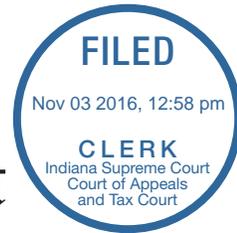


In the  
**Indiana Supreme Court**



Cause No. 94S00-1602-MS-86

**Order Amending Indiana Rules for Admission to the Bar and the  
Discipline of Attorneys**

Under the authority vested in this Court pursuant to Article 7, Section 4 of the Indiana Constitution providing for the admission and discipline of attorneys in this state, Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Rule 23 is amended. The version of the Rule in effect at the time of this Order is stricken in its entirety and replaced with the following:

**ADMISSION AND DISCIPLINE RULE 23**

**Rule 23. Disciplinary Commission and Proceedings**

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## **I. Overview**

### **Section 1. General Principles**

(a) *Duties of attorneys.* Each person exercising the privilege to practice law in this State has the obligation to behave at all times in a manner consistent with the trust and confidence reposed in him or her by the Indiana Supreme Court (“Supreme Court”) and in a manner consistent with the duties and responsibilities as an officer or judge of the courts of this State.

(b) *Supreme Court’s exclusive jurisdiction.* The Supreme Court has exclusive jurisdiction of all cases in which an attorney is charged with misconduct under this Rule.

(c) *Purpose.* The procedures set forth in this Rule shall be employed and construed to protect the public, the courts and the members of the bar of this State from misconduct on the part of attorneys, and to protect attorneys from unwarranted claims of misconduct.

(d) *Definitions.*

(1) The term “attorney” as used in this Rule shall include all persons admitted to the bar of this State, all persons who practice law in this State, and all judges of all courts of this State.

(2) Unless otherwise specified, the term "Supreme Court Clerk" as used in this Rule shall mean the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.

(3) The “Disciplinary Commission” shall mean the Disciplinary Commission of the Indiana Supreme Court established under Section 6(a) of this Rule.

(4) The “Executive Director” shall mean the Executive Director of the Disciplinary Commission appointed under Section 8(a)(1) of this Rule.

(5) The term “respondent” shall mean a person who is named as the respondent in any court proceeding under this Rule, or who is the subject of an investigation under Section 10 of this Rule.

(6) “This Rule” shall mean Admission and Discipline Rule 23, including all of its Sections.

## **Section 2. Grounds for Discipline or Suspension**

(a) *Indiana standards of conduct.* Any conduct that violates the Rules of Professional Conduct or the Code of Judicial Conduct or any standards or rules of legal and judicial ethics or professional responsibility in effect in Indiana at the time of the alleged misconduct shall constitute grounds for discipline.

(b) *Standards of conduct of other jurisdictions.* If an attorney admitted to practice in this State who is also admitted to practice in any other jurisdiction should be disbarred or suspended by the proper authority of the other jurisdiction, the disbarment or suspension shall constitute sufficient grounds for reciprocal discipline of the attorney in this State.

(c) *Disability.* Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of the disability.

## **Section 3. Types of Discipline and Suspension; Notice of Orders and Opinions**

(a) *Discipline for professional misconduct.* One of the following types of discipline may be imposed upon any attorney found to have committed professional misconduct: (1) permanent disbarment from the practice of law; (2) suspension from the practice of law without automatic reinstatement; (3) suspension from the practice of law for a fixed period of time, not to exceed 180 days, with provision for automatic reinstatement after the expiration of the fixed period, upon any conditions as the Supreme Court may specify in the order of suspension; (4) a public reprimand; (5) a private reprimand; or (6) a private administrative admonition.

(b) *Disability suspension.* Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended indefinitely for the duration of the disability.

(c) *Probation.* In cases of misconduct or disability, the Supreme Court may, in lieu of permanent disbarment or suspension, stay the discipline in whole or in part, place an attorney on probation and permit the attorney to continue practicing law if in its opinion this action is appropriate and desirable. In this event, the attorney shall be subject to conditions, limitations and restrictions as the Supreme Court may see fit to impose, and upon a violation of these conditions, restrictions or limitations, probation may be revoked and the attorney may be suspended or disbarred.

(d) *Required notice of orders and opinions.*

(1) Notice of orders and opinions imposing permanent disbarment, accepting resignation, imposing suspension, granting reinstatement, revoking probation, and imposing public reprimand shall be given by the Supreme Court Clerk to the respondent and the Disciplinary Commission; the Clerk of the United States Court of Appeals for the Seventh Circuit; the Clerk of each of the Federal District Courts in this State; the Clerk of the United States Bankruptcy Courts in this State; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each county in which the attorney maintains an office; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each contiguous county; a newspaper of general circulation in each county in which the attorney maintains an office; the official publication of the Indiana State Bar Association; and the American Bar Association.

(2) In addition, notice of disbarment, resignation, or suspension of one year or more shall be given to the Clerk of the United States Supreme Court.

(3) Notice of private reprimand shall be given to the respondent and to the Disciplinary Commission.

(4) In cases where probation is imposed by the Supreme Court, the Supreme Court Clerk shall notify persons as the Supreme Court may direct of the action taken and of the restriction, conditions or limitations.

## **II. The Disciplinary Commission and Bar Associations**

### **Section 4. Sources and Uses of Funds**

(a) *Source and deposit of funds.* The Supreme Court shall periodically designate a portion of the registration fees charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Disciplinary Commission. The Executive Director of the Disciplinary Commission shall deposit these funds into an account designated "Supreme Court Disciplinary Commission Fund."

(b) *Disbursements.* Disbursements from the fund shall be made solely upon vouchers signed by or pursuant to the direction of the Chief Justice of Indiana.

(c) *Salaries.* The Supreme Court shall specifically approve all salaries to be paid out of the Disciplinary Commission Fund.

(d) *Budget.* Not later than May 1 of each year, the Disciplinary Commission shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.

## **Section 5. Role of Bar Associations**

(a) *Mandatory and prohibited actions.* Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this Rule. The bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. The bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation of claims of misconduct upon request by the Disciplinary Commission.

(b) *Permissive actions regarding fee disputes.* Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independent of any request by the Disciplinary Commission and without referring the dispute to the Disciplinary Commission. Action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorney's services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with the attempt at resolution shall have a right to file a formal grievance with the Disciplinary Commission pursuant to this Rule if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual considerations taken into account in determining an attorney's charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.

(c) *Authorization to file grievance.* A bar association of this State shall be permitted to prepare and file a grievance with the Disciplinary Commission under the following circumstances:

- (1) The decision to prepare and file the grievance shall be taken at a regular or special meeting of the bar association after notice has been given to the members of the association; or, where the association has a governing Board of Managers or Board of Directors, the decision may be taken at a regular or special meeting of the Board of Managers or Board of Directors after notice to the managers or directors.
- (2) A quorum of the members of the association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.
- (3) The decision to file grievance shall be made by a roll call vote of the members, managers or directors in attendance at the meeting, with the vote of each member present being recorded.

## **Section 6. Composition of Supreme Court Disciplinary Commission**

(a) *Establishment.* A Disciplinary Commission to be known as the “Disciplinary Commission of the Supreme Court of Indiana” is hereby created and shall have the powers and duties hereinafter set forth.

(b) *Composition.* The Disciplinary Commission shall consist of nine (9) members appointed by the Supreme Court of Indiana, seven (7) of whom shall be admitted to the Bar of the Supreme Court and two (2) of whom shall be lay persons. Those who are not members of the Bar must take and subscribe to an oath of office which shall be filed and maintained by the Supreme Court Clerk. A reasonable effort shall be made to provide diversity in membership, including, but not limited to, race, gender, practice area, and geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this Rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5) years. The initial term of the two additional members authorized by the amendment of this subsection effective February 1, 1996, shall be for two (2) and four (4) years, respectively. Thereafter, the terms of each appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term, until the end of the unexpired term. Any member may be terminated by the Supreme Court for good cause.

## **Section 7. Organization of the Disciplinary Commission**

(a) *Officers.* The Disciplinary Commission shall annually elect from among its membership a Chair who shall preside at all meetings, a Vice Chair who shall preside in the absence of the Chair, and a Secretary who shall keep the minutes of the meetings of the Disciplinary Commission.

(b) *Quorum.* Five (5) Commissioners shall constitute a quorum of the Disciplinary Commission, and the Disciplinary Commission shall act by a vote of a majority of Commissioners present.

(c) *Meetings.* The Disciplinary Commission shall meet monthly at a time and place designated by the Chair, who may also convene special meetings of the Disciplinary Commission in his or her discretion.

(d) *Expenses and compensation.* The members of the Disciplinary Commission shall be allowed their necessary expenses and reasonable compensation as the Supreme Court shall fix from time to time.

## **Section 8. Powers and Duties of the Disciplinary Commission**

(a) *Duties and powers.* In addition to the powers and duties set forth in this Rule, the Disciplinary Commission shall have the duty and power to:

- (1) Appoint with the approval of the Supreme Court an Executive Director of the Disciplinary Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Disciplinary Commission.
- (2) Prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to these persons.
- (3) Supervise the investigation of claims of misconduct.
- (4) Issue subpoenas; the failure to obey the subpoena may be punished as contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule.
- (5) Do all things necessary and proper to carry out its powers and duties under this Rule.
- (6) Exercise the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.
- (7) Make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.

(b) *Rules and regulations.* The Disciplinary Commission may propose rules and regulations for the efficient discharge of its power and duties. These rules and regulations shall become effective upon approval by a majority of the Supreme Court.

## **Section 9. Powers and Duties of the Executive Director**

In addition to the powers and duties set forth in other Sections of this Rule, the Executive Director shall have the power and duty to:

- (a) Administer the Disciplinary Commission's work.
- (b) Appoint, with the approval of the Disciplinary Commission, staff as may be necessary to assist the Disciplinary Commission to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Disciplinary Commission's staff.
- (d) Appoint and assign duties to investigators.
- (e) Supervise the maintenance of the Disciplinary Commission's records.

(f) Issue subpoenas in the name of the Disciplinary Commission. The failure to obey the subpoena shall be punished as a contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule.

(g) Enforce the collection of the registration fee provided in Ind. Admission and Discipline Rule 2 against delinquent members of the Bar.

(h) Notwithstanding the Public Access requirements set out in Section 22 of this Rule, cooperate with the attorney disciplinary enforcement agencies of other jurisdictions, including, upon written request, the release of any documents or records that are in the control of the Executive Director to the chief executive of an attorney disciplinary enforcement agency in any jurisdiction in which an Indiana attorney is also admitted.

(i) In addition to the powers and duties set forth in other Sections of this Rule, the Executive Director shall have the power and duty to designate in writing an Acting Executive Director to act in the Executive Director's absence.

(j) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

### **III. Specific Procedures**

#### **Section 10. Investigatory Procedures**

(a) *Initial review of grievances.* Upon receipt of a written, verified request for investigation ("the grievance") from any person, including a bar association ("the grievant"), and completion of a preliminary investigation as may be appropriate, the Executive Director may:

(1) Dismiss the grievance, with subsequent approval by the Disciplinary Commission, if the Executive Director determines that it raises no substantial question of misconduct. In the event of a dismissal, the grievant and the attorney against whom the grievance is filed ("the respondent") shall be given written notice of the Executive Director's determination.

(2) If the Executive Director determines that the grievance does raise a substantial question of misconduct, issue a caution letter to the attorney against whom the grievance is filed (hereinafter referred to as "the respondent"). The caution letter may state the facts constituting the alleged violation, the method of remedying the violation that the Executive Director proposes, and a deadline by which the attorney must remedy the

violation to avoid further action under this Section. If the attorney complies with the terms of the caution letter, no further action shall be taken concerning the grievance.

(3) If the Executive Director determines that the grievance raises a substantial question of misconduct that is not resolved under subsection (a)(2), the Executive Director shall send a copy of the grievance by certified mail to the respondent and shall demand a written response from the respondent.

(b) *Grievance on behalf of Disciplinary Commission.* Upon receipt of information from any source that would give the Executive Director reason to believe that an attorney has committed, or is committing, professional misconduct, the Executive Director may draft a grievance on behalf of the Disciplinary Commission or, if the misconduct would qualify for a caution letter under Section 10(a), may send the attorney a caution letter with respect to the misconduct. The Executive Director shall send a copy of the grievance by certified mail to the respondent and shall demand a written response from the respondent.

