IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS TO COURT RULES REGARDING ATTORNEY DISCIPLINE, SEPCIFICALLY, SCR 102, 103, 104, 105, 105.5, 110, 111, 113, 116 AND 117.

ADKT 0506

FILED

APR 28 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

## *ORDER SETTING PUBLIC HEARING*

On March 16, 2015, the Board of Governors of the State Bar of Nevada filed a petition seeking amendment of Supreme CourtRules 102, 103, 104, 105, 105.5, 110, 111, 113, 116, and 117. A copy of the petition with the proposed amendments is attached to this order.

The Nevada Supreme Court will conduct a public hearing to consider the proposed amendments. The public hearing will be held on Wednesday, July 1, 2015, at 1:00 p.m. in the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 200 Lewis Avenue, 17th Floor (Regional Justice Center), Las Vegas, Nevada.

Further, this court invites written comment from the bench, bar and public regarding the petition. An original and 8 copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., June 26, 2015. Comments must be submitted in hard-copy format. Comments submitted electronically will not be docketed. Persons



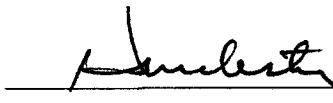
15-12892

interested in participating in the hearing must notify the Clerk no later than June 26, 2015.

Hearing date: July 1, 2015, at 1:00 p.m.
Supreme Court Courtroom
201 South Carson Street
Carson City, Nevada

Comment deadline: June 26, 2015, at 1:30 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 28th day of April, 2015

 , C.J.

cc: Elana T. Graham, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Administrative Office of the Courts

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
MAR 16 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

In the matter of Amendments to Court Rules regarding attorney discipline, specifically, SCR 102, 103, 104, 105, 105.5, 110, 111, 113, 116, and 117.

ADKT NO.: 0501

## PETITION

The Board of Governors of the State Bar of Nevada (State Bar) hereby petitions this Court to amend its rules regarding attorney discipline.

In 2014, the State Bar convened a Discipline Taskforce to conduct a comprehensive review of the process for attorney discipline, from receipt of grievance through disposition. As a result of the Discipline Taskforce recommendations, on July 9, 2014, the State Bar adopted Rules of Procedure, pursuant to Supreme Court Rule (SCR) 105(4). The Discipline Taskforce also recommended amendments to Court Rules, submitted hereto by the State Bar, to streamline the discipline process.

## DISCUSSION

The State Bar proposes amendments which would: (1) eliminate the reference to "private" in a letter of reprimand to reflect current practice; (2) eliminate informal hearings; (3) reduce the size of formal hearing panels from five to three and reduce to a simple majority the number of panel members required to reach a concurrence; (4) add reciprocal subpoena authority for other jurisdictions who govern lawyer discipline; (5) allow interim temporary suspension pending review of disbarment recommendation; (6) remove language requiring disciplinary board chairs to sign petitions for temporary suspension under SCR 102; (7) require a formal entry of a default when a

RECEIVED
MAR 13 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK



15-07987

respondent fails to file an answer; (8) authorize bar counsel to request certain information for reinstatement hearings; (9) expand the options for informal resolution of grievances under SCR 104(1)(b), and; (10) require repayment to the Clients' Security Fund (CSF) prior to reinstatement of license.

Due to the number of Rules that are impacted by the proposed Rule changes, each section will refer to **Exhibit A, pp. 17-48**, which contains all the changes in their entirety to avoid confusion to the reader.

**1.**
**Letter of Reprimand.**

A letter of reprimand is the first level of discipline that may be imposed upon an attorney. The current Rule provides that the Supreme Court or a hearing panel may issue a private or public reprimand, with or without conditions. SCR 104(5, 6). Additionally, screening panels may issue a private reprimand, with or without conditions (SCR 104(7)), subject to the attorney's right to object and be heard, usually in an informal hearing. In practice, private reprimands are typically imposed without the filing of a formal complaint.

Nevada's Rules of Professional Conduct use the label "private reprimand" because historically letters of reprimands were confidential pursuant to SCR 121. This phrase became a misnomer in 2007 when the Supreme Court changed SCR 121(2) to provide, "In the event no formal complaint is filed, the disciplinary proceeding shall become public upon its conclusion, whether by dismissal or otherwise." *See*, Order Amending Rules 98-121, ADKT No. 392 (December 26, 2006) (effective March 1, 2007). Since private reprimands typically issued from screening panels or informal

hearings, what was once a "private" reprimand now became "public" upon the conclusion of the proceeding.

Thus, following this amendment, David A. Clark, in his capacity as Acting Bar Counsel, communicated with the Court about the impact of the change on confidentiality of the discipline process and was informed the Court would leave it to bar counsel's interpretation. Office of Bar Counsel policy then became to interpret "proceedings" as any open grievance file[1] and would include screenings and informal hearings that resulted in a letter of reprimand. All forms were also amended to read "letter of (private) reprimand" and respondents were informed that such letters were no longer technically private. As a result, the State Bar makes a private reprimand available to the public and press upon request.[2]

As further indication of the now-public nature of letters of reprimand, the Supreme Court entered an Order in ADKT No. 428 on October 22, 2008. This Order required an attorney to report private reprimands imposed after March 1, 2007, on the lawyer's biographical data form, pursuant to Rules of Professional Conduct (RPC) 1.4.

The State Bar respectfully requests the Court to amend the following Rules to eliminate references to "private" reprimands and refer to the

---

[1]Grievances dismissed immediately by bar counsel remain confidential because no screening proceeding occurs.

[2]Private reprimands may be published in bar counsel's discretion in *Nevada Lawyer* magazine without the attorney's name. They are not made available on the attorney's online profile, but will be provided if requested. By rule (SCR 121.1), public reprimands must be published by name in *Nevada Lawyer*, reported to the National Discipline Data Bank, and are linked to the attorney's online profile.

disciplinary action as a "letter of reprimand." The public reprimands would remain as a public reprimand, a higher form of discipline. The proposed Rule amendments would impact the following Rules. *See* **Ex. A.:**

- SCR 102 (5) to (7). *See,* pg. 19.
- SCR 105(1)(a) to (c). *See,* pp. 23-24.

**2.**

**Elimination of Informal Hearings.**

Currently, attorneys can appeal Letters of Reprimand to an informal or formal hearing. An informal hearing is a confidential proceeding until ended. No court reporter is present. Once an appeal is made from the screening panel's recommendation to an informal hearing panel, it may not be appealed further. In exchange, the informal hearing panel may not impose greater discipline, but may only affirm or reduce the proposed Letter of Reprimand. The purpose of informal proceedings was to maintain the confidentiality of private reprimands.

Given that Letters of Reprimand are now public upon conclusion, confidential proceedings are unnecessary and at odds with the increasing open nature of attorney discipline. Eliminating the option of an informal hearing also provides for a more streamlined approach as a single hearing process allows for greater efficiencies in administration. This method is consistent with a single formal hearing process adopted in Arizona, Colorado, Kentucky, Virginia and Washington. As there will only be one hearing for all purposes, all references to "formal" hearings should also be removed.

An informal hearing process is used in determining whether a Respondent has breached the terms of their diversion or mentoring contract. Thus, the elimination of informal hearings would also affect SCR 105.5.

Finally, SCR 111 (Attorneys convicted of crimes) allows the Court to refer matters to the disciplinary board for institution of a formal hearing before a hearing panel. The proposed change to eliminate all references of the word "formal" would impact this Rule as well.

Therefore, the State Bar proposes amendments to the following Rules. *See*, **Ex. A.:**

- SCR 103 (6)(a) to (c). *See,* pg. 22.
- SCR 105(1)(b) to (c). *See,* pp. 23-24.
- SCR 105 (2)(g). *See,* pg. 26-27.
- SCR 105.5(6)(a) to (c). *See,* pp. 29-30.
- SCR 105.5 (7). *See,* pg. 30.
- SCR 111(8). *See,* pg. 35.

