

# Indiana Rules of Court Rules for Admission to the Bar and the Discipline of Attorneys

*Including Amendments Received Through March 13, 2017*

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### **Rule 1. The Bar of Indiana