(c) *Demand for information.* The Executive Director may demand from the respondent any information or clarification necessary to complete its investigation. The respondent shall respond to the demand as set forth in Section 10(e).

(d) *Additional allegations or evidence.* In conducting an investigation of any grievance, before or after a Disciplinary Complaint is filed, the Disciplinary Commission and Executive Director are not limited to the matters raised in a grievance and may inquire into additional allegations or evidence regarding the professional conduct of the respondent. The Executive Director shall notify the respondent of the additional allegations that may lead to a charge of misconduct in a demand letter sent by certified mail. The respondent shall respond to such a demand as set forth in Section 10(e).

(e) *Duty to respond to demand for information.* The respondent shall provide a written response to any grievance, Disciplinary Commission grievance, or other demand for information from the Disciplinary Commission or its Executive Director within thirty (30) days after respondent receives a copy of the grievance or demand or within such additional time as the Executive Director may allow. Additional time beyond a total of sixty (60) days to respond shall be allowed only for good cause shown. In addressing the allegations included in the grievance or in responding to a written demand from the Executive Director, the respondent shall include supporting documents.

(f) *Self-report of misconduct.* If a respondent self-reports misconduct, the Executive Director may proceed directly to subsection (g) below.

(g) *Action by Executive Director.* Upon consideration of the grievance, any response from the respondent, and any preliminary investigation:

(1) if the Executive Director determines there is a reasonable cause to believe that the respondent is guilty of misconduct, the grievance shall be docketed and investigated.

(2) if the Executive Director determines that no such reasonable cause exists, the grievance shall be dismissed with the subsequent approval of the Commission.

In either event, the person filing the grievance (hereinafter “the grievant”) and the respondent shall be given written notice of the Executive Director’s determination. If the grievance is docketed for an investigation, the Executive Director shall conduct an investigation of the grievance. Upon completion of the investigation, the Executive Director shall promptly make a report of the investigation and a recommendation to the Commission at its next meeting.

(h) *Limitation on time to complete investigation.* Unless the Supreme Court permits additional time, any investigation into a grievance shall be completed and action on the grievance shall be taken within twelve (12) months from the date the grievance is received (or the date a response is demanded to a Disciplinary Commission grievance). The purpose of the deadline is to enable the Supreme Court to promote a fair and efficient process and not to create substantive or procedural rights. Requests for additional time shall be submitted to the Supreme Court and shall briefly describe the circumstances necessitating the request. No response or objection shall be allowed. Delays caused by a respondent’s noncooperation or requests for extensions of time, and periods during which the respondent is suspended from practice, shall not be counted toward the 12-month period. If the Disciplinary Commission does not file a Disciplinary Complaint within this time, the grievance shall be deemed dismissed.

### **Section 10.1. Noncooperation with Disciplinary Investigation**

(a) *Duty to cooperate.* It shall be the duty of every attorney to cooperate with an investigation by the Disciplinary Commission, accept service, and comply with the provisions of this Rule.

(b) *Failure to cooperate.* The failure to: (1) respond to a grievance under this Rule; (2) comply with any written demand from the Executive Director under this Rule; (3) accept certified mail from the Disciplinary Commission that is sent to the attorney's official address of record with the Clerk and that requires a written response under this Rule; (4) comply with a subpoena issued pursuant to this Rule; or (5) unexcused failure to appear at any hearing on the matter under investigation shall be deemed failure to cooperate with an investigation by the Disciplinary Commission.

(c) *Suspension for noncooperation.* A respondent who fails to cooperate with an investigation by the Disciplinary Commission may be subject to suspension from the practice of law.

(1) *Show cause order.* Upon the filing by the Disciplinary Commission of a “Verified Petition for Noncooperation Suspension,” the Supreme Court may issue an order

directing the respondent to respond within ten (10) days of service of the order and to show cause why the respondent should not be immediately suspended for failure to cooperate with the disciplinary process. Service upon the respondent shall be made pursuant to Section 12(c). To comply with the show cause order, the respondent shall, within ten days of service: (1) file a response to the show cause order with the Supreme Court Clerk; and (2) cure the respondent's failure to cooperate with the investigation (unless the alleged failure is contested in good faith in the response filed with the Supreme Court Clerk).

(2) *Entry of noncooperation suspension order.* Upon a determination that the respondent has failed to cooperate with an investigation by the Disciplinary Commission, the Supreme Court may enter an order of noncooperation suspension. Upon this suspension from the practice of law, the respondent shall comply with the requirements of Section 26.

(3) *Certification of cooperation.* If the respondent complies with the demand from the Disciplinary Commission or Executive Director, the Executive Director shall certify to the Supreme Court that the respondent has cooperated with the investigation. Upon the filing of the certification, the Supreme Court may enter an order dismissing the proceeding as moot. If a noncooperation suspension has taken effect, the order shall also direct the Supreme Court Clerk to adjust the respondent's status on the Roll of Attorneys to reflect that the respondent is no longer suspended, provided that no other suspension is in effect. Any outstanding order to pay costs shall remain in effect, and the Disciplinary Commission may, if appropriate, seek costs.

(4) *Conversion to indefinite suspension.* On motion by the Disciplinary Commission and order of the Supreme Court, a noncooperation suspension that lasts for more than ninety (90) days may be converted into indefinite suspension, after which the respondent may seek reinstatement only pursuant to Section 18(b) of this Rule.

(5) *Repeated failures to cooperate.* If the respondent has been the subject of two or more prior petitions for noncooperation suspension within the preceding 12 months, the Disciplinary Commission may include in its Petition for Noncooperation Suspension a request that the Supreme Court issue an order of indefinite suspension. (This request shall not delay the entry of a noncooperation suspension order under (c)(2) above.) Upon such a request, the Supreme Court may issue an order directing the respondent to respond in writing within ten (10) days of service of the order and show cause why the respondent should not be immediately suspended for an indefinite period for repeatedly failing to cooperate with the disciplinary process. Unless the respondent shows good cause for a different disposition, the Supreme Court may enter an order of indefinite suspension, whether or not a noncooperation suspension is then in effect, and the respondent may seek reinstatement only pursuant to Section 18(b) of this Rule.

(d) *Costs.* Upon the disposition of any Petition for Noncooperation Suspension due to dismissal because the respondent cooperated, or due to suspension, disbarment, or resignation in any proceeding, the Disciplinary Commission may seek an order reimbursing the Disciplinary Commission in the amount of \$500 plus out-of-pocket expenses for its time and effort in seeking the suspension, in addition to all other costs and expenses provided for by Section 21 of this Rule. An attorney who fails to pay this assessment by the due date of the annual registration fee required by Admission and Discipline Rule 2(b) shall be subject to an order of suspension pursuant to Section 21.

## **Section 11. Disciplinary Commission Consideration of Grievances**

(a) *Consideration of Executive Director's report.* The members of the Disciplinary Commission shall consider and make a determination on the report and recommendations submitted by the Executive Director.

(b) *Authorization to dismiss grievance.* If, the Disciplinary Commission determines that there is not reasonable cause to believe that the respondent has committed misconduct, the grievance shall be dismissed and the grievant and the respondent shall be given written notice of the Disciplinary Commission's determination.

(c) *Authorization to file Disciplinary Complaint.* If after its consideration, the Disciplinary Commission determines there is a reasonable cause to believe the respondent has committed misconduct which would warrant disciplinary action, it shall file with the Supreme Court Clerk a Disciplinary Complaint as provided in Section 12.

### **Section 11.1. Duty to Report Findings of Guilt; Interim and Summary Suspensions**

(a) *Findings of criminal guilt.*

(1) *Duty to report finding of guilt of any felony or misdemeanor.*

(i) The judge of any court in this State in which an attorney is found guilty of any felony or misdemeanor shall, within ten (10) days after the finding of guilt, transmit a certified copy of proof of the finding of guilt to the Disciplinary Commission's Executive Director.

(ii) An attorney licensed to practice law in the State of Indiana who is found guilty of any felony or misdemeanor under the laws of any state or the United States shall, within ten (10) days after the finding of guilt, transmit a certified copy of the finding of guilt to the Disciplinary Commission's Executive Director.

(2) *Criminal conviction of crime punishable as a felony.*

(i) Upon receipt of information indicating that an attorney has been found guilty of a crime punishable as a felony under the laws of any state or of the United States (even if alternative misdemeanor sentence or other disposition is imposed), the Executive Director shall verify the information, and, in addition to any other proceeding initiated pursuant to this Rule, shall file with the Supreme Court a Notice of Finding of Guilt and Petition for Suspension, and shall forward notice to the attorney by certified mail.

(ii) The attorney shall have fifteen (15) days after the service of the Notice to file any response to it.

(iii) Upon finding that an attorney has been found guilty of a crime punishable as a felony, the Supreme Court may suspend the attorney from the practice of law pending further order of the Supreme Court or final determination of any resulting disciplinary proceeding.

(b) *Emergency interim suspension.* If the Disciplinary Commission determines by the affirmative vote of two-thirds (2/3) of its membership, that: (1) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (2) the alleged conduct, if true, would subject the respondent to discipline under this Rule, the Executive Director shall petition the Supreme Court for an order of interim suspension from the practice of law or imposition of temporary conditions of probation on the attorney.

(1) The Disciplinary Commission's petition to the Supreme Court for interim relief under this subsection shall be verified and set forth the specific acts and violations of the Rules of Professional Conduct alleged by the Disciplinary Commission as grounds for the relief requested. The petition may be supported by documents or affidavits.

(2) A copy of the petition and notice to answer shall be served by the Disciplinary Commission on the attorney in the same manner as provided in Sections 12(c) of this Rule. The Executive Director shall file a return on service, setting forth the method of service and the date on which the respondent was served with the petition and notice to answer.

(3) The respondent shall file an answer to the Disciplinary Commission's petition with the Supreme Court within fifteen (15) days of service. The answer shall be verified and may be supported by documents or affidavits. The respondent shall serve a copy of the answer on the Disciplinary Commission Executive Director and file proof of service with the Supreme Court Clerk.

(4) If the respondent fails to answer the Disciplinary Commission's petition within the time provided in this Rule for an answer, that failure to answer shall constitute a waiver of the respondent's right to contest the petition, and the averments of the petition shall be

conclusively established to be true for purposes of ruling on the petition. Failure to timely answer shall not establish the facts alleged as true for any other proceedings.

(5) The Supreme Court may enter an order of interim suspension or imposition of temporary conditions of probation in conformity with subsection (b)(9) either upon the record before it or, at the discretion of the Supreme Court, after a hearing ordered by the Supreme Court.

(6) Upon the filing of the respondent's answer and upon consideration of all of the pleadings, the Supreme Court may:

(i) Order interim suspension or imposition of temporary conditions of probation upon the petition and answer in conformity with subsection (b)(9);

(ii) Deny the petition; or

(iii) Refer the matter to a hearing officer.

(7) If the Supreme Court refers a matter under this Section to a hearing officer, the hearing officer shall hold a hearing thereon within thirty (30) days after the date of referral and, within fourteen (14) days after the hearing, submit to the Supreme Court a Hearing Officer's Report, which report shall contain findings of fact and a recommendation regarding the proposed interim suspension.

(8) The Supreme Court shall act promptly on the Hearing Officer's Report.

(9) If the Supreme Court finds that the Disciplinary Commission has shown by a preponderance of the evidence that:

(i) The continuation of the practice of law by the respondent during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice; and

(ii) The conduct would subject the respondent to discipline under this Rule;

the Supreme Court may grant the petition and enter an order of interim suspension or imposition of temporary conditions of probation. The order shall set forth an effective date and remain in effect until disposition of any related disciplinary proceeding or further order of the Supreme Court.

(10) Dissolution or amendment of order.

(i) If the Supreme Court issues an order of interim relief, the respondent may file a verified motion with the Supreme Court at any time for dissolution or amendment of the interim order.

(ii) The verified motion shall set forth specific facts demonstrating good cause to dissolve or amend the interim order. A copy of the motion shall be served on the Executive Director.

(iii) If the verified motion is in proper form, the Supreme Court may refer the matter to a hearing officer, who shall proceed consistent with the procedures set forth in subsection (b)(7).

(iv) Successive motions for dissolution or amendment of an interim order may be summarily dismissed by the Supreme Court to the extent they raise issues that were or with due diligence could have been raised in a prior motion.

(11) If a Disciplinary Complaint for disciplinary action has not been filed by the Disciplinary Commission against the respondent by the time an order of interim suspension is entered, the Disciplinary Commission shall file a Disciplinary Complaint within sixty (60) days of the Supreme Court's entry of the interim suspension order.