**3.**

**Size of Hearing Panels; Concurrence to Impose Discipline.**

Current Court Rule requires a formal hearing panel to be comprised of five volunteer members; one of whom must be a non-attorney member. The Discipline Taskforce recognized that three-member panels are used elsewhere in the discipline process, including screening panels, informal hearings, and formal panels to accept conditional guilty pleas. Furthermore, most appellate courts hear cases in three-member panels.

In order to recognize efficiencies in the process and maximize the number of hearings held, the State Bar also proposes that all hearing panels be comprised of three members; one of whom shall be a non-attorney member. However, the State Bar proposes that either party may petition the board chair

or vice chair to appoint a five-member panel if the party so chooses.

Additionally, a formal hearing panel of five members presently requires a four-to-one concurrence to impose or recommend discipline. This appears to be a holdover requirement from a time when formal hearings were composed of seven members and reflected a simple majority.

Therefore, the State Bar proposes an amendment to reduce the default size of all hearing panels to three members and to amend Court Rules to require a simple majority concurrence to impose or recommend discipline, which would be three-two for a five-member panel and two-one for a three-member one. The Rules that would be impacted are as follows. *See,* **Ex. A.:**

- SCR 103(6)(a) to (c). *See,* pg. 22.
- SCR 105(1)(a) to (d). *See,* pp. 23-24.
- SCR 105(2)(a). *See,* pp. 24-25.
- SCR 105(2)(e). *See,* pg. 26.
- SCR 113(1). *See,* pg. 36.
- SCR 117 (4). *See,* pg. 42-43.

**4.**
**Reciprocal Subpoena Authority.**

The Office of Bar Counsel often receives requests by other attorney disciplinary jurisdictions to assist in issuing subpoenas in Nevada as it relates to their investigation. The respondent in those jurisdictions is not licensed in Nevada but may have some ties to Nevada such as a bank account or a witness. Currently, bar counsel is not authorized to issue those subpoenas. A majority

(30) of other states and jurisdictions have a rule allowing for issuance and enforcement of reciprocal subpoenas.[3]

More importantly, the Office of Bar Counsel has seen a greater need to obtain records and witness statements from other jurisdictions, which reflects the increasingly multi-jurisdictional practice of law. Many jurisdictions' ability to cooperate is based upon reciprocity. Adopting a reciprocal subpoena rule would strengthen the State Bar's ability to investigate and prosecute cases that span state lines.

Therefore, the State Bar proposes an amendment that would allow the State Bar to aid another lawyer disciplinary jurisdiction to compel the attendance of witnesses or production of documents which impacts SCR 110(5) and 110(9). *See,* **Ex. A.,** pp. 33.

**5.**
**Interim Suspension Pending Supreme Court Review of Disbarment Recommendations.**

Pursuant to SCR 102(4), a petition for a temporary suspension may be filed with the Supreme Court if it appears that an attorney is posing a substantial threat of serious harm to the public. This petition is supported by

[3]Alaska, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, Washington DC, West Virginia, Wisconsin, and Wyoming.

an affidavit alleging facts personally known to the affiant that the attorney is posing a threat. The Office of Bar Counsel has typically filed petitions for temporary suspension in instances when the attorney is a current threat, the matter is still under investigation, and formal complaint has not been filed.

However, the Office of Bar Counsel has prosecuted cases when an attorney was not temporarily suspended, but a formal hearing panel recommended disbarment after the hearing. Those findings are submitted to this Court *de novo* for review and, while this Court does not have to accept the recommendation of the formal hearing panel, this Court does review the record in its entirety before rendering a decision. Given the Court's docket, there may be a delay in which an attorney continues to practice law after a hearing panel has determined by clear and convincing evidence that the attorney should be disbarred.

The State Bar proposes that, upon a formal hearing panel entering a finding and recommendation of disbarment, the Office of Bar Counsel be allowed to file a petition requesting the interim suspension of the attorney's law license pending this Court's review of the record. Minnesota and Washington State have a similar rule. This is not an automatic interim suspension but would simply afford another basis for the State Bar to seek such a suspension. It recognizes that the State Bar has established by clear and

convincing evidence the quantum of proof that an attorney has engaged in misconduct and that a disciplinary hearing panel has determined that disbarment is the appropriate sanction.

In the alternative, the State Bar proposes that the attorney be placed on involuntarily inactive status with the State Bar pending this Court's *de novo* review of the record. California has a rule that requires the involuntary inactive enrollment of an attorney following a disbarment or default. California Business Code §6007 (c)(4) states:

> The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

The State Bar proposes an amendment to SCR 102(4)(a) to (e). *See,* **Ex. A,** pp. 18-19.

**6.**
**Remove Language Requiring Disciplinary Board Chairs to Sign Petitions for Temporary Suspensions.**

SCR 102(3) and (4) requires that petitions for temporary restraining order regarding funds and for temporary suspension be signed by the disciplinary board chair or vice chair. Recent board chairs have indicated concern that they do not add much to the fact-finding process because bar counsel has investigated the matter, collected the necessary affidavits and

drafted the underlying petition. The chairs only have knowledge of what has been presented to them in the petition yet they are signing the pleading pursuant to NRCP 11. Even then, this Court still undertakes its own *de novo* review of the facts presented in the petition in deciding whether or not to temporarily suspend the lawyer.

Therefore, the State Bar is requesting that SCR 102(3) and (4) be amended to allow petitions to be signed by bar counsel. *See,* **Ex. A,** pp. 17-19.

**7.**
**Default Proceedings.**

Currently, if a respondent attorney fails to timely answer or respond to a formal discipline complaint, "the charges shall be deemed admitted." The rule provides that an attorney may, after failing to respond, "obtain permission to do so" from the chair, "if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect."

This language obviously tracks provisions of NRCP 55 and NRCP 60 regarding defaulting parties. Those rules require the entry of a default in order to establish in the record the change in status of the non-responding party.

Yet, in discipline proceedings there is no formal order or pleading that documents this fact in the record. Moreover, unlike a civil default, which still requires the plaintiff to prove up his case, when a respondent in a discipline matter fails to plead, the State Bar's allegations are automatically "deemed

admitted." The respondent is now facing almost certain suspension, if not disbarment, on the occurrence of an event not codified in the record that this Court will review.

Default disciplinary proceedings, by definition, involve attorneys unable to comply with deadlines and timely address their professional responsibilities. Often these attorneys appear pro se and fail to grasp the consequences when the matter proceeds on a default basis. In many cases, as well, they are attempting to retain counsel and counsel would benefit from a clear assessment of the case before agreeing to the representation.

The State Bar respectfully requests that SCR 105(2) be amended to provide for the entry of a default pleading in order to make the record clearer and allow more certainty in the Panel's and the Court's review of the respondent's conduct. Such a pleading is also more familiar to most attorneys and would likely reinforce the notice and gravity of the failure to plead. This is particularly true when the consequences are that the allegations are automatically deemed admitted. *See,* **Ex. A,** pp. 25, lins 5-7.

**8.**
**Reinstatement Proceedings.**

An attorney petitioning for reinstatement pursuant to SCR 116 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 Nevada.* The rule provides that, "bar counsel shall represent the State Bar and submit any evidence and produce any witnesses relevant to the petition."

In order to properly vet the petition for reinstatement and the requirements under SCR 116, bar counsel informally requests from the petitioner specific information consistent with SCR 51 (Qualifications of applicants for admission) and bar applications. Current office practice is that form letter is sent to the applicant with a deadline to respond. The State Bar requests that SCR 116(3) be modified to include language authorizing bar counsel to lawfully request this information. *See,* **Ex. A,** p. 40. This would codify existing practice and also allow for the enforcement of such requests pursuant to RPC 8.1(b).

