be assessed in any amount not less than \$2,500 and the attorney shall also be required to pay all costs previously assessed but not yet paid prior to the processing of the application for reinstatement.*
6. *Failure to pay within sixty (60) days from receipt of billing statement from the Office of Bar Counsel or Order from the Supreme Court, shall result in further disciplinary action. An additional fee of \$250 for every thirty (30) days payment is delinquent. Failure to pay shall result in administrative suspension.*