(12) When a respondent in a disciplinary case is subject to an interim suspension order entered pursuant to this Section, the hearing officer shall conduct a final hearing of the underlying issues and file a report with the Supreme Court Clerk without undue delay.

(13) A respondent suspended from practice under this Section shall comply with the duties of a suspended attorney under Section 26 of this Rule.

(c) *Delinquency in paying child support.*

(1) Upon receipt of an order from a court pursuant to IC 31-16-12-8 or IC 31-14-12-5 finding that an attorney has been delinquent in the payment of child support as a result of an intentional violation of an order for support, the Executive Director shall file with the Supreme Court a Notice of Intentional Violation of Support Order and Request for Suspension and shall serve that request for suspension on the attorney by certified mail.

(2) The attorney shall have fifteen (15) days after service to file any response to the request for suspension.

(3) Any order of suspension issued by the Supreme Court shall be effective until further order of the Supreme Court.

(4) An attorney suspended pursuant to Section 11.1(c) may be reinstated by the Supreme Court upon filing a "Motion for Relief from Suspension" along with a certified copy of a

court order stating that the attorney is no longer in intentional violation of an order for child support. The motion shall be filed with the Supreme Court Clerk together with a filing fee of two hundred dollars (\$200). If costs were imposed as part of the order of suspension, those costs must be paid before a Motion for Relief from Suspension is filed.

## **Section 12. Prosecution of Attorney Misconduct**

(a) *Disciplinary Complaint.* If the Disciplinary Commission determines that the misconduct, if proved, would warrant disciplinary action and should not be disposed of by way of a private administrative admonition, the Executive Director or designee shall prepare a verified Disciplinary Complaint (“the Disciplinary Complaint”) which sets forth the misconduct with which the attorney is charged and shall prosecute the case. The caption shall contain the title of the case, which shall be “In the Matter of,” naming the attorney as the respondent, and include the cause number assigned by the Supreme Court Clerk. The allegations in the Disciplinary Complaint may be verified on the basis of information and belief, and the Disciplinary Complaint shall be filed with the Supreme Court Clerk. The signature of the Executive Director or designee on the Disciplinary Complaint, and the signatures thereon by other attorneys for the Disciplinary Commission, shall serve as their appearance as attorney(s) for the Disciplinary Commission.

(b) *Summons.* The Disciplinary Commission shall also prepare a summons and provide the Supreme Court Clerk with as many copies of the Disciplinary Complaint and summons as are necessary for service. The Supreme Court Clerk shall examine, date, sign and affix the Supreme Court Clerk’s seal to the summons and thereupon return to the Disciplinary Commission copies of the Disciplinary Complaint for service. Separate or additional summons shall be issued by the Supreme Court Clerk at any time upon request by the Disciplinary Commission.

The summons shall contain:

- (1) The name and address of the person on whom the service is to be effected.
- (2) The Supreme Court cause number assigned to the case.
- (3) The title of the case as shown by the Disciplinary Complaint.
- (4) The name, address, and telephone number of the Disciplinary Commission.
- (5) The time within which this Rule requires the respondent to respond, and a clear statement that in case of the respondent’s failure to do so, the allegations in the complaint shall be taken as true.

The summons may also contain any additional information that will facilitate proper service.

(c) *Service of Disciplinary Complaint and summons.*

(1) Upon the filing of the Disciplinary Complaint, the summons and the Disciplinary Complaint shall be served upon the respondent by delivering a copy of them to the respondent personally or by sending a copy of them by registered or certified mail with return receipt requested and returned showing its receipt. Alternatively, service may be made electronically if authorized or required by the Supreme Court.

(2) If personal service or service by registered or certified mail cannot be obtained upon a respondent, the summons and Disciplinary Complaint shall be served on the Supreme Court Clerk as set forth in Section 23.1(c) of this Rule.

(d) *Modification of a Disciplinary Complaint or charge.* The Executive Director may amend a Disciplinary Complaint or a charge without the Disciplinary Commission's approval, if further investigation reveals that the facts do not support continued prosecution of a particular charge. The Executive Director may not, however, add additional charges to a Disciplinary Complaint.

### **Section 12.1. Agreed Discipline**

(a) *Private administrative admonition.*

(1) *Available for minor misconduct.* If the Disciplinary Commission determines that there is reasonable cause to believe an attorney has committed misconduct that would not likely result in discipline greater than a public reprimand if successfully prosecuted, the Disciplinary Commission and the attorney may agree to resolve the matter by private administrative admonition without filing a Disciplinary Complaint. Misconduct shall not be regarded as minor if:

(i) The misconduct involves misappropriation of funds or property;

(ii) The misconduct resulted in or is likely to result in material prejudice (loss of money, legal rights or valuable property rights) to a client or other person;

(iii) The attorney has been publicly disciplined in the past three (3) years;

(vi) The misconduct involved is of the same nature as misconduct for which the attorney has been publicly or privately disciplined in the past five (5) years;

(v) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the attorney; or

(vi) The misconduct constitutes the commission of a felony under applicable law.

(2) *Private administrative admonition letters.*

(i) An administrative admonition shall be issued in the form of a letter from the Executive Director to the attorney summarizing the facts and setting out the violations of the Rules of Professional Conduct.

(ii) The proposed admonition letter shall first be submitted to the Supreme Court. The administrative admonition shall be final within thirty (30) days thereafter, unless disapproved by the Supreme Court. If not disapproved by the Supreme Court, the Executive Director shall send the admonition letter to the attorney, and the Executive Director shall file a Notice that an attorney has received a private administrative admonition with the Supreme Court Clerk.

(iii) A Notice that an attorney has received a private administrative admonition shall be a public record, but the admonition letter shall be confidential. A copy of the admonition letter shall be kept by the Executive Director in the Disciplinary Commission's records.

(b) *Conditional Agreement for discipline.*

(1) *Submission to the Supreme Court.* After or with the filing of a Verified Complaint, the Disciplinary Commission and the respondent may jointly submit to the Supreme Court a statement of circumstances and conditional agreement for discipline ("the Conditional Agreement").

(2) *Contents of Conditional Agreement.* The Conditional Agreement shall contain the facts agreed to, the charge(s) which the Disciplinary Commission and the respondent agree are established, and the proposed discipline to which they conditionally agree. The Conditional Agreement shall not contain statements by witnesses attesting to the character or reputation of the respondent.

(3) *Respondent's affidavit.* The Conditional Agreement shall also contain an affidavit by the respondent stating that he or she consents to the agreed discipline and that:

(i) The respondent's consent is freely and voluntarily given, and the respondent is aware of the implications of giving his or her consent;

(ii) The respondent is aware that there is a pending proceeding alleging grounds for the respondent's discipline, the nature of which shall be specifically set forth;

(iii) The respondent acknowledges that the material facts set forth in the Conditional Agreement are true; and

(iv) The respondent acknowledges that if prosecuted, the respondent could not successfully defend himself or herself.

(4) *Consideration and disposition by the Supreme Court.* The Supreme Court shall consider the Conditional Agreement and either: (i) approve the Conditional Agreement and enter an order for the discipline conditionally agreed to; (ii) notify the Disciplinary Commission and the respondent that it declines to approve the Conditional Agreement; or (iii) submit to the Disciplinary Commission and the respondent a proposed disposition for discipline the Supreme Court deems appropriate (“Proposed Disposition”).

(i) *Supreme Court approval.* The Conditional Agreement shall be effective upon entry of the order approving it by the Supreme Court.

(ii) *Acceptance of Proposed Disposition.* If the Supreme Court submits a Proposed Disposition, the Disciplinary Commission and the respondent may agree to it by submitting to the Supreme Court, within thirty (30) days, a statement of agreement to the Proposed Disposition, verified by the respondent and by the Disciplinary Commission’s Executive Director or designee. The statement of agreement shall set forth or adopt by reference the Conditional Agreement, the Proposed Disposition, and the agreement of the Disciplinary Commission and the respondent. The Supreme Court may then enter an order approving the resulting agreement, which shall conclude the matter.

(iii) *Rejection of Conditional Agreement.* If the Disciplinary Commission and the respondent do not agree to the Supreme Court’s Proposed Disposition or if the Supreme Court rejects the Conditional Agreement without a Proposed Disposition, the action shall proceed as if no Conditional Agreement had been submitted.

(5) *Use of Conditional Agreement.* It is the intent of this Rule to encourage appropriate agreed dispositions of disciplinary matters. A Conditional Agreement not approved by the Court shall not be admitted into evidence at any hearing of the matter. If the Conditional Agreement is the basis of a final disposition, it may be admitted into evidence in a subsequent proceeding under this Rule, including contempt, probation violation, and reinstatement proceedings in which the facts agreed to in the Conditional Agreement may be relevant.

### **Section 13. Hearing Officers**

(a) *Appointment and qualifications.* Upon the filing of a Disciplinary Complaint, the Supreme Court may appoint a hearing officer to hear the charges. The hearing officer shall be a member of the Bar of this State, shall have no investigations or actions regarding potential professional misconduct pending before the Supreme Court or any of its agencies, shall not be a member of the Disciplinary Commission or a member of the same law firm as a Disciplinary Commission member, and shall not be an employee of the Supreme Court.

(b) *Change of hearing officer.* A respondent may, on a showing of good cause, petition the Supreme Court for a change of hearing officer within ten (10) days after the appointment of the

hearing officer. Good cause may include any of the bases for disqualification found in Rule 2.11 of the Code of Judicial Conduct. The Disciplinary Commission may seek a change of hearing officer when the Disciplinary Commission is conducting an investigation into alleged misconduct by the hearing officer.

(c) *Powers and duties.* Hearing officers shall have the power and duty to:

- (1) Conduct a hearing on a Disciplinary Complaint;
- (2) Administer oaths to witnesses;
- (3) Receive evidence and file a Hearing Officer's Report making written findings of fact and conclusions of law; and
- (4) Do all things necessary and proper to carry out their responsibilities under this Rule.

#### **Section 14. Proceedings Before the Hearing Officer**

(a) *Rules of pleading and practice.*

- (1) Except as otherwise specifically provided in Rule 23, the Indiana Rules of Trial Procedure, the Indiana Rules of Criminal Procedure, and the Indiana Rules of Appellate Procedure shall not apply to proceedings brought under this Rule.
- (2) Except as otherwise explicitly provided, the Indiana Rules of Evidence shall apply in all evidentiary hearings under this Rule.
- (3) No motion to dismiss or dilatory motions shall be entertained.

(b) *Appearance and answer.*

- (1) When the respondent first appears on his or her own behalf or by counsel, the respondent or counsel shall file an appearance form. That appearance form shall have the same caption as the Disciplinary Complaint and shall contain the name, address, attorney number, FAX number, and email address of the respondent or the respondent's counsel as applicable.
- (2) An answer shall be filed by the respondent within thirty (30) days after service of the summons and Disciplinary Complaint, or within any additional time as may be allowed upon written motion setting forth good cause for extension of time to answer the Disciplinary Complaint.
- (3) A written motion for enlargement of time to answer shall be automatically allowed for an additional thirty (30) days from the original due date without a written order. A

motion for automatic enlargement of time filed pursuant to this Rule shall state the date when the answer is due and the date to which time is to be enlarged. The motion must be filed on or before the original due date or this provision shall be inapplicable. Any other motion for enlargement of time to answer the Disciplinary Complaint shall be granted only for good cause shown.

(4) The respondent's answer shall admit or controvert the averments set forth in the Disciplinary Complaint by specifically denying designated averments or paragraphs or generally denying all averments except the designated averments or paragraphs as the respondent expressly admits. All denials shall fairly meet the substance of the averments denied. If in good faith the respondent intends to deny only a part of an averment, he or she shall specify so much of it as is true and material and deny the remainder.

(5) If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state and the statement shall be considered a denial.

(6) Averments in a Disciplinary Complaint are admitted when not denied in the answer.

(7) The answer shall assert any legal defense.

(c) *Failure to answer.*

(1) If a respondent fails to answer a Disciplinary Complaint as required by this Section, the Disciplinary Commission may file a "Motion for Judgment on the Complaint" asking that the allegations set forth in the Disciplinary Complaint be conclusively established as true.