**9.**

**Informal Resolutions of Grievances.**

During the Task Force discussions, a suggestion was made to expedite disciplinary grievances on intake by offering informal resolution measures, similar to diversion. The Office of Bar Counsel receives approximately 1,000 grievances a year that are dismissed under SCR 104(1)(b) and SCR 105(1)(a), which allows bar counsel the discretion to dismiss matters.

For example, the current practice is that bar counsel dismisses the matter and refers the grievant to State Bar Fee Dispute if the allegations raised by the grievant is that of a simple misunderstanding of fees and does not rise to the level of violating RPC 1.5 (Fees). Under the new proposed rule, this would require the attorney to participate in the fee dispute arbitration. Other options available to bar counsel under this new proposal would be directing the

attorney to take a continuing legal education class. Arizona has rules similar to what the State Bar is proposing.

In order to streamline the intake policy and procedure in the Office of Bar Counsel, the State Bar is proposing an amendment to SCR 104(2), which will clearly allow intake counsel the authority to direct the respondent attorney to take remedial measures to resolve the issue. *See,* **Ex. A,** pg. 23.

**10.**

**Repayment to Clients' Security Fund Prior to Reinstatement.**

Pursuant to SCR 86.5, the Clients' Security Fund (CSF) Committee has the authority to reimburse clients who have sustained loss by reason of a dishonest act of a member of the State Bar, acting in his or her capacity as an attorney and counselor at law, in the context of a lawyer-client relationship. The CSF has jurisdiction to make reimbursements when the lawyer has been removed from practice due to disciplinary suspension, disbarment, disappearance or death[4]. Since 1994, the CSF has made reimbursements totaling close to $3 million.

All claims are investigated by Committee members who make determinations as to whether the client received any services for the fees paid. As part of the investigative process, the accused attorney is sent notice of the CSF investigation to his or her last known address and is provided the opportunity to respond. Once a claim has been investigated, it is forwarded to the full Committee for consideration; claims may be denied, approved, or

[4]Prior to 2012, the Fund also reimbursed clients whose attorneys were removed from practice through an administrative order (i.e., CLE suspension or Fee Suspension).

approved in part. As a condition of receiving reimbursement, clients are required to submit a notarized subrogation agreement which allows the Fund to pursue restitution.

In most cases, there are few attorney assets to pursue; however, when available, the Committee will work with law enforcement, courts and the Office of Bar Counsel to recover any paid claims. As a result of these efforts, restitution to the Fund has continued to increase from $2,100 in 2011, to $18,570 in 2012, to $62,470 in 2013. However, these efforts rarely bear compensation anywhere near the amount paid.

The surest form of reimbursement to the Fund comes when an attorney previously removed from practice through a disciplinary order seeks reinstatement. Supreme Court Rule 116 allows a hearing panel to condition reinstatement upon the attorney's restitution to injured parties, including the CSF. Recently, the Court has supported this provision and has rejected panel recommendations for reinstatement when the Fund has not been paid in advance.[5] However, SCR 116 states that reinstatement "*may be* conditioned" [emphasis added] upon the attorney's payment of costs of the hearing and restitution to injured parties, including the CSF.

---

[5] *See, i.e, In Re Discipline of Alex Ghibaudo*, Docket No. 62670 (Order Approving Conditional Guilty Plea and Denying Reinstatement, December 12, 2013) ("This court will not consider reinstatement until Ghibaudo has repaid all of the money owed to [CSF]."); *In Re Discipline of Douglas H. Clark*, Docket No. 61903 (Order Approving Conditional Guilty Plea, August 15, 2014) (Approving repayment to CSF and clients as condition precedent to reinstatement petition); *cf., In Re Discipline of Mehi Aholelei-Aongo*, Docket No. 61055 (Order of Suspension, December 6, 2013) (No reinstatement until discipline costs paid).

The provision to condition reinstatement upon reimbursement to CSF does not exist in SCR 117. In these cases, attorneys can be reinstated to full practice prior to CSF repayment. In instances where an attorney goes disability inactive, any pending disciplinary cases at the time of inactivation are stayed indefinitely. If bar counsel pursues disciplinary action after reinstatement, restitution to the CSF can be included as part the hearing panel recommendation. However, restitution is not guaranteed as part of the hearing panel recommendation or Court order.

It can be argued that an attorney does not choose to be disabled and, but-for the disability, the attorney would have been presumed to have earned the client fee that CSF paid back in reimbursement. However, just as the attorney may not choose to be disabled, the client does not choose to pay for services not received. Public policy would not expect clients to wait indefinitely for repayment once – or if – the attorney is able to return to practice. For that reason, the CSF is available to clients to recover unearned fees as a fund of last resort.

Furthermore, although attorneys on disability inactive status make up a small portion of the total CSF approved claims ($277,000 of the $3 million), and the percentage of those who return to practice are even smaller, the CSF is not in a position to forego reimbursement of any amount, especially in lean years when there is insufficient funding to reimburse fully.

This issue was the subject of discussion at the 2014 ABA National Forum on Client Protection meeting. Representatives from various jurisdictions related their efforts to seek restitution to their respective funds, including paying the salary of an assistant attorney general to pursue recovery

to the fund to employing outside collection firms, which can be costly. It was the consensus among attendees that every jurisdiction have a rule which would require repayment to the fund prior to reinstatement of license.

Therefore, the State Bar proposes the following Rules be amended. *See,* **Ex. A.:**

- SCR 116(5). *See,* pp. 40-41, lines 1 and 3 (technical correction).
- SCR 117(4). *See,* p. 42, lines 22-24.

## CONCLUSION.

The proposed rules, as amended, are attached hereto in their entirety as **Exhibit A.**

Respectfully submitted this 10th day of March 2015.

STATE BAR OF NEVADA
BOARD OF GOVERNORS

Elana Turner Graham, Pres.

ELANA TURNER GRAHAM, President
Nevada Bar No. 3429
State Bar of Nevada
600 E. Charleston Boulevard
Las Vegas, NV 89104
(702) 382-2200

**EXHIBIT A**

## D. MISCONDUCT

**Rule 99. Jurisdiction.**

1. Every attorney admitted to practice law in Nevada, specially admitted by a court of this state for a particular proceeding, practicing law here, whether specially admitted or not, or whose advertising for legal services regularly appears in Nevada is subject to the exclusive disciplinary jurisdiction of the supreme court and the disciplinary boards and hearing panels created by these rules.

2. Nothing contained in these rules denies any court the power to maintain control over proceedings conducted before it, such as the power of contempt, nor do these rules prohibit any association from censuring, suspending, or expelling its members.

**Rule 100. Disciplinary districts.**

Disciplinary jurisdiction in this state shall be divided into a southern district and a northern district. The southern district shall consist of the counties of Clark, Esmeralda, Lincoln, Nye, and White Pine. The northern district shall consist of the counties of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, and Washoe.

**Rule 101. Grounds for discipline.**

Conviction of a crime or acts or omissions by an attorney, including contempt of a hearing panel, individually or in concert with another person, which violate the rules of the supreme court or the Nevada Rules of Professional Conduct are misconduct and constitute grounds for discipline.

**Rule 102. Types of discipline.**

Misconduct is grounds for:

1. Irrevocable disbarment by the supreme court.

2. Suspension by the supreme court. A suspension of 6 months or less shall not require proof of rehabilitation; a suspension of more than 6 months shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding under Rule 116.

3. Temporary restraining order regarding funds.

(a) On the petition of a ~~[disciplinary board or hearing panel, signed by its chair or vice chair]~~ bar counsel, supported by an affidavit alleging facts personally known to the affiant which shows that an attorney appears to be

causing great harm by misappropriating funds to his or her own use, a district court of this state in the county where the attorney resides, where he or she maintains an office, or where the alleged acts occurred, may issue an order, in the same manner and under the same provisions of the Nevada Rules of Civil Procedure, not inconsistent with this rule, as a temporary restraining order is issued, which restricts the attorney in the handling of funds entrusted to him or her or over which the attorney has the power of disposition.

(b) An order entered pursuant to the preceding paragraph may also prescribe the manner in which fees or other funds received from or on behalf of clients are to be handled during the existence of the order. When served on either the attorney or a depository in which the attorney maintains an account, the order is also an injunction against withdrawals from the account except in accordance with the terms of the order. In preparing such an order, due consideration shall be given to whether the account(s) affected by it are maintained by the attorney alone or whether there are other people whose right to withdraw funds may be affected.

(c) Unless it is deemed necessary by the district court, a bond shall not be required for an order under this rule. The duration of the order and proceedings to dissolve it are governed by Rule 65 of the Nevada Rules of Civil Procedure, unless the order is superseded by an order of the supreme court pursuant to the next paragraph of this rule.

4. Temporary suspension by the supreme court.

(a) Following a hearing and upon entry of a hearing panel's recommendation for disbarment pursuant to SCR 105(2)(e) and served upon the attorney in accordance with SCR 105(3)(a), bar counsel may file a petition with the supreme court requesting the immediate temporary suspension of the attorney. The decision of the hearing panel shall accompany the petition.

[~~(a)~~](b) On the petition of [~~a disciplinary board, signed by its chair or vice chair~~] bar counsel, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice. If a petition is filed under subsection 3 of this rule, a separate petition under this subsection must be filed with the supreme court as soon thereafter as possible.

[~~(b)~~] (c) A temporary order may restrict an attorney in the handling of funds entrusted to the attorney or over which the attorney has the power of disposition, or, if appropriate, direct the attorney to establish a trust account in accordance with conditions prescribed in the order. When served on either the attorney or a depository in which the attorney maintains an account, the order

is also an injunction against withdrawals from the account except in accordance with the terms of the order. An order of the supreme court that restricts the handling of funds by an attorney supersedes an order entered by the district court pursuant to subsection 3 of this rule.

[~~(c)~~](d) An order of temporary suspension precludes the attorney from accepting new cases but does not preclude the attorney from continuing to represent existing clients during the first 15 days after service of the order unless the court orders otherwise. Fees and other funds received from or on behalf of clients during this 15-day period shall be deposited in a trust account from which withdrawals may be made only in accordance with the conditions imposed by the order.

[~~(d)~~](e)The attorney may request dissolution or amendment of the temporary order of suspension by petition filed with the supreme court, a copy of which shall be served on bar counsel. The petition may be set for immediate hearing before a hearing panel, to hear the petition and submit its report and recommendation to the court within 7 days of the conclusion of the hearing. Upon receipt of the report and recommendation, the court may modify its order, if appropriate, and continue such provisions of it as may be appropriate until the final disposition of all pending disciplinary charges against the attorney.

5. Public reprimand or [~~private~~] letter of reprimand, with or without conditions, including but not limited to restitution, a fine, or both a reprimand and a fine, imposed by the supreme court.

6. Public reprimand or [~~private~~] letter of reprimand, with or without conditions, including but not limited to restitution, a fine of up to $1,000, or both a reprimand and a fine, imposed by a hearing panel of the disciplinary board.

7. [~~Private~~] Letter of reprimand, with or without conditions, including but not limited to restitution, a fine of up to $1,000, or both a reprimand and a fine, imposed by a screening panel of the disciplinary board pursuant to Rule 105(1).

8. Letter of caution imposed by a hearing or screening panel of the disciplinary board and issued by bar counsel, or imposed by the supreme court, which is a dismissal but cautions the attorney regarding specific conduct and/or disciplinary rules. A letter of caution may not be used as an aggravating factor in any subsequent disciplinary proceeding.

**Rule 102.5. Aggravation and mitigation.**

Aggravating and mitigating circumstances may be considered in deciding what sanction to impose and may be admitted into evidence at a disciplinary hearing.

1. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. The following list of examples is illustrative and is not exclusive:

(a) prior disciplinary offenses;

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary hearing;

(g) refusal to acknowledge the wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law;

(j) indifference to making restitution;

(k) illegal conduct, including that involving the use of controlled substances.

2. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. The following list of examples is illustrative and is not exclusive:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems;

(d) timely good faith effort to make restitution or to rectify consequences of misconduct;

(e) full and free disclosure to disciplinary authority or cooperative attitude toward proceeding;

(f) inexperience in the practice of law;

(g) character or reputation;

(h) physical disability;

(i) mental disability or chemical dependency including alcoholism or drug abuse when:

(1) there is medical evidence that the respondent is affected by chemical dependency or a mental disability;

(2) the chemical dependency or mental disability caused the misconduct;

(3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

(j) delay in disciplinary proceedings;

(k) interim rehabilitation;

(l) imposition of other penalties or sanctions;

(m) remorse;

(n) remoteness of prior offenses.

3. Factors which should not be considered as either aggravating or mitigating include:

(a) forced or compelled restitution;

(b) agreeing to a client's demand for improper behavior;

(c) withdrawal of grievance against the lawyer;

(d) resignation prior to completion of disciplinary proceedings;

(e) grievant's recommendation as to sanction;

(f) failure of injured client to complain.

**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 and screening panels of [~~five or~~] three members, consisting of two lawyers and one non-lawyer [~~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~~]. Either party may move the chair or vice chair to assign a hearing panel of five members, one of whom shall be a non-lawyer. The motion must be filed with the attorney's response. If requested by bar counsel, the motion must be filed upon commencement of formal proceedings. 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 pursuant to SCR 105.5(6) to determine if there is a breach of a diversion or mentoring agreement.

[~~(a)~~] (b) Conduct hearings on formal complaints of misconduct and matters arising under SCR 116 and 117.

[~~(b)~~] (c) 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.

**Rule 104. State bar counsel.**

1. State bar counsel shall:

(a) Investigate all matters involving possible attorney misconduct or incapacity called to bar counsel's attention, whether by grievance or otherwise.

(b) Subject to Rule 105(1), dispose of all matters involving alleged misconduct by dismissal of the allegation(s) or by the filing of a written complaint.

(c) Prosecute all proceedings under these rules before all forums in the name of the State Bar of Nevada.

(d) File with the supreme court petitions with certified copies of proof of conviction demonstrating that attorneys have been convicted of serious crimes, as defined in Rule 111.

(e) Maintain permanent records of all matters investigated under these rules except as otherwise required under Rule 121.

2. Bar counsel may meet with an attorney against whom a grievance has been received to informally resolve a matter that does not involve the commission of a serious crime, as defined in these rules, including directing the attorney to participate in fee dispute arbitration, obtain Continuing Legal Education credit(s), and/or other appropriate remedial measures.

3. A grievance against bar counsel or bar counsel's staff shall be investigated at the direction of the president of the state bar and heard by the board of governors. A decision of the board of governors against bar counsel may be appealed to the supreme court under the Nevada Rules of Appellate Procedure.

**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~~] letter of reprimand, or the filing of a written complaint for formal [~~hearing~~] proceedings. 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~~] letter of reprimand and shall be served with the notification and [~~private~~] letter of reprimand in the manner prescribed by Rule 109(1). The attorney shall have 14 days after receipt of the notice within which to serve on bar counsel written objections to the issuance of the [~~private~~] letter of 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-member panel of the appropriate disciplinary board on a written complaint filed by bar counsel; or (ii) an informal hearing before a three-member panel of the appropriate disciplinary board.~~]

(c) *Hearing*. Upon receipt by bar counsel of written objections to the issuance of a [~~private~~] letter of 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~~] letter of reprimand not objected to by the attorney within 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 a[~~n 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~~] hearing 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, bar counsel shall enter a default and the charges shall be deemed admitted; provided, however, that an attorney who fails to respond within the time provided may thereafter [~~obtain permission of~~] move to set aside the default with the appropriate 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 of 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 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.