(2) The respondent shall have fourteen (14) days to file a response to the Motion for Judgment on the Complaint. If a respondent files a timely response to the Motion for Judgment on the Complaint, the hearing officer shall set the motion and the respondent's response for hearing within twenty-eight (28) days, and shall give the Disciplinary Commission and the respondent at least seven (7) days' notice of that hearing.

(3) Upon Motion for Judgment on the Complaint and in the absence of a timely answer by the respondent that conforms with subsections (a) and (b) above, or in the absence of a response under subsection (c)(2), the hearing officer shall find the allegations set forth in the Disciplinary Complaint are conclusively established as true and promptly file a Hearing Officer's Report in conformity with subsection (g).

(4) If a hearing officer has not been appointed by the time a Motion for Judgment on the Complaint is filed, the Supreme Court shall act directly on the Motion for Judgment on the Complaint.

(d) *Discovery.* Discovery shall be available to the Disciplinary Commission and the respondent on terms and conditions that, as nearly as practicable, follow Indiana Trial Rules 26 through 37.

(e) *Pre-hearing conference.* At the discretion of the hearing officer, or upon the request of either the Disciplinary Commission or the respondent, a pre-hearing conference shall be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the Disciplinary Complaint and answer, and any other matters as may aid in the disposition of the action.

(f) *The hearing.*

(1) Within thirty (30) days after the respondent has filed a timely answer or the hearing officer is appointed and has qualified, whichever is later, the hearing officer shall schedule a date for a final hearing on the Disciplinary Complaint and the respondent's answer. Absent good cause, the hearing date shall be within ninety (90) days of the scheduling order.

(2) The grievant, the respondent, and the Disciplinary Commission shall be given not less than fifteen (15) days written notice of the hearing date.

(3) The respondent shall have the right to attend the hearing in person, to be represented by counsel, to examine witnesses and to submit evidence and witnesses as in civil proceedings.

(4) Only the Supreme Court and its duly appointed hearing officer or hearing officers shall have jurisdiction to issue any orders or processes in connection with a disciplinary case brought under this Rule.

(5) Upon request, the hearing officer may issue a subpoena for the attendance of witnesses or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to the Disciplinary Commission or the respondent or the respondent's attorney, who shall fill it in before service. The respondent, or attorneys for the Disciplinary Commission and for the respondent, are authorized to sign and issue subpoenas. Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Indiana Trial Rule 45. The hearing officer or officers shall have authority to enforce, quash or modify subpoenas for good cause.

(6) The hearing on the Disciplinary Complaint and the respondent's answer shall be conducted by the hearing officer on the record and without a jury.

(g) *Hearing Officer's Report.*

(1) Within sixty (60) days after the conclusion of the hearing or the filing of proposed findings by the parties, whichever is later, the hearing officer shall file a Hearing Officer's Report with the Supreme Court Clerk. The Hearing Officer's Report shall include a determination whether it has been proved by clear and convincing evidence that the respondent committed misconduct as charged in the Disciplinary Complaint, and findings of fact and conclusions of law relevant to that determination.

(2) The Disciplinary Commission and the respondent may request the hearing officer to make a recommendation concerning the discipline to be imposed if the hearing officer finds misconduct, or the hearing officer may make a recommendation at his or her own discretion. The recommendation by the hearing officer is not binding on the Supreme Court.

(3) A copy of the Hearing Officer's Report shall be served by the hearing officer on the respondent and the Disciplinary Commission when the report is filed with the Supreme Court Clerk. The Hearing Officer's Report filed with the Supreme Court Clerk shall be accompanied by a copy of the report in electronic format, unless it was filed in electronic form. Any electronic format used by the word processing system to generate the report is permissible. When the Hearing Officer's Report is filed, the Disciplinary Commission shall transmit the record of the case (including any exhibits and transcripts that have been prepared) to the Supreme Court Clerk for filing.

## **Section 15. Supreme Court Review**

### *(a) Petition for Review.*

(1) *Time for filing.* The respondent or Disciplinary Commission shall have thirty (30) days after the filing of the Hearing Officer's Report to file a Petition for Review seeking a review of the case by the Supreme Court.

(2) *Brief in Support of Petition for Review.* The respondent or the Disciplinary Commission may file a supporting brief at the time a petition for review is filed.

(3) *Response and reply briefs.* The respondent or Disciplinary Commission opposing a Petition for Review shall have thirty (30) days from the date of service of the Petition for Review to file a response brief. The filer opposing a Petition for Review may raise in its response brief any issues for review that were not raised in the Petition for Review. The respondent or Disciplinary Commission filing the Petition for Review shall then have fifteen (15) days from the date of service of the response brief to file a reply brief addressing the response to the issues originally raised in the Petition for Review as well as any additional issues raised in the response brief. No further briefing shall be permitted without leave of the Supreme Court.

(b) *Brief on Sanction.* If the respondent or the Disciplinary Commission desires to address the Supreme Court on the issue of the appropriate sanction to be imposed, they may file a "Brief on Sanction." In that event, the deadlines for filing response and reply briefs shall be the same as in the case of a Petition for Review. Alternatively, arguments regarding the issue of appropriate sanction may be included in a Petition for Review or supporting brief. No further briefing shall be permitted without leave of the Supreme Court.

(c) *Format.* The Petition for Review and briefs filed under this Section shall comply with the formatting requirements of Section 23(j). They need not conform to the Rules of Appellate Procedure adopted by the Supreme Court.

## **Section 16. Probation**

(a) *Imposition.* An order of the Supreme Court imposing suspension or granting reinstatement may include probation.

(b) *Termination.*

(1) *Termination of probation not automatic.* Unless otherwise provided in the order, probation shall remain in effect until terminated pursuant to this Rule or by Supreme Court order.

(2) *Petition for termination of probation.* No sooner than fifteen (15) days prior to expiration of the period of probation set by the Supreme Court's order, the attorney may file with the Supreme Court Clerk: (i) a "Petition for Termination of Probation;" and (ii) an affidavit by the attorney attesting to compliance with all terms of probation.

(3) *Objection to termination of probation.* The Disciplinary Commission shall have fifteen (15) days after service of a Petition for Termination of Probation to file with the Supreme Court Clerk an objection. If an objection is filed, probation shall continue until further order of the Supreme Court. The attorney shall have fifteen (15) days after service of an objection to file a response. The Disciplinary Commission shall have ten (10) days after service of a response to file a reply.

(4) *Adjustment of status in absence of objection.* If no objection to a Petition for Termination of Probation is filed, the petition shall be deemed granted with no action by the Supreme Court, effective fifteen (15) days after the petition was filed. The Supreme Court Clerk shall adjust the attorney's status on the Roll of Attorneys to reflect that the attorney is no longer on probation, provided there is no other probation or any suspension in effect.

(5) *Procedure if the Disciplinary Commission objects to termination of probation.* If the Disciplinary Commission files an objection to termination of probation, the dispute shall

be resolved through the procedures set forth in Section 16(c)(4) unless the Supreme Court directs otherwise.

(c) *Revocation.*

(1) *Motion to Revoke Probation.* If the Executive Director receives information that an attorney may have violated probation, the Executive Director may file a verified Motion to Revoke Probation with the Supreme Court Clerk, setting forth supporting facts. A Motion to Revoke Probation shall not preclude the Disciplinary Commission from filing independent disciplinary charges against the attorney based on the same conduct alleged in the motion.

(2) *Response to motion.* Within ten (10) days after service of a Motion to Revoke Probation, the attorney shall file a response under penalties of perjury admitting or denying each of the allegations in the motion. A general denial shall not be allowed and, if filed, shall be taken as a failure to respond. The attorney's failure to respond timely shall be deemed to be an admission to the allegations in the Motion to Revoke Probation.

(3) *Burden of proof and matters considered.* The Disciplinary Commission shall have the burden of proving violation of probation by a preponderance of the evidence. Any reliable evidence of probative value may be considered regardless of its admissibility under the rules of evidence so long as the opponent is provided a fair opportunity to controvert it.

(4) *Disposition.* After the time for filing a response has expired, the Supreme Court may dispose of the matter on the documents filed or, if there are material factual disputes, may refer it to a hearing officer. The hearing officer shall hold a hearing within fourteen (14) days of appointment. The hearing officer shall file with the Supreme Court Clerk findings and a recommendation within ten (10) days of the hearing. The Supreme Court may then enter an order deciding the matter.

(d) *Service in termination and revocation matters.* Service upon the attorney and the Disciplinary Commission through its Executive Director shall be made by personal service or by certified mail, return receipt requested. Service shall be complete upon mailing when served upon the attorney at his or her current address of record on the roll of attorneys, regardless of whether the attorney claims the mail. Alternatively, service may be made electronically if authorized or required by the Supreme Court.

(e) *Immediate suspension pending revocation.* In addition to a Motion to Revoke Probation, the Executive Director may also file a verified motion for the immediate suspension of the attorney's license to practice. Upon a showing of good cause, the Supreme Court may order the attorney's license suspended immediately until the Motion to Revoke Probation has been decided.

## **Section 17. Resignation and Disbarment by Consent on Admission of Misconduct**

(a) *Affidavit consenting to resignation.* An attorney who is the subject of an investigation or a proceeding involving allegations of misconduct may consent to relinquish his or her license to practice law in this State under a resignation, by submitting an affidavit and simultaneously serving a copy on the Disciplinary Commission. The affidavit shall state that the respondent desires to consent to resignation and that:

- (1) The respondent's consent to the resignation is freely and voluntarily given and he or she is fully aware of the implications of giving his or her consent to resignation;
- (2) The respondent is aware that there is a presently pending investigation or proceeding involving allegations of grounds for his or her discipline, the nature of which shall be specifically set forth;
- (3) The respondent acknowledges that the material facts alleged in the pending investigation or proceeding are true; and
- (4) The respondent acknowledges that if prosecuted, he or she could not successfully defend himself or herself.

(b) *Supreme Court action on affidavit consenting to resignation.*

(1) *Approval of resignation.* The Supreme Court may enter an order approving the resignation. If approved, the respondent may seek reinstatement only under the provisions of Section 18(b) of this Rule.

(2) *Rejection of resignation.* If the Supreme Court notifies the respondent and the Disciplinary Commission that it rejects the respondent's consent to resignation, the investigation or proceeding then pending shall proceed as though no consent to resignation had been submitted.

(c) *Disbarment by consent.* If the Supreme Court notifies the respondent and the Disciplinary Commission that it rejects the respondent's resignation, the Supreme Court may include in the notice a proposal that the respondent submit a supplemental affidavit consenting to permanent disbarment instead of resignation. If the respondent submits a supplemental affidavit consenting to permanent disbarment, the Supreme Court may enter an order permanently disbarring the respondent from the practice of law in this State.

(d) *Confidentiality of affidavit.* An order entered under (b) or (c) above shall be a matter of public record. However, the affidavit required under the provisions of (a) and (c) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Supreme Court.

## **Section 17.1. Consent to Discipline on Admission of Misconduct**

(a) *Affidavit consenting to discipline.* An attorney who is the subject of an investigation proceeding involving allegations of misconduct may consent to discipline by filing an affidavit with the Supreme Court Clerk, and serving a copy on the Disciplinary Commission, stating that the respondent desires to consent to discipline as determined by the Supreme Court and that:

- (1) The respondent's consent to discipline is freely and voluntarily rendered and he or she is fully aware of the implications of giving his or her consent to discipline;
- (2) The respondent is aware that there is a presently pending investigation or proceeding involving allegations of grounds for his or her discipline the nature of which shall be specifically set forth;
- (3) The respondent acknowledges that the material facts alleged in the pending investigation or proceeding are true; and
- (4) The respondent acknowledges that if prosecuted, he or she could not successfully defend himself or herself.

(b) *Briefing and decision.* The respondent may file a brief on sanction simultaneously with the affidavit consenting to discipline. The Disciplinary Commission shall have thirty (30) days from the date of service of the affidavit to file a response brief on sanction. The respondent shall then have fifteen (15) days from the date of service of the Disciplinary Commission's brief to file a reply brief. No further briefing shall be permitted without leave of the Supreme Court. The Supreme Court may then enter an order imposing discipline on the respondent.

## **Section 18. Reinstatement**

(a) *Reinstatement after suspension with automatic reinstatement.* Whenever an attorney is suspended for a fixed period not to exceed 180 days with automatic reinstatement, the Disciplinary Commission may file written objections to automatic reinstatement, which shall be limited to:

- (1) Failure to comply with the terms of the order, including any conditions the Supreme Court may have specified in the order of suspension;
- (2) Pendency of other complaints;
- (3) Failure to comply with the terms of Section 26; and
- (4) Failure to satisfy fully the costs of the proceeding assessed pursuant to Section 21,

which must be satisfied no later than twenty (20) days prior to the expiration of the period of suspension.