(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.

(e) *Quorum; time for decision of panel; votes required to impose discipline.* Any three, if a three-member panel or five, if a five-member [~~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~~] two members of a three-member panel or three members of a five-member panel [~~members of the panel~~].

(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.

(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.

**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 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 a [~~a 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.

**Rule 106. Privilege and limitation.**

1. *Privilege.* All participants in the discipline process, including grievants, bar counsel staff, members of disciplinary panels, diversion and mentoring participants, and witnesses, shall be absolutely immune from civil liability. No action may be predicated upon the filing of a disciplinary complaint or grievance or any action taken in connection with such a filing by any of the participants. Except that any disclosures made pursuant to Rule 121(16) shall not be immune under this rule.

2. *Limitation.* Disciplinary proceedings shall not be commenced against an attorney for alleged misconduct occurring more than 4 years prior to the receipt of the grievance or filing of the complaint by bar counsel. In the event of fraud or concealment, the 4 year period begins on the date the fraud or concealment was discovered by the grievant, or on the date facts were known to bar counsel, which should have lead bar counsel to discover the alleged misconduct. For purposes of Rule of Professional Conduct 7.2A (Advertising

Filing Requirements), the 4-year period begins on the date the advertisement or communication was actually known to bar counsel.

**Rule 106.5. Lawyers Concerned for Lawyers program: privilege and limitation.**

1. *Definition.* The Lawyers Concerned for Lawyers program is a voluntary program created by the board of governors to assist lawyers who are suffering from a psychological disorder or impairment, or a drug, alcohol, gambling, or other addictive or compulsive disorder.

2. *Privilege.* Individuals who make a good faith report to the Lawyers Concerned for Lawyers program, the board of governors and its members, bar counsel, and staff, and the coordinator, agents, or employees of the Lawyers Concerned for Lawyers program, shall be absolutely immune from civil liability for any activities related to the Lawyers Concerned for Lawyers program, including, but not limited to, making referrals to a counselor, therapist, medical, psychological or behavior health care provider. No action may be predicated upon the filing of a good faith report with the Lawyers Concerned for Lawyers program or any action taken in connection with such a filing by the coordinator, agents, or employees of the Lawyers Concerned for Lawyers program.

3. *Limited use policy.* All information obtained by the Lawyers Concerned for Lawyers program, including the initial report and any subsequent information provided to the program thereafter, shall be confidential and shall not be admissible in any state bar disciplinary, admission, administrative or other state bar proceeding. This rule is not meant to preclude the state bar from using evidence or information which is independently discovered from a source separate from the Lawyers Concerned for Lawyers program.

**Rule 107. Refusal of grievant or complainant to proceed, compromise, etc.**

Neither unwillingness nor neglect of a grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement or compromise between the grievant or complainant and the attorney, nor restitution by the attorney, shall require abatement of the processing of any grievance or complaint. Such factors may be considered in determining whether to abate.

**Rule 108. Matters involving related pending civil or criminal litigation.**

Before or after a grievance file has been opened, processing of a grievance or complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized, for good cause, by a three-member screening panel appointed pursuant to Rule 105(1).

**Rule 109. Service.**

1. *Complaint.* Service of a complaint under these rules shall be made by personal service by any person authorized in the manner prescribed by Nevada Rule of Civil Procedure 4(c), or by registered or certified mail at the current address shown in the state bar's records or other last known address.

2. *Other papers.* Service of other papers or notices required by these rules shall be made in accordance with Nevada Rule of Civil Procedure 5, unless otherwise provided by these rules.

**Rule 110. Subpoena power, production of documents, witnesses, and pretrial proceedings.**

1. *Issuance of subpoenas by hearing panels and bar counsel.* Bar counsel and a member of a hearing panel who is also a state bar member, in matters under investigation by either, may administer oaths and affirmations and issue and compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents. The attorney may also compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and other documents before a hearing panel. Subpoena and witness fees and mileage shall be the same as in a district court.

2. *Confidentiality stated on subpoena.* Subject to the provisions of Rule 121, subpoenas shall clearly indicate on their face that they are issued in connection with a confidential investigation under these rules and that it is regarded as contempt of the supreme court or grounds for discipline under these rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with counsel or to answer questions asked by bar counsel or the attorney to determine the facts known by the witness.

3. *Attachment of person for failure to obey subpoena or produce documents.* Whenever any person subpoenaed to appear and give testimony or to produce books, papers, or other documents as required by subpoena, or requested to provide documents pursuant to Rule 78.5(1)(b), refuses to appear or testify before a hearing panel, or to answer any pertinent or proper questions, or to provide the requested documents, that person shall be deemed

in contempt of the disciplinary board, and the chair of the disciplinary board shall report the fact to a district judge of the county in which the hearing is being held or the investigation conducted. The district court shall promptly issue an attachment in the form usual in the court, directed to the sheriff of the county, commanding the sheriff to attach such person and bring such person forthwith before the court. On the return of the attachment, and the production of the person attached, the district court shall have jurisdiction of the matter; and the person charged may purge himself or herself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a district court of the State of Nevada.

4. *Contest of subpoena.* A contest of a subpoena shall be heard and determined by the chair of the appropriate disciplinary board.

5. *Restriction on discovery.* Discovery by the attorney, other than under Rule 105(2)[~~(c)~~](d), is not permitted prior to hearing, except by the order of the chair for good cause upon motion under Rule 103(5) or Rule 103(6).

6. *Prehearing conference.* At the discretion of the chair, a prehearing conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. The conference may be held before the chair or the chair's designee.

7. *Deposition in lieu of appearance.* With the approval of the chair, testimony may be taken by deposition or by commission if the witness is not subject to subpoena or is unable to attend or testify at the hearing because of age, illness, or other infirmity.

8. *Confidentiality of deposition.* Depositions are subject to the protective requirements and confidentiality provided in Rule 121.

9. *Subpoena pursuant to law of another jurisdiction.* Bar counsel, in the aid of lawyer discipline or disability proceedings in another jurisdiction, may issue a subpoena as provided in this Rule 110. The request for the subpoena must be duly approved under the laws of the requesting jurisdiction and must be made by either the disciplinary authority of the requesting jurisdiction or a respondent in a disciplinary or disability proceeding in the requesting jurisdiction. The subpoena may compel the attendance of witnesses and production of documents in Nevada where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement and challenges to this subpoena shall be in accordance with this Rule.

**Rule 111. Attorneys convicted of crimes.**

1. *Conviction" defined.* For purposes of this rule, in addition to a final judgment of conviction, a "conviction" shall include a plea of guilty or nolo contendere, a plea under *North Carolina v. Alford*, 400 U.S. 25 (1970), or a guilty verdict following either a bench or a jury trial, regardless of whether a sentence is suspended or deferred or whether a final judgment of conviction has been entered, and regardless of any pending appeals.

2. *Duty to inform bar counsel.* Upon being convicted of a crime by a court of competent jurisdiction, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, an attorney subject to these rules shall inform bar counsel within 30 days.

3. *Court clerks to transmit proof of conviction.* The clerk of any court in this state in which an attorney is convicted of a crime, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, shall transmit a certified copy of proof of the conviction to the supreme court and bar counsel within 10 days after its entry.

4. *Bar counsel's responsibility.* Upon being advised that an attorney subject to the disciplinary jurisdiction of the supreme court has been convicted of a crime, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, bar counsel shall obtain a certified copy of proof of the conviction and shall file a petition with the supreme court, attaching the certified copy. Upon being advised that an attorney subject to the disciplinary jurisdiction of the supreme court has been convicted of a misdemeanor involving the use of alcohol or a controlled substance and the offense is not the attorney's first such offense, bar counsel shall investigate and present the matter to the appropriate panel of the disciplinary board prior to the filing of the petition. The petition shall be accompanied by the panel's recommendation regarding the appropriate disciplinary action, if any, to be imposed under these or any other rules of the supreme court that pertain to the conduct of attorneys.

5. *Certified document conclusive.* A certified copy of proof of a conviction is conclusive evidence of the commission of the crime stated in it in any disciplinary proceeding instituted against an attorney based on the conviction.

6. *Definition of "serious crime."* The term "serious crime" means (1) a felony and (2) any crime less than a felony a necessary element of which is, as determined by the statutory or common-law definition of the crime, improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return,

deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

7. *Suspension on certification.* Upon the filing with the supreme court of a petition with a certified copy of proof of the conviction, demonstrating that an attorney has been convicted of a serious crime, the court shall enter an order suspending the attorney, regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding, which shall be commenced by the appropriate disciplinary board upon referral by the supreme court. For good cause, the court may set aside its order suspending the attorney from the practice of law.

8. *Referral to disciplinary board.* Upon receipt of a petition filed under subsection 4 of this rule, demonstrating that an attorney has been convicted of a serious crime, the supreme court shall, in addition to suspending the attorney in accordance with the provisions of subsection 7 of this rule, refer the matter to the appropriate disciplinary board for the institution of a [~~formal~~] hearing before a hearing panel in which the sole issue to be determined shall be the extent of the discipline to be imposed. The panel may, for good cause, postpone the proceeding until all appeals from the conviction have been concluded.

9. *Conviction for other than a serious crime.* Upon receipt of a petition demonstrating that an attorney has been convicted of a crime which is not a serious crime, the supreme court may refer the matter to the appropriate disciplinary board for any action it may deem warranted under these or any other rules of the supreme court that pertain to the conduct of attorneys, provided, however, that the supreme court may decline to refer a conviction for a minor offense to the board. If the conviction adversely reflects on the attorney's fitness to practice law, the supreme court may issue an order to show cause, requiring the attorney to demonstrate why an immediate temporary suspension should not be imposed.

10. *Reinstatement.* An attorney suspended under the provisions of subsection 7 or 9 of this rule may be reinstated by filing a certificate with the supreme court demonstrating that the underlying conviction has been reversed, but reinstatement will not terminate any formal proceeding pending against the attorney, the disposition of which shall be determined by the hearing panel on the basis of the available evidence.

11. *Conviction of attorney who is prohibited from practicing.* If an attorney convicted of a crime is at that time prohibited from practicing due to a disciplinary suspension or transfer to disability inactive status under Rule 117, then the petition filed under subsection 7 or 9 of this rule shall state that the attorney is prohibited from practicing and under what provision. If the attorney

has been suspended as discipline, then the petition shall indicate the suspension's length and whether the attorney must file a reinstatement petition under Rule 116 to regain active status. The supreme court shall then enter an appropriate order directing how the conviction shall be addressed.

**Rule 112. Disbarment by consent.**

1. An attorney who is the subject of an investigation or proceeding involving allegations of misconduct may consent to disbarment by delivering to bar counsel an affidavit stating that:

(a) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of submitting his or her consent;

(b) The attorney is aware that there is presently pending investigation into, or proceeding involving, allegations that there are grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(c) The attorney acknowledges that the material facts alleged are true; and

(d) The attorney's consent to disbarment is submitted because the attorney knows that if charges were predicated on the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend against the charges.

2. Upon receipt of the required affidavit, bar counsel shall deliver a petition for consent disbarment to the appropriate disciplinary board chair for approval. That petition shall be filed with the supreme court, and the court shall enter an order disbarring the attorney on consent.

**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.

**Rule 114. Reciprocal discipline.**

1. *Duty to inform of discipline elsewhere.* Upon the imposition of disciplinary sanctions in another jurisdiction, an attorney subject to these rules shall inform bar counsel of the action within 30 days, regardless of any pending appeals.

2. *Duties of bar counsel.* Upon being informed that an attorney subject to these rules has been disciplined in another jurisdiction, bar counsel shall obtain a certified copy of the disciplinary order, or other document so demonstrating. In the event that bar counsel receives information, from a source other than the attorney, indicating that an attorney subject to these rules may have been disciplined in another jurisdiction, bar counsel shall investigate the matter. If the investigation reveals that an attorney subject to these rules was in fact disciplined in another jurisdiction, bar counsel shall obtain a certified copy of the disciplinary order, or other document so demonstrating and file a petition for reciprocal discipline as described in subsection 3 of this rule.

3. *Procedure.* Bar counsel shall file a petition with the supreme court, and shall serve a copy of the petition on the attorney at the address on file with the state bar under Rule 79 and provide proof of service to the supreme court. The petition must contain a brief statement of the facts known to bar counsel, any Nevada Rules of Professional Conduct counterparts to the rules violated, and an attachment of the certified copy of the other jurisdiction's disciplinary order, or other document so demonstrating. The attorney shall have 15 days from the date of service to file a response, if any, with the supreme court, including any claim that the identical discipline is not warranted, predicated on the grounds set forth in subsection 4 of this rule.

4. *Identical discipline to be imposed; exceptions.* After the time for the attorney to respond has expired, the supreme court shall impose the identical discipline unless the attorney demonstrates, or the supreme court finds, that on the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept the decision of the other jurisdiction as fairly reached; or

(c) That the misconduct established warrants substantially different discipline in this state; or

(d) That the misconduct established does not constitute misconduct under any Nevada Rule of Professional Conduct.

If the court determines that any of the preceding factors exist, it shall enter an appropriate order.

5. *Discipline elsewhere res judicata.* In all other respects, a final adjudication in another jurisdiction that an attorney has engaged in misconduct conclusively establishes the misconduct for the purposes of a disciplinary proceeding in this state.

**Rule 115. Notice of change in license status; winding down of practice.**

1. *Who must comply.* An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under Rule 98 or Rule 212, transfer to disability inactive status, or resignation with discipline pending must comply with this rule. An attorney who resigns without discipline pending under Rule 98(5)(a) and who has any Nevada clients must also comply with this rule solely with respect to the attorney's Nevada clients. If an attorney who resigns under Rule 98(5)(a) has no Nevada clients, then the attorney shall file the affidavit described in Rule 115(4).

2. *Duty to notify clients not involved in legal proceedings.* An attorney who is required to comply with this rule shall immediately notify, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The attorney shall further advise the clients to seek other legal advice of their own choice, and shall inform them of any relevant limitation period and deadlines.

3. *Duty to notify clients and forums involved in proceedings.* An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under Rule 98 or Rule 212, transfer to disability inactive status, or resignation, shall immediately notify, by registered or certified mail, return receipt requested, (1) each of the attorney's clients who is involved in pending litigation, administrative proceedings, arbitration, mediation or other similar proceedings, (2) the attorney(s) for each adverse party in such matters,

and (3) the court, agency, arbitrator, mediator or other presider over such proceeding of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The notice to the client shall state the desirability of prompt substitution of another attorney of the client's own choice and shall list any upcoming appearances and deadlines. The notice given to the attorney for an adverse party shall provide the last known address of the client.

In the event the client does not obtain substitute counsel within 30 days of the attorney's notice to the client, it shall be the responsibility of the attorney to move in the court, agency or other forum in which the proceeding is pending for leave to withdraw, if leave is required.