The objections must be filed with the Supreme Court Clerk at least fifteen (15) days prior to the expiration of the period of suspension. If the Supreme Court determines that the attorney should not then be reinstated, the Supreme Court's order may specify when and under what conditions the attorney may apply for reinstatement.

If the Supreme Court determines that the attorney has failed to satisfy fully the costs assessed against him or her, the Supreme Court may enter an order staying the automatic reinstatement until the suspended attorney satisfies fully the costs of the proceeding or until further order of the Supreme Court.

(b) *Reinstatement after suspension without automatic reinstatement.* An attorney who has been suspended from the practice of law without automatic reinstatement, including an attorney under resignation, may file with the Supreme Court Clerk a Petition for Reinstatement, unless the order of suspension provides otherwise, together with a filing fee of five hundred dollars (\$500).

(1) *Time for filing.* The petition may be filed when the term of suspension prescribed in the order of suspension has elapsed, or at any time if the suspension is for an indefinite period of time. An attorney whose resignation from the bar has been accepted may petition for reinstatement when five (5) years have elapsed since the date of the order accepting the resignation.

(2) *Prerequisites for seeking reinstatement.*

(i) The attorney must file the notification affidavit required by Section 26(c)(7) before a petition for reinstatement is filed.

(ii) The attorney must take the Multistate Professional Responsibility Examination (MPRE) within twelve (12) months before filing the petition and pass with a scaled score of eighty (80) or above.

(iii) At least twelve months must have passed since the Supreme Court denied a prior petition for reinstatement by the attorney.

(3) *Proof needed for reinstatement.* A petition for reinstatement under (a) above may be granted only if the attorney establishes by clear and convincing evidence that:

(i) The attorney desires in good faith to obtain restoration of his or her privilege to practice law;

(ii) The attorney has not practiced law in this State or attempted to do so since he or she was disciplined;

(iii) The attorney has complied fully with the terms of the order for discipline and the duties set forth in Section 26, including the filing of a notification affidavit;

(iv) The attorney's attitude towards the misconduct for which he or she was disciplined is one of genuine remorse;

(v) The attorney's conduct since the discipline was imposed has been exemplary and above reproach;

(vi) The attorney has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and shall conduct himself or herself in conformity with these standards;

(vii) The attorney can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the courts; and

(viii) The disability has been removed, if the suspension was imposed by reason of disability.

(4) *Hearing on petition for reinstatement.*

(i) *Appointment of hearing officer.* Upon the filing of a Petition for Reinstatement, the Supreme Court may appoint a hearing officer who meets the qualifications of Section 13(a) to hear the matter. A hearing officer may be a former member of the Disciplinary Commission. The Disciplinary Commission may recommend a hearing officer to the Supreme Court.

(ii) *Change of hearing officer.* An attorney or the Disciplinary Commission may, on a showing of good cause, petition the Supreme Court for a change of hearing officer within ten (10) days after the appointment of the hearing officer.

(iii) *Powers and duties.* Hearing officers shall have the powers provided in Section 13. The provisions of Section 14(a)(1) and 14(d) through (g) shall apply to the extent practicable. After a hearing, the hearing officer shall determine whether the attorney has met the prerequisites set forth in (b)(2) above and shall file a Hearing Officer's Report making findings of fact, conclusions of law, and a recommendation on whether the attorney should be reinstated to the practice of law in this State.

(5) *Supreme Court review of the Hearing Officer's Report.* The attorney seeking reinstatement or the Disciplinary Commission may file a Petition for Review of the Hearing Officer's Report within thirty (30) days of entry. Briefing and consideration of a

Petition for Review shall proceed under the provisions of Section 15 to the extent practicable.

(c) *Reinstatement under other Sections of Rule 23.* An attorney suspended under Section 11.1(c) (delinquency in paying child support), Section 20 (discipline imposed by other jurisdiction), Section 21 (failure to pay costs and expenses), or any other Section of this Rule with its own reinstatement provisions may be reinstated by following the procedures set forth in those Sections.

(d) *Other terms and conditions.* The Supreme Court may provide for reinstatement on other terms and by other procedures than those set forth above, such as reinstatement conditioned only on the attorney's submission of proof of compliance with a requirement for reinstatement.

### **Section 19. Proceedings to Determine Disability**

(a) *Report to the Disciplinary Commission.* Any person, including a member of the Disciplinary Commission, a member of the Bar of this State, the Executive Director or designee, or any bar association of this State, may submit a report to the Disciplinary Commission suggesting that an attorney be suspended indefinitely from the practice of law due to disability caused by physical or mental infirmity or by the use of intoxicants or drugs.

(b) *Investigation.* The Executive Director shall investigate the allegations and shall make a report to the Disciplinary Commission as soon as practicable.

(c) *Hearing and Petition for Disability Suspension.* If the Disciplinary Commission determines that there is good reason to believe that the attorney is under a disability that would justify suspension, the Disciplinary Commission shall hold a hearing to determine if the attorney should be suspended indefinitely. To conduct the hearing, the Disciplinary Commission may request the appointment of a hearing officer as provided in Section 18(b)(4). The hearing officer shall submit findings of fact and a recommendation to the Disciplinary Commission. The Disciplinary Commission may then file with the Supreme Court Clerk a Petition for Disability Suspension, which shall include its findings of fact. The Petition may also include a suggestion that the Supreme Court appoint an Attorney Surrogate under Section 27.

(d) *Immediate emergency suspension.* The Disciplinary Commission's Petition for Disability Suspension may include a request for immediate emergency suspension pending final determination of the Petition for Disability Suspension. If the Supreme Court enters an order of immediate emergency suspension, the attorney shall have fifteen (15) days after entry of the order to file a motion for dissolution or modification of the order. The order of immediate emergency suspension shall remain in effect unless dissolved or modified by the Supreme Court.

(e) *Objection to Petition for Disability Suspension.* The attorney shall have thirty (30) days after the filing of the Disciplinary Commission's Petition for Disability Suspension to file an objection.

(f) *Suspension if no objection is filed.* If no timely objection is filed, the Supreme Court may enter an order of indefinite suspension of the attorney for the duration of the disability.

(g) *Procedure if an objection is filed.* If an objection to the Petition for Disability Suspension is timely filed, briefs may be filed as the Supreme Court may direct. The briefs need not conform to the Supreme Court's rules except as provided by Section 23. The Supreme Court may then enter an order on the Disciplinary Commission's Petition for Disability Suspension.

(h) *Procedure for reinstatement.* Any attorney suspended indefinitely for disability as provided in this Section may petition for reinstatement upon the termination of the disability as provided by Section 18(b).

## **Section 20. Discipline Imposed by Other Jurisdictions**

(a) *Definitions and applicability.*

(1) For the purpose of this Section, "foreign suspension" shall mean any suspension from the practice of law, revocation of the attorney's license to practice law, disbarment, or acceptance of resignation with an admission of misconduct pursuant to an order in another jurisdiction.

(2) "Foreign discipline" shall mean foreign suspension or any other public discipline imposed by another jurisdiction.

(3) This Section shall apply to an attorney admitted to practice in this State ("Indiana attorney"), regardless of whether the attorney's license is active in good standing.

(b) *Indiana attorney's duty to report foreign discipline.* An Indiana attorney shall notify the Executive Director in writing of an order imposing foreign discipline within fifteen (15) days after entry of the order.

(c) *Executive Director's duty to obtain copy of order.* Upon notification from any source that an Indiana attorney has been subject to foreign discipline, the Executive Director shall obtain a certified copy of the order of discipline.

(d) *Notice and request for reciprocal suspension.* Upon receipt of a certified copy of an order imposing foreign suspension, the Executive Director or designee shall file with the Supreme Court Clerk a Notice of Foreign Suspension. The Executive Director shall attach a certified copy of the order of foreign suspension and request the Supreme Court issue an order to the Executive Director and to the Indiana attorney directing either of them to show cause in writing within thirty (30) days from service of the order why the Supreme Court should not impose reciprocal discipline on the Indiana attorney. The burden is on the opponent to reciprocal suspension in this State to demonstrate that it should not be imposed.

(e) *Supreme Court order.* After thirty (30) days from service of the show cause order, the Supreme Court may suspend the Indiana attorney from the practice of law in this State indefinitely unless the Supreme Court finds on the face of the record that:

- (1) The procedure in the foreign suspension case was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) An infirmity of proof gives rise to the clear conviction that the Supreme Court could not, consistent with its duty, accept as final the foreign jurisdiction's conclusion regarding misconduct;
- (3) The imposition of suspension by the Supreme Court would be inconsistent with standards governing discipline in this Rule or would result in grave injustice; or
- (4) The misconduct established warrants substantially different discipline in this State.

If the Supreme Court determines that any of the above factors exists, it may deny the request for reciprocal suspension or impose alternative discipline as it concludes is appropriate.

(f) *Effect of foreign adjudication.* Except as provided above, a final adjudication in another jurisdiction that an Indiana attorney has committed misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

(g) *Motion for Release from Reciprocal Suspension.* An Indiana attorney suspended under this Section may file a "Motion for Release from Reciprocal Suspension" in this State only after he or she is reinstated to the practice of law in the jurisdiction that imposed the foreign suspension and after the attorney has paid all costs assessed by the Supreme Court. Regardless of the Indiana attorney's date of reinstatement in the foreign jurisdiction, however, the attorney shall not be released from reciprocal suspension in this State until he or she has been suspended at least as long as he or she was suspended in the foreign jurisdiction.

- (1) The suspension in this State shall be deemed to begin on the date the foreign suspension begins only if the Indiana attorney promptly notifies the Disciplinary Commission of the foreign suspension and states that the attorney has suspended his or her practice in Indiana as of the date the foreign suspension began.
- (2) The Motion for Release from Reciprocal Suspension shall be verified, shall be accompanied by certified proof of reinstatement in the foreign jurisdiction, and shall state the length of time the Indiana attorney was suspended in the foreign jurisdiction and the date on which the length of the attorney's Indiana suspension equals the length of the attorney's foreign suspension.
- (3) The Supreme Court may decide the motion without appointment of a hearing officer, and the provisions of Section 18(b) shall not apply.

(4) If the Indiana attorney's reinstatement in the foreign jurisdiction is subject to terms of probation, the attorney's release from reciprocal suspension in Indiana shall also be subject to compliance with those terms. The Indiana attorney shall promptly notify the Disciplinary Commission of any modification or revocation of probation in the foreign jurisdiction.

#### **IV. General Provisions**

##### **Section 21. Costs and Expenses**

(a) *Imposition of costs and expenses in disciplinary proceedings.* If the Supreme Court imposes discipline or other sanction, including a sanction for contempt, the Supreme Court may issue an order that the respondent pay the costs and expenses of the proceeding. The Executive Director shall prepare an itemized statement of expenses allocable to each case, including: (1) expenses incurred by the Disciplinary Commission in the course of the investigatory, hearing, or review procedures under this Rule; (2) costs attributable to the services of the hearing officer; and (3) a fee of two hundred fifty dollars (\$250) payable to the Supreme Court Clerk, as reimbursement for the processing of all papers in connection with the proceeding. Proceedings for the collection of the costs taxed against the respondent may be initiated by the Executive Director on the Supreme Court's order approving expenses and costs.

(b) *Costs of hearing in reinstatement proceedings.* Any attorney filing a petition for reinstatement under Section 18, or seeking reinstatement to practice under any other provision of this Rule, shall be responsible for the payment of all costs incurred by the Disciplinary Commission in conducting a hearing that exceed the amount of any filing fee paid by the attorney seeking reinstatement. The Disciplinary Commission shall send a statement of costs to the attorney, and the attorney shall pay the costs within ten (10) days of the receipt of the statement. In no event shall there be any refund or rebate of any part of any filing fee paid by the person seeking reinstatement.

(c) *Costs for Disciplinary Commission services in providing copies of documents.*

(1) *Documents.* The Disciplinary Commission may charge a person requesting copies of documents the same costs that the Supreme Court has authorized the Supreme Court Clerk to charge for copies of documents.

(2) *Delivery costs.* In addition, the Disciplinary Commission may charge the costs of postage or other delivery services in responding to requests for copies of documents.