4. *Duty to inform supreme court of compliance with order.* Within 10 days after the entry of the disbarment, suspension, transfer to disability inactive status, or resignation order, the attorney shall file an affidavit of compliance with the supreme court, bar counsel, and, if the suspension was under Rule 212, with the board of continuing legal education. The affidavit must show:

(a) That the attorney has fully complied with the provisions of the order and with these rules;

(b) All other state, federal, and administrative jurisdictions to which the attorney is admitted or specially admitted to practice;

(c) That the attorney has served a copy of his or her affidavit on bar counsel;

(d) The address and telephone number of the attorney and that of a contact person, if any, designated for client files; and

(e) The status of any client or third-party funds being held.

5. *Maintenance of records.* An attorney required to comply with this rule shall maintain records of his or her proof of compliance with these rules and with the disbarment, suspension, transfer to disability inactive status, or resignation order for the purposes of subsequent proceedings. Proof of such compliance shall be a condition precedent to reinstatement or readmission.

6. *Failure to comply.* If an attorney subject to this rule fails to comply with any provision of this rule or the court's order of disbarment, suspension, transfer to disability inactive status, or resignation, the court may enter an order to accomplish the purpose of this rule.

7. *Effective date.* Orders imposing suspension or disbarment or approving resignation shall be effective immediately. After entry of the order, the attorney shall not accept any new retainer or act as attorney for another in any new case or legal matter of any nature. However, for 15 days from the entry date of the order, the attorney may wind up and complete, on behalf of any client, all matters pending on the entry date.

**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. Prior to the hearing, bar counsel may make a lawful request for information consistent with the requirements for admission under SCR 51.

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~~] shall be conditioned upon the attorney's payment of the costs of the proceeding, restitution to parties injured by the petitioner's misconduct, including the Clients' 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.

## E. DISABILITY

### Rule 117. Proceedings when an attorney is declared to be incompetent or is alleged to be incapacitated.

1. *Judicial declaration of incompetency or commitment.* Upon proof that an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the supreme court shall enter an order transferring the attorney to disability inactive status until the further order of the court. A copy of the order shall be served on the attorney, his guardian, and/or the director of the institution to which he has been committed in such manner as the court may direct.

2. *Petition to determine competency; notice.* Whenever a disciplinary board or a hearing panel believes that an attorney is incapable of continuing the practice of law because of mental infirmity, illness, or addiction, it may file a petition with the supreme court seeking a determination of the attorney's competency. Such a petition may also be filed by joint stipulation of the parties. A petition to determine an attorney's competency should be filed separately from any discipline matter that may be pending and should be marked confidential in accordance with Rule 121. Upon the filing of such a petition, the court may take or direct such action as it deems necessary to determine whether the attorney is incapacitated, including referral of the matter to the appropriate disciplinary board for hearing and recommendation by a hearing panel or the examination of the attorney by qualified medical experts.

If, upon due consideration, the court concludes that the attorney is incapacitated for the purpose of practicing law, it shall enter an order transferring him or her to disability inactive status. Any pending disciplinary proceeding or investigation against the attorney shall be suspended.

The court shall provide for notice to the attorney as it deems necessary and may appoint counsel to represent the attorney if he or she is without adequate representation.

3. *Transfer to disability inactive status prior to determination of competency.* If, during the course of a disciplinary proceeding or investigation, the attorney contends in a petition or joint petition filed with the supreme court that he or she is suffering from a disability due to mental or physical infirmity, illness, or addiction, which makes it impossible for the attorney to adequately defend the disciplinary proceeding, the supreme court shall enter an order transferring the attorney to disability inactive status until a determination is made of the attorney's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of subsection 2 above.

If the court determines that the attorney is not incapacitated from practicing law, it shall take such action as it deems necessary, including a direction for the resumption of the disciplinary proceeding against the attorney.

4. *Resumption of practice by disabled attorney.* An attorney transferred to disability inactive status under the provisions of this rule may not resume active status until reinstated by order of the supreme court. An attorney transferred to disability inactive status under the provisions of this rule shall be entitled to petition for reinstatement to active status once a year, or at such shorter intervals as the court may direct in the order transferring the attorney to disability inactive status. The petition shall be filed with bar counsel's office and shall be set for hearing before a [~~five-member~~] hearing panel, which shall consider whether the attorney has demonstrated by clear and convincing evidence that the attorney's disability has been removed and that he or she is fit to resume the practice of law. The panel may direct that the attorney establish competence and learning in law, including certification by the bar examiners that the attorney successfully completed an examination for admission to practice subsequent to being transferred to disability inactive status. Reinstatement shall be conditioned upon the attorney's repayment to the Clients' Security Fund for clients who were reimbursed on the attorney's behalf. The panel shall render a written decision within 30 days of the hearing's conclusion, which shall be filed with bar counsel's office and served pursuant to Rule 109(1).

Bar counsel shall forward the record of the hearing panel proceeding to the supreme court within 30 days of the decision's entry. Receipt of the record shall be acknowledged in writing by the supreme court clerk. The parties shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file any objection to the panel's recommendation. If none is filed, then the matter shall be submitted for decision. If the supreme court concludes that the attorney's disability has been removed and that the attorney is fit to practice law, then the supreme court may reinstate the attorney to active status, with any conditions that may be appropriate to protect the attorney's clients or the public. If any disciplinary proceeding against the attorney was suspended by the attorney's transfer to disability inactive status, then the supreme court may direct the state bar to resume the disciplinary proceeding. If the supreme court is not satisfied that the attorney's disability has been removed, then it may take such action as it deems appropriate, including denying the petition.

When an attorney who has been transferred to disability inactive status is later judicially declared to be competent, the attorney may file a petition for reinstatement with the supreme court, attaching a copy of the judicial declaration of competency. The petition shall state whether any disciplinary proceedings were pending against the attorney at the time he or she was transferred to disability inactive status. Upon the filing of such a petition, the supreme court may dispense with further evidence that the attorney's disability has been removed and may direct the attorney's reinstatement to active status upon such terms as are deemed appropriate, or may direct the state bar to resume any disciplinary proceedings that were suspended by the attorney's transfer to disability inactive status.

5. *Burden of proof.* In a proceeding for transfer to disability inactive status or for reinstatement under this rule, the burden of proof rests with the petitioner.

6. *Waiver of privilege and disclosure by filing petition for reinstatement.* The filing of a petition for reinstatement under this rule waives any doctor-patient privilege with respect to any treatment, diagnosis, or prognosis of the attorney during disability. The attorney shall be required to disclose the name of every treatment provider by whom or in which the attorney has been examined or treated since being transferred to disability inactive status, and the attorney shall furnish every treatment provider the attorney's written consent to divulge such information and records as requested by the supreme court, its appointed medical experts, the office of bar counsel, or any hearing panel.

7. *Notice.* An attorney who is transferred to inactive status must comply with Rule 115, if he or she is able to do so. If the attorney's disability

precludes compliance with Rule 115, or if the attorney fails to comply, then bar counsel shall proceed under Rule 118. Bar counsel shall also comply with Rule 121.1.

**Rule 118. Appointment of counsel to protect client's interest.**

1. *Judicial action; compensation; right of reimbursement.* Whenever an attorney has been transferred to disability inactive status, abandoned his or her practice, resigned, died, or been suspended or disbarred, and there is evidence that the attorney has not complied with Rule 115, and a responsible person capable of conducting the attorney's affairs cannot be found, the chief or presiding judge, or designee in the judicial district(s) in which the attorney maintained his or her practice, upon application by bar counsel, the state bar may appoint a disinterested attorney(s) to examine and inventory the attorney's files and to take such action as is necessary to protect the interests of the attorney and the attorney's clients. An appointed attorney may petition the board of governors for reasonable compensation. The board of governors may seek reimbursement from the attorney, out of the attorney's property, or from the attorney's clients whose interests are served under this rule.

2. *Confidentiality.* An attorney appointed under this rule shall not disclose any information contained in the files examined or inventoried without the consent of the client for whom the file was maintained, except as necessary to carry out the order of the court which appointed the attorney.