(3) *Right to withhold until payment is made.* The Disciplinary Commission may withhold the documents requested until the costs for its service are paid.

(4) *Inapplicable to discovery requests.* This subsection shall not apply to the Commission's responses to discovery requests in the course of litigation.

(d) *Failure to pay costs and expenses.* An attorney who fails to pay costs and expenses assessed pursuant to this Section or any other provision of this Rule (except subsection (c) above) by the due date of the annual registration fee required by Admission and Discipline Rule 2(b) may be subject to an order of suspension from the practice of law pursuant to Indiana Admission and Discipline Rule 2(h), and shall be reinstated only upon paying the outstanding costs and expenses and filing with the Supreme Court Clerk a written application for reinstatement and payment of an administrative reinstatement fee of two hundred dollars (\$200). The requirements of Section 18(b) shall not apply to these proceedings.

## **Section 22. Public Access**

(a) *Documents and information about disciplinary matters.*

(1) After a Disciplinary Complaint has been filed with the Supreme Court, all papers filed with the Supreme Court Clerk pertaining to that particular Disciplinary Complaint shall be open and available to the public, except as provided by Administrative Rule 9.

(2) After a Disciplinary Complaint has been filed with the Supreme Court, all proceedings shall be open to the public, except adjudicative deliberations or as provided in Section 22(b).

(3) Proceedings and papers that relate to matters that have not resulted in the filing of a Disciplinary Complaint shall be confidential and not available to the public.

(4) Communications among members and staff of the Disciplinary Commission regarding disciplinary matters, minutes and notes regarding Disciplinary Commission meetings and deliberations, and investigative reports and other work product of the Executive Director or his or her agents shall be confidential and not available to the public.

(5) Conditional Agreements, advisory letters and any responses from respondents, private administrative admonition letters, resignation affidavits, and affidavits consenting to disbarment shall be confidential and not open to public inspection.

(b) *Hearings.* Hearings before hearing officers shall be open to the public. However, hearing officers may order a hearing or portions of a hearing to be closed or order evidentiary exhibits to be held under seal if necessary for any of the following purposes:

(1) For the protection of witnesses.

- (2) To prevent likely disruption of the proceedings.
- (3) For the security of the hearing officer or any of the participants at the proceedings.
- (4) To prevent the unauthorized disclosure of attorney-client confidences not at issue in the proceeding.
- (5) To protect medical information.
- (6) For any other good cause shown which in the judgment of the hearing officer requires the hearing to be closed.

### **Section 23. Filing, Service, Submission, Format of Documents; Motion Practice**

(a) *Filing; general provisions.*

- (1) Pleadings, motions, and other documents shall have a caption showing the Indiana Supreme Court as the court in which they are filed and shall be filed with the Supreme Court Clerk (not with the clerk of a trial court, even if the judge of that court is serving as hearing officer in the disciplinary proceeding).
- (2) No deposition, request for discovery, or discovery response shall be filed with the Supreme Court Clerk unless permitted under circumstances set forth in Trial Rule 5(E)(2).
- (3) Original depositions shall be maintained according to the procedures of Trial Rule 5(E)(3).
- (4) The filing of any deposition shall constitute publication.

(b) *Filing defined.* All papers shall be deemed filed when they are:

- (1) Personally delivered to the Supreme Court Clerk;
- (2) Deposited in the United States Mail, postage prepaid, properly addressed to the Supreme Court Clerk;
- (3) Deposited with any third-party commercial carrier for delivery to the Supreme Court Clerk within three (3) calendar days, cost prepaid, and properly addressed; or
- (4) Electronically filed as authorized or required by the Supreme Court.

(c) *Filing; required documents.* Only the original of a document shall be filed with or tendered to the Supreme Court Clerk. No paper original shall be required for any documents electronically filed with or tendered to the Supreme Court Clerk.

(d) *Time for service.* A filer shall serve a document no later than the date it is tendered for filing.

(e) *Required service.* All documents tendered to the Supreme Court Clerk for filing must be served upon all participants or their counsel and the hearing officer, after one has been appointed.

(f) *Manner and date of service.* Unless otherwise provided in this Rule, all documents shall be deemed served when they are:

- (1) Personally delivered;
- (2) Deposited in the United States Mail, postage prepaid, properly addressed;
- (3) Deposited with any third-party commercial carrier for delivery within three (3) calendar days, cost prepaid, and properly addressed; or
- (4) Electronically served as authorized or required by the Supreme Court.

(g) *Certificate of service.* Anyone tendering a document to the Supreme Court Clerk for filing in a disciplinary proceeding shall certify that service has been made, list the persons served, and specify the date and means of service. The certificate of service shall be placed at the end of the document and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for filing. The Supreme Court Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.

(h) *Documents submitted to the Supreme Court.* Documents directed to be submitted to the Supreme Court shall be delivered to the Supreme Court agency or office designated by the Supreme Court to accept the submissions. Submission may be made electronically if authorized or required by the Supreme Court. The date of submission shall be the date received by the Supreme Court agency or office. Unless submitted electronically, one paper original shall be submitted. Documents submitted to the Supreme Court shall not be filed with the Supreme Court Clerk.

(i) *Inclusion of contact information.* A person filing or submitting a pleading, motion, or document shall include at any place under the signature line the person's address, telephone number, FAX number, and email address.

(j) *Format.* Motions, petitions for review, and briefs shall conform to the following requirements:

- (1) The pages shall be 8 1/2 by 11 inch white paper of a weight normally used in printing and typing.

(2) The document shall be produced in a neat and legible manner using black print. It may be typewritten, printed or produced by a word processing system. It may be copied by any copying process that produces a distinct black image on white paper. Text shall appear on only one side of the paper.

(3) The font shall be Arial, Baskerville, Book Antiqua, Bookman, Bookman Old Style, Century, Century Schoolbook, Courier, Courier New, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino or Times New Roman and the typeface shall be 12-point or larger in body text.

(4) All text shall be double-spaced except that footnotes, tables, charts, or similar material and text that is blocked and indented shall be single-spaced.

(5) The pages shall be numbered at the bottom.

(6) All four margins for the text of the document shall be at least one (1) inch from the edge of the page.

(k) *Electronic copy.* Petitions and briefs may be accompanied by a copy of the document in electronic format, unless the document is filed in electronic form. Any electronic format used by the word processing system to generate the document is permissible.

(l) *Motion practice.* Unless provided otherwise by these Rules or by order of the Supreme Court, a request for an order or for other relief shall be made by filing a written motion. A motion for relief from a prior order shall be filed no later than thirty (30) days after the date of the order, absent good cause shown for seeking relief at a later date. Any response to a motion must be filed within fifteen (15) days after the motion is served. The Supreme Court or hearing officer has the discretion to rule on a motion without waiting for a response. The movant may not file a reply to a response without leave of the Supreme Court or hearing officer. Any reply must be tendered within five (5) days of service of the response and accompanied by the filing of a motion for leave to file the reply.

### **Section 23.1. Obligations of Attorneys regarding Service; Constructive Service**

(a) *Obligation to accept service.* It shall be the duty of every attorney against whom a grievance is submitted to accept service, and when notice is given by registered or certified mail, to claim the notice in a timely manner either personally or through an authorized agent.

(b) *Obligation to notify Supreme Court Clerk of change of contact information.* A failure to notify the Supreme Court Clerk of a change in contact information shall be deemed a waiver of notice involving disciplinary matters.

(c) *Supreme Court Clerk as agent to receive constructive service.* Each attorney admitted

to practice law in this State or practicing law in this State shall be deemed to have appointed the Supreme Court Clerk as his or her agent to receive constructive service of all papers, including processes and notices, called for by any provision of this Rule when actual service on the attorney at the attorney's addresses shown on the records of the Supreme Court Clerk cannot be accomplished, or when the attorney has not provided the Supreme Court Clerk with an address. These papers may be served by filing them with the Supreme Court Clerk as the agent for the attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of the papers and the affidavit, the Supreme Court Clerk shall immediately mail notification to the attorney at the attorney's office address, or if unavailable the attorney's residence address, as shown in the records of the Supreme Court Clerk, informing the attorney that the papers have been filed with the Supreme Court Clerk as agent for the attorney. Alternatively, the Supreme Court Clerk may accomplish this notification by emailing copies of or hyperlinks to the documents to the attorney at his or her email address, as shown upon the records of the Supreme Court Clerk. The Supreme Court Clerk shall then file a written certification showing the mailing or emailing of the notification to the attorney. If the attorney has provided no contact information to the Supreme Court Clerk, the Supreme Court Clerk may, but need not, attempt to accomplish notification through other means. Upon the completion of this procedure, the attorney shall be deemed to have been served with the papers.

### **Section 23.2. Computation of Time**

(a) *Non-business and business days.* For purposes of this Rule, a non-business day shall mean a Saturday, a Sunday, a legal holiday as defined by State statute, or a day the Office of the Supreme Court Clerk is closed during regular business hours. A business day shall mean all other days.

(b) *Counting days.* In computing any period of time allowed by this Rule, by order of the Supreme Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a non-business day. If the last day is a non-business day, the period runs until the end of the next business day. When the time allowed is less than seven (7) days, all non-business days shall be excluded from the computation.

(c) *Extension of time when served by mail or carrier.* When the Disciplinary Commission or the respondent serves a document by mail or third-party commercial carrier, the time period for filing any response or reply to the document shall be extended automatically for an additional three (3) days from the date of deposit in the mail or with the carrier. This extension of time does not extend any time period that is not triggered by service of a document, such as the time for filing a petition for review.

### **Section 24. Assistance of Law Enforcement Agencies and to Attorney Disciplinary Agencies in Other Jurisdictions**

(a) *Assistance from law enforcement.* The Disciplinary Commission, or the Executive Director, may request any law enforcement agency or office to assist in an investigation. This assistance shall include the furnishing of all available information about the respondent.

(b) *Assistance to other jurisdictions.* The Supreme Court may order a person domiciled or found within this State to give testimony or a statement or to produce documents or other things for use in an attorney discipline or disability proceeding in another jurisdiction. The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this State, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of the Indiana Rules of Trial Procedure. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Supreme Court. A person may be required to give testimony or a statement only in the county in which he or she resides or is employed or transacts business in person, or at another convenient place fixed in the order. The person appointed shall have the power to administer any necessary oath. Any order to testify or to produce documents or other things issued as prescribed in this subsection may be enforced in the circuit court of the county in which the person commanded to appear is domiciled, upon petition of any person interested in the attorney discipline or disability proceeding.

## **Section 25. Immunity**

(a) *Statements to the Disciplinary Commission or Lawyers Assistance Program.* Each person shall be absolutely immune from civil suit for all of his or her oral or written statements intended for transmittal either: (1) to the Disciplinary Commission, the Executive Director, or the Disciplinary Commission staff, or made in the course of investigatory, hearing, or review proceedings under this Rule; or (2) to a Lawyers Assistance Program approved by the Supreme Court. Oral or written statements made to others which are not intended for such transmittal have no immunity under this Section.

(b) *Suit arising from performance of duties.* The Executive Director, his or her staff, counsel, investigators, hearing officers, and the members of the Disciplinary Commission shall be immune from suit for any conduct arising out of the performance of their duties.

## **Section 26. Duties of Suspended Attorneys, Disbarred Attorneys, and Attorneys whose Resignation has been Accepted**

(a) *Applicability.* This Section shall apply to all attorneys who have been disbarred, or whose law license has been suspended under this Rule or any other provision of the Indiana Admission and Discipline Rules, including suspensions for registration fee nonpayment, continuing legal education noncompliance, and nonpayment of costs (“license maintenance suspension”). Disbarment shall include disbarment by consent, and suspension shall include

resignation.

(b) *Duties of all suspended and disbarred attorneys.*

(1) Upon receiving notice of the order of suspension or disbarment, including disbarment by consent, the respondent shall not undertake any new legal matters between receipt of the order and the effective date of the suspension or disbarment. Upon the effective date, the respondent shall not practice law, represent clients, or maintain a presence or occupy an office where the practice of law is conducted.

(2) Upon receiving notice of the order of suspension or disbarment, the attorney shall file a notice of his or her suspension or disbarment in every pending matter in which the attorney has filed an appearance. The attorney shall attach a copy of the suspension or disbarment order to the notice.

(c) *Additional duties of attorneys who have been disbarred, suspended without automatic reinstatement, or suspended for more than 180 days.*

(1) This subsection shall apply to attorneys who have been disbarred, suspended without automatic reinstatement for any length of time (including those under resignation), and attorneys whose active suspension exceeds 180 days (including license maintenance suspensions).

(2) The attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt requested, all clients being represented by him or her in pending matters, of the disbarment or suspension and the attorney's inability to act as an attorney. This notice shall advise the clients to seek legal advice of the client's own choice elsewhere.

(3) In addition to notifying clients as set forth above, the attorney shall move to withdraw as counsel in the court or agency in which any proceeding is pending, shall notify all attorneys for adverse parties in these proceedings, and shall furnish the address of the client involved to the court or agency and to the attorneys for adverse parties.

(4) The attorney shall make available to any of his or her clients, to new counsel for any of the clients or to any other person designated by the court having appropriate jurisdiction, all papers, documents, files or information which may be in his or her possession.

(5) The attorney shall take any action as is necessary to cause the removal of any indicia of attorney, lawyer, counselor at law, legal assistant, law clerk, or similar title, displayed or communicated in any form or medium, including the internet.

(6) The attorney shall close any IOLTA account or other attorney trust account the attorney may have and disburse any funds in the account(s) to their rightful owner(s).

(7) Within thirty (30) days after the effective date of the disbarment or suspension order (or within 10 days of the date active suspension exceeds 180 days in the case of license maintenance suspensions), the attorney shall file with the Supreme Court a notification affidavit showing that he or she has fully complied with the provisions of the order and with this Rule. The notification affidavit shall disclose all other State, Federal and Administrative jurisdictions to which the attorney has been admitted to practice. If the attorney is representing no clients at the time the order is entered, the affidavit shall so state. The attorney shall also serve a copy of the affidavit upon the Executive Director and shall set forth the address where communications may be directed to him or her.

(d) *Additional duties of suspended attorneys not subject to subsection (c).* A suspended attorney not subject to subsection (c) shall, within thirty (30) days from the date of the notice of the suspension, file with the Supreme Court a notification affidavit showing that:

(1) All clients being represented by the attorney in pending matters have been notified by certified mail, return receipt requested, of the nature and duration of the suspension, and all pending matters of clients requiring the attorney's services during the period of suspension have been placed in the hands and care of an attorney admitted to practice in this State with the consent of the client.

(2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.

(3) If the suspended attorney is representing no clients at the time the order of suspension is entered, the affidavit shall so state.

## **Section 27. Attorney Surrogates**

(a) *Definitions for purposes of this Section only.*

(1) "Attorney Surrogate" means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an Attorney Surrogate for a Lawyer.

(2) "Court of competent jurisdiction" means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.

(3) "Disabled" means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems, or age that significantly impairs the Lawyer's ability to practice law.

(4) “Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.

(5) “Lawyer” means a member of the Bar of this State who is engaged in the private practice of law in this State. “Lawyer” does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity, or an organization that is not engaged in the private practice of law.

(b) *Designation of Attorney Surrogate.*

(1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 2(b), a Lawyer may designate an Attorney Surrogate in the Clerk of Courts Portal provided by the Supreme Court Clerk by specifying the attorney number of the Attorney Surrogate and certifying that the Attorney Surrogate has agreed to the designation in a writing in possession of both the Lawyer and the surrogate. The designation of an Attorney Surrogate shall remain in effect until revoked by either the designated Attorney Surrogate or the Lawyer designating the Attorney Surrogate. The Lawyer who designates the Attorney Surrogate shall notify the Supreme Court Clerk of any change of designated Attorney Surrogate within thirty (30) days of such change. The Supreme Court Clerk shall keep a list of designated Attorney Surrogates and their addresses.

(2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity where indicated in the Attorney Surrogate designation section of the Clerk of Courts Portal. Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no Attorney Surrogate shall be appointed for a Lawyer practicing in a Fiduciary Entity.

(3) A Lawyer not practicing in a Fiduciary Entity who does not designate an Attorney Surrogate pursuant to subsection (1) above shall be deemed to designate a senior judge or other suitable member of the bar of this State in good standing appointed by a court of competent jurisdiction to perform the duties of an Attorney Surrogate.

(c) *Role of Attorney Surrogate.*

(1) Upon notice that a Lawyer has:

(i) Died;

(ii) Disappeared;

(iii) Become disabled; or

(iv) Been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26,

any interested person (including a local bar association) or a designated Attorney Surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an Attorney Surrogate.

(2) A copy of the verified petition shall be served upon the Lawyer at the address on file with the Supreme Court Clerk or, in the event the Lawyer has died, upon the Lawyer's personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition), determine whether there is an occurrence under (a), (b), (c) or (d), and an Attorney Surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an Attorney Surrogate should be appointed then the court shall appoint as Attorney Surrogate either the designated Attorney Surrogate as set forth pursuant to subsection (b)(1), a suitable member of the Bar of this State in good standing or a senior judge.

(3) Upon such appointment, the Attorney Surrogate may:

(i) Take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;

(ii) Notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;

(iii) Apply for extensions of time pending employment of replacement counsel by the client;

(iv) File notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;

(v) Give notice to appropriate persons and entities who may be affected, other than clients, that the Attorney Surrogate has been appointed;

(vi) Arrange for the surrender or delivery of clients' papers or property;

(vii) As approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;

(viii) Deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and

(xi) Do such other acts as the court may direct to carry out the purposes of this Section.

(4) If the Attorney Surrogate determines that conflicts of interest exist between the Attorney Surrogate's clients and the clients of the Lawyer, the Attorney Surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the Attorney Surrogate shall take no action with regard to those cases or files.

(5) Upon appointment, the Attorney Surrogate shall notify the Disciplinary Commission.

(d) *Jurisdiction of court.* A court of competent jurisdiction that has granted a verified petition for appointment under this Section shall have jurisdiction over the files, records, and property of clients of the Lawyer and may make orders necessary or appropriate to protect the interests of the Lawyer, the clients of the Lawyer, and the public. The court shall also have jurisdiction over closed files of the clients of the Lawyer and may make appropriate orders regarding those files including, but not limited to, destruction of the same.

(e) *Time limitations suspended.* Upon the granting of a verified petition for appointment under this Section, any applicable statute of limitations, deadline, time limit, or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

(f) *Applicability of attorney-client rules.* Persons examining the files and records of the law practice of the Lawyer pursuant to this Section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this Section. The attorney-client privilege shall apply to communications by or to the Attorney Surrogate to the same extent as it would have applied to communications by or to the Lawyer. However, the Attorney Surrogate relationship does not create an attorney/client relationship between the Attorney Surrogate and the client of the Lawyer.

(g) *Final report of Attorney Surrogate: petition for compensation; court approval.* When the purposes of this Section have been accomplished with respect to the law practice of the Lawyer, the Attorney Surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the Attorney Surrogate. The Attorney Surrogate may also file with the court a petition for reasonable fees and expenses in compensation for performance of the Attorney Surrogate's duties. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a final order to that effect and discharging the Attorney Surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the Attorney

Surrogate. The amount of fees and expenses allowed shall be a judgment against the Lawyer or the estate of the Lawyer. The judgment is a lien upon all assets of the Lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this Section. The judgment lien is subordinate to nonpossessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law. To the extent a senior judge is not fully compensated under this subsection, the senior judge may seek compensation pursuant to Administrative Rule 5 (B)(10).

(h) *Immunity.* Absent intentional wrongdoing, an Attorney Surrogate shall be immune from civil suit for damages for all actions and omissions as an Attorney Surrogate under this Section. This immunity shall not apply to an employment after acceptance of representation of a client with the agreement of the client under subsection (c)(3)(viii) above.

## **Section 28. [reserved]**

## **V. Trust Accounts**

### **Section 29. Trust Account Funds**

(a) *Required trust account records.* An attorney who is licensed in Indiana shall maintain current financial records as provided for in this Rule and required by Rule 1.15 of the Indiana Rules of Professional Conduct. An attorney shall keep records sufficient to determine, at any time, the amount held for each client or other beneficiary in relation to the total amount held in the trust account as a pooled whole. For each trust or other fiduciary account, attorneys shall create and retain the following records for a period of five (5) years after the conclusion of each matter:

- (1) Deposit and disbursement journals containing a record of deposits to and withdrawals from each trust account, specifically identifying the date, source of funds, description, amount, and client or beneficiary of each item deposited; the date, payee, purpose, amount, and client or beneficiary of each item disbursed; and a running total of the balance of the trust account as a pooled whole (an example of a deposit and disbursement journal is appended to this Section as Exhibit A);
- (2) Ledgers for all trust accounts showing, for each separate trust client or beneficiary, the amount of funds disbursed or deposited, the date of disbursement or deposit, the source of funds deposited, the payee of funds disbursed, and a running total of the amounts held in trust for each separate client or beneficiary (examples of client ledgers are appended to this Section as Exhibit B);
- (3) A ledger detailing the nominal amount of attorney funds held in the account, showing the amount of attorney funds disbursed or deposited, the date of their disbursement or deposit, and a running balance of the amount of attorney funds held in the trust account (an example of a ledger of attorney owned funds is appended to this Section as Exhibit C);

- (4) Relevant fee agreements;
- (5) All checkbook registers, bank statements, records of deposit, and cancelled checks;
- (6) Records of all electronic disbursements from trust accounts, including the name of the person authorizing the disbursement, the date of the disbursement, the name of the recipient, the purpose of the disbursement, and the client or beneficiary for whom the disbursement was made; and
- (7) All periodic reconciliation reports for each trust account.

(b) *Availability of records.* Records required by Indiana Admission and Discipline Rule 23, Section 29(a) may be maintained by electronic, photographic, or other media provided that they otherwise comply with these rules and printed copies can be produced. If trust account records are maintained electronically, the attorney shall ensure that backups occur regularly and frequently.

(c) *Trust account safeguards.*

- (1) Attorneys shall deposit all funds held in trust in accounts clearly identified as “trust” or “escrow” accounts. Attorneys shall inform the financial institution of the purpose and identity of each trust account. Funds held in trust include funds held in any fiduciary capacity, whether as attorney, trustee, agent, guardian, executor or otherwise. Trust accounts shall be maintained only in financial institutions approved by the Indiana Supreme Court Disciplinary Commission.
- (2) Attorneys shall not pay personal or business expenses directly from a trust account; instead, attorneys shall promptly withdraw fully earned fees from the trust account by first disbursing the fully earned fees to the attorney’s personal or business account.
- (3) Only an attorney admitted to practice law in Indiana or a person under the direct supervision of the attorney shall be an authorized signatory or authorized to disburse funds from a trust account. If an attorney or law firm delegates authority to disburse funds from a trust account to a person not admitted to practice law in Indiana, this delegation shall be accompanied by safeguards, including at minimum:
  - (i) All bank statements or periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory, or the supervising attorney shall review the bank statements electronically directly from the financial institution; and

(ii) Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no authority to disburse funds from the trust account.

(4) All receipts shall be deposited into a trust account intact, and records of deposits should be sufficiently detailed to identify each item deposited.

(5) Disbursements from a trust account shall not be made by a check payable to “cash” or to “bearer.” Disbursements from a trust account shall not be made by ATM withdrawal or cash withdrawal.

(6) Provided that the attorney complies with Admission and Discipline Rule 23, Sections 29(a) and 29(c)(5), an attorney may make disbursements from a trust account by means of electronic transfer.

(7) Attorneys shall reconcile their internal trust account records, specifically the records required by Admission and Discipline Rule 23, Section 29(a)(1-3) with the periodic bank account statements from the financial institution.

(d) *Dissolution or sale of law practice.* Upon dissolution or sale of a law practice, the owner(s) or partner(s) shall make reasonable arrangements for the maintenance and preservation of the records required by Section 29(a).