3. *Immunity.* Any attorney appointed pursuant to this rule shall be absolutely immune from civil liability for any act or omission in connection with, or in the course of, duties performed pursuant to the appointment.

## F. MISCELLANEOUS PROVISIONS

**Rule 119. Additional rules of procedure.**

1. *Record.* The record of a hearing shall be made available to the attorney at the attorney's expense on request made to bar counsel.

2. *Time limits not jurisdictional.* Except as is otherwise provided in these rules, time is directory and not jurisdictional. Time limitations are administrative, not jurisdictional. Failure to observe directory time intervals may result in contempt of the appropriate disciplinary board or hearing panel having jurisdiction, but will not justify abatement of any disciplinary investigation or proceeding.

3. *Other rules of procedure.* Except as otherwise provided in these rules, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure apply in disciplinary cases.

**Rule 120. Costs; bar counsel conflict or disqualification.**

1. An attorney subjected to discipline or seeking reinstatement under these rules may 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.

**Rule 121. Confidentiality.**

1. *Generally.* All proceedings involving allegations of misconduct by an attorney shall be kept confidential until the filing of a formal complaint. All participants in a proceeding, including anyone connected with it, shall conduct themselves so as to maintain the confidentiality of the proceeding until a formal complaint is filed.

2. *When no formal complaint filed.* In the event no formal complaint is filed, the disciplinary proceeding shall become public upon its conclusion, whether by dismissal or otherwise.

3. *Reciprocal discipline.* Proceedings under Rule 114, concerning the imposition of reciprocal discipline, shall be public.

4. *Temporary restraining order regarding funds under Rule 102(3).* In the event that the state bar files a petition with a district court for a temporary restraining order regarding funds before a formal complaint is filed in the underlying disciplinary proceeding against an attorney, then the matter shall be treated as confidential. If the court grants the petition, then the matter shall become public upon entry of the order granting the petition. If the court denies the petition, then the matter shall remain confidential until a formal complaint is filed or the matter is otherwise concluded.

5. *Temporary suspension under Rule 102(4).* In the event that the state bar files a petition with the supreme court for the temporary suspension of an attorney before a formal complaint is filed in the underlying disciplinary proceeding, then the matter shall be treated as confidential. If the court grants the petition, then the matter shall become public upon entry of the order granting the petition. If the court denies the petition, then the matter shall remain confidential until a formal complaint is filed or the matter is otherwise concluded.

6. *Temporary suspension under Rule 111.* Proceedings under Rule 111, concerning attorneys convicted of crimes, shall be public.

7. *Transfers to disability inactive status.* The supreme court's order transferring an attorney to disability inactive status shall be public. All other proceedings in such matters shall remain confidential, unless the attorney waives confidentiality.

8. *Transfers from disability inactive status.* Unless the attorney waives confidentiality, petitions for reinstatement from disability inactive status shall be confidential. If a petition is granted, then the matter will become public upon entry of the order of reinstatement.

9. *Reinstatement.* Reinstatement proceedings under Rule 116 shall be public.

10. *Disbarment by consent.* Disbarments by consent under Rule 112 shall be public.

11. *What becomes public.* Once a matter has become public pursuant to this rule, all records of the lawyer discipline agency shall become public except bar counsel's work product and the panel's deliberations.

12. *Proceedings before the supreme court.* Unless these rules specifically provide that a matter in the supreme court is confidential, all filed documents and arguments in lawyer discipline proceedings in the supreme court shall be public, unless for good cause shown, the supreme court enters an order sealing all or part of the record in the court.

13. *Cooperation with certain investigations.* This rule shall not deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice, or to law enforcement agencies investigating qualifications for government employment.

14. *Expungement.* On December 31 of each year, the state bar shall expunge all records or other evidence of grievances that have been terminated by dismissal for more than three years, except that upon application by the state bar, notice to the attorney and a showing of good cause, the supreme court may permit the state bar to retain such records for an additional period of time, not to exceed three years. After a file has been expunged, any response to an inquiry regarding a reference to the matter shall state that there is no record of such matter.

15. *Statements by the State Bar of Nevada.* Notwithstanding Rule 121(1), the state bar may disseminate the procedural status and the general nature of a grievance or complaint upon request.

16. *Exclusions.* These rules shall not prohibit any complainant, the accused attorney, or any witnesses from discussing publicly the existence of the proceedings under these rules or the underlying facts related thereto. However, disclosures made under this subsection, in whatever form or by

whatever means, outside the disciplinary process shall not be covered by the civil immunity afforded in Rule 106(1).

**Rule 121.1. Dissemination of license status, discipline and disability information.**

1. *Entity responsible.* If the attorney's suspension was imposed under Rule 98 for failure to pay state bar dues, then the state bar shall be responsible for issuing the notices required by Rule 121.1(2) and (3). If the attorney's suspension was imposed under Rule 212 for failure to comply with continuing legal education requirements, then the board of continuing legal education shall be responsible for issuing the notices required by Rule 121.1(2) and (3). In all other cases, bar counsel shall be responsible for issuing the notices required by Rule 121.1(2) and (3).

2. *Public notice of change in license status and discipline imposed.* The entity responsible under Rule 121.1(1) shall cause notices of orders that subject an attorney to disbarment or any form of suspension, including suspension under Rule 98 or Rule 212, that transfer an attorney to or from disability inactive status, that reinstate an attorney to the practice of law, or that approve an attorney's resignation, with or without discipline pending, to be published in the state bar publication. The responsible entity also shall make these notices available to a newspaper of general circulation in each judicial district of this state in which the attorney maintained an office for the practice of law or carried on a substantial portion of his or her practice.

The responsible entity shall also cause a notice of a public reprimand issued by the supreme court to be published in the state bar publication.

The entity responsible for compliance with this provision has discretion in drafting public notices required by this rule, which may consist simply of the orders themselves. However, notices of orders that impose discipline should include sufficient information to adequately inform the public and members of the bar about the misconduct found, the rules violated, and the discipline imposed.

3. *Notice to courts.* The entity responsible under Rule 121.1(1) shall promptly advise all courts in this state of orders that suspend or disbar an attorney, that transfer an attorney to or from disability inactive status, that approve an attorney's resignation, or that reinstate an attorney to the practice of law.

4. *Disclosure to National Discipline Data Bank.* Bar counsel shall notify the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline of all public discipline imposed by the supreme court on an attorney, transfers to or from

disability inactive status, reinstatements to the practice of law, and resignations with discipline pending.

5. *Publication of supreme court orders.* The clerk of the supreme court shall cause any order issued by the supreme court that subjects an attorney to any form of public reprimand, suspension or disbarment, that transfers an attorney to or from disability inactive status, that approves an attorney's resignation, or that reinstates an attorney to the practice of law to be published in pamphlet form and disseminated to all subscribers of the advance sheets of the Nevada Reports and to all persons and agencies listed in NRS 2.345.

6. *Publication of public reprimand issued by state bar.* Bar counsel shall cause a public reprimand issued by the state bar under Rule 113 to be published in the state bar publication.

**Rule 122. Effective date.**

These rules are effective on March 1, 2007; any disciplinary proceeding or matter either previously concluded, or pending on that date in which a formal complaint has been filed by bar counsel shall be governed by Rules 99 et seq. of the Supreme Court Rules in effect prior to the effective date.

**Rule 123. Citation to unpublished opinions and orders.**

An unpublished opinion or order of the Nevada Supreme Court shall not be regarded as precedent and shall not be cited as legal authority except when the opinion or order is (1) relevant under the doctrines of law of the case, res judicata or collateral estoppel; (2) relevant to a criminal or disciplinary proceeding because it affects the same defendant or respondent in another such proceeding; or (3) relevant to an analysis of whether recommended discipline is consistent with previous discipline orders appearing in the state bar publication.