Exhibit A - Attorney John Counsel’s Deposit and Disbursement Journal

| Date       | Client or Beneficiary               | Source of Funds Deposited           | Payee        | Check Number | Description  | Amount     | Trust Account Balance |
|------------|-------------------------------------|-------------------------------------|--------------|--------------|--|------------|-----------------------|
| 01/01/2015 | John Counsel (attorney owned funds) | John Counsel (attorney owned funds) |              |              | Nominal amount of attorney funds deposited to open trust account | \$100      | \$100                 |
| 01/02/2015 | Susan Plaintiff                     | ABC insurance company               |              |              | Personal injury settlement                                       | \$30,000   | \$30,100              |
| 01/06/2015 | Susan Plaintiff                     |                                     | John Counsel | 101          | Attorney fees for personal                                       | (\$10,000) | \$20,100              |

|            |                         |                   |                            |     |   |             |           |
|------------|-------------------------|-------------------|----------------------------|-----|---|-------------|-----------|
|            |                         |                   |                            |     | injury<br>settlement                              |             |           |
| 01/06/2015 | Susan<br>Plaintiff      |                   | Susan<br>Plaintiff         | 102 | Client's<br>share of<br>settlement                | (\$20,000)  | \$100     |
| 01/20/2015 | ABC<br>Company          | ABC<br>Company    |                            |     | Prepayment<br>of expenses<br>and attorney<br>fees | \$10,000    | \$10,100  |
| 01/28/2015 | Jack and Jill<br>Vendor | Mark<br>Purchaser |                            |     | Purchase<br>price for<br>real estate<br>sale      | \$200,000   | \$210,100 |
| 02/01/2015 | ABC<br>Company          |                   | Court<br>Reporter<br>Inc.  | 103 | Deposition<br>transcript                          | (\$200)     | \$209,900 |
| 02/02/2015 | Jack and Jill<br>Vendor |                   | Jack and<br>Jill<br>Vendor | 104 | Proceeds of<br>real estate<br>sale                | (\$199,500) | \$10,400  |
| 02/02/2015 | Jack and Jill<br>Vendor |                   | John<br>Counsel            | 105 | Attorney<br>fees for real<br>estate sale          | (\$500)     | \$9,900   |
| 02/08/2015 | ABC<br>Company          |                   | John<br>Counsel            | 106 | Attorney<br>fees – 5<br>hours at<br>\$200/hour    | (\$1,000)   | \$8,900   |

Exhibit B - Client Ledgers

**Susan Plaintiff**

| Date       | Source of Funds Deposited | Payee           | Check Number | Description                                  | Amount     | Total amount held for client or beneficiary |
|------------|---------------------------|-----------------|--------------|--|------------|---|
| 01/02/2015 | ABC Insurance Company     |                 |              | Personal Injury Settlement                   | \$30,000   | \$30,000                                    |
| 01/06/2015 |                           | John Counsel    | 101          | Attorney fees for personal injury settlement | (\$10,000) | \$20,000                                    |
| 01/06/2015 |                           | Susan Plaintiff | 102          | Client's share of settlement                 | (\$20,000) | \$0   |

**ABC Company**

| Date       | Source of Funds Deposited | Payee               | Check Number | Description                              | Amount    | Total amount held for client or beneficiary |
|------------|---------------------------|---------------------|--------------|--|-----------|---|
| 01/20/2015 | ABC Company               |                     |              | Prepayment of expenses and attorney fees | \$10,000  | \$10,000                                    |
| 02/01/2015 |                           | Court Reporter Inc. | 103          | Deposition transcript                    | (\$200)   | \$9,800                                     |
| 02/08/2015 |                           | John Counsel        | 106          | Attorney fees – 5 hours at \$200/hour    | (\$1,000) | \$8,800                                     |

**Jack and Jill Vendor**

| Date       | Source of Funds Deposited | Payee                | Check Number | Description                         | Amount      | Total amount held for client or beneficiary |
|------------|---------------------------|----------------------|--------------|-------------------------------------|-------------|---|
| 01/28/2015 | Mark Purchaser            |                      |              | Purchase price for real estate sale | \$200,000   | \$200,000                                   |
| 02/02/2015 |                           | Jack and Jill Vendor | 104          | Proceeds of real estate sale        | (\$199,500) | \$500                                       |
| 02/02/2015 |                           | John Counsel         | 105          | Attorney fees for real estate sale  | (\$500)     | \$0   |

Exhibit C - Ledger of Attorney Owned Funds

**John Counsel Ledger**

| Date       | Source of Funds Deposited           | Payee | Check Number | Description  | Amount | Total amount held for client or beneficiary |
|------------|-------------------------------------|-------|--------------|--|--------|---|
| 01/01/2015 | John Counsel (attorney owned funds) |       |              | Nominal amount of attorney funds deposited to open trust account | \$100  | \$100                                       |

### **Section 30. Overdraft Notification and Processing**

(a) *Definitions.* As used in this Section:

(1) “Financial institution” means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

(2) “Trust account” means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Professional Conduct Rule 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.

(3) “IOLTA (Interest on Lawyer Trust Account)” means an attorney trust account maintained pursuant to Professional Conduct Rule 1.15(f).

(4) “Properly payable” refers to an instrument or other disbursement which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.

(b) *Approval of financial institutions.*

(1) Section 29(c)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached to this Section as Exhibit A under which it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing insufficient funds, regardless of whether the instrument is honored.

(2) The written agreement of any financial institution is binding upon all branches of the financial institution.

(3) The Disciplinary Commission shall maintain a public listing of all approved financial institutions and shall publish it on its website. The names of approved financial institutions shall also be available by written or telephone inquiry to the Disciplinary Commission.

(4) The written agreement of any financial institution shall continue in full force and effect and be binding upon the financial institution until the financial institution gives thirty (30) days' notice of cancellation in writing to the Disciplinary Commission, or until its approval is revoked by the Disciplinary Commission.

(c) *Disapproval and revocation of approval of financial institutions.*

(1) A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached to this Section as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary Commission to approve a financial institution due to its failure or refusal to submit an executed written agreement in the form attached as Exhibit A is not appealable or otherwise subject to challenge.

(2) A prior approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.

(3) The Executive Director or designee shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. The financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to submit a written request with the Executive Director or designee seeking reconsideration of the revocation decision. If an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Director or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved status of a financial institution shall continue until the time the reconsideration process is final. The financial institution shall be liable for the costs of the reconsideration of the revocation decision and the costs of any hearing on the request.

(4) Once the approval of a financial institution has been revoked, the institution shall not again be approved as a depository for trust accounts until the institution petitions the Disciplinary Commission for approval and includes in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

(d) *Duty to notify institutions of trust accounts.*

(1) Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting. For each trust account, an attorney or law firm shall maintain a copy of each notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.

(i) For IOLTA accounts as required by Professional Conduct Rule 1.15(f), notice by the attorney to the financial institution that the account is an IOLTA account shall constitute notice to the financial institution that the account is subject to overdraft reporting to the Disciplinary Commission.

(ii) For non-IOLTA trust accounts as permitted by Professional Conduct Rule 1.15(f)(1), every attorney shall notify each financial institution that the account is subject to overdraft reporting to the Disciplinary Commission by submitting a notice in the form attached to this Section as Exhibit B.

(2) In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each trust account. However, every member of the firm is responsible for ensuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.

(e) *Maintaining a trust account in a foreign jurisdiction.* Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any application for exemption shall be in writing and shall include:

(1) A copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;

(2) A copy of the agreement between the financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;

(3) A list of the names of all financial institutions, account names, and account numbers of all trust accounts maintained by the attorney in the foreign jurisdiction; and

(4) A certification under oath by the attorney that each foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.

Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.

(f) *Overdraft reports.*

(1) Overdraft notifications made by financial institutions to the Disciplinary Commission shall be in the following format:

(i) In the case of a dishonored instrument or dishonored disbursement, the report shall be identical to the overdraft notice customarily forwarded to the customers of the financial institution, and it should include a copy of the dishonored instrument, if a copy is normally provided to customers of the financial institution.

(ii) In the case of disbursements or instruments that are presented against insufficient funds but which are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created.

(2) Reports under subsection (f)(1) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(3) Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing in this Rule shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this Rule.

*(g) Investigation of overdrafts.*

(1) Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Director or designee shall send a letter to the respondent attorney seeking a comprehensive explanation of the overdraft, to which the respondent shall respond within thirty (30) days of receipt. This letter is a demand for information, noncompliance of which is a violation of Professional Conduct Rule 8.1(b).

(2) If the respondent fails to timely and adequately respond to the notice of overdraft and demand for explanation, the Executive Director or designee may file a non-cooperation case against the respondent pursuant to Section 10.1.

(3) Upon considering the respondent's response to the notice of overdraft, the Executive Director or designee may dismiss the overdraft matter as not presenting a substantial issue of misconduct, or the Executive Director or designee may continue to investigate the matter and then present the matter for consideration to the Disciplinary Commission pursuant to Section 11. Thereafter, the procedures for disciplinary actions shall apply.

(4) In investigating an overdraft, the Disciplinary Commission and the Executive Director or designee shall have all investigatory powers otherwise available when investigating grievances, including but not limited to the power to issue subpoenas, take testimony, require accountings, send demand letters, and perform trust account audits. Likewise, a respondent attorney who is the subject of an overdraft investigation shall fully and promptly cooperate with the Disciplinary Commission's investigation.

(5) Nothing in this Section shall limit the Disciplinary Commission's ability to investigate overdrafts or trust account mismanagement pursuant to its authority under Section 10.

Exhibit A to Section 30

**TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT**

TO: INDIANA SUPREME COURT DISCIPLINARY COMMISSION

The undersigned, being a duly authorized officer of \_\_\_\_\_, a financial institution doing business in the State of Indiana, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to be approved to receive attorney trust accounts in the State of Indiana. In consideration of the Indiana Supreme Court Disciplinary Commission's approval of the named financial institution, the institution agrees to comply with the reporting requirements for such institution as set forth in Indiana Admission and Discipline Rule 23, § 30, as now in effect and as hereafter amended from time to time.

Specifically, the named financial institution agrees:

- (1) To report to the Indiana Supreme Court Disciplinary Commission in the event it has actual notice that any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored. (This obligation applies to both IOLTA trust accounts under Indiana Professional Conduct Rule 1.15(f)(1) and non-IOLTA attorney trust accounts under Indiana Professional Conduct Rule 1.15(f)(1).)
- (2) That all such reports shall be in substantially the following format:
  - (a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and should include a copy of the dishonored instrument, if such a copy is normally provided to the depositor;
  - (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the depositor attorney or law firm, the account number, the date of presentation for payment, the date paid, and the amount of the overdraft created thereby.
- (3) That all such reports shall be made within the following time periods:
  - (a) in the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;
  - (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.
- (4) To provide the Disciplinary Commission with the name and contact information of the financial institution's primary point of contact for matters pertaining to its responsibilities under this agreement, and to promptly update that contact information in the event it changes.

This agreement shall apply to all branches of the named financial institution and shall not be canceled except upon thirty (30) days notice in writing to the Executive Director, Indiana Supreme Court Disciplinary Commission.

Name, Address, and Telephone Number of Contact Person for Financial Institution:

---

---

---

DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Official

CORPORATE

\_\_\_\_\_  
Printed or Typed Name of Authorized Official

SEAL

\_\_\_\_\_  
Title or Position of Authorized Official

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared the above-named individual, known to me to be the person executing the foregoing instrument, and acknowledged and executed said instrument as his/her free and voluntary act and deed.

\_\_\_\_\_  
Notary Public (signature)

\_\_\_\_\_  
Notary Public (printed or typed)

My Commission Expires: \_\_\_\_\_ County of Residence: \_\_\_\_\_

**ACCEPTANCE**

The named financial institution is hereby approved by the Indiana Supreme Court Disciplinary Commission as a depository for trust accounts in the State of Indiana until such time as this agreement is canceled upon thirty (30) days' written notice to the Commission by the institution or is revoked by action of the Disciplinary Commission.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Executive Director

Indiana Supreme Court Disciplinary Commission

**Attorney Trust Account Notification**

\_\_\_\_\_  
Name of Attorney Attorney Number

\_\_\_\_\_  
Name of Law Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Name of Financial Institution

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Name of Account

\_\_\_\_\_  New  Existing  
Account Number

Type of Account:

\_\_\_\_\_Trust      \_\_\_\_\_Guardian

\_\_\_\_\_Escrow      \_\_\_\_\_Estate

\_\_\_\_\_Other \_\_\_\_\_

(Please Describe)

The undersigned hereby certifies that he/she is an attorney licensed to practice law in the State of Indiana and that the information indicated above provided to his/her financial institution is accurate. This information is provided to permit the financial institution to report all overdraft or insufficient funds occurrences to the Indiana Supreme Court Disciplinary Commission pursuant to Indiana Admission and Discipline Rule 23, Section 30.

Date: \_\_\_\_\_

\_\_\_\_\_

Signature

These amendments shall take effect on January 1, 2017.

Done at Indianapolis, Indiana, on 11/3/2016 .



\_\_\_\_\_  
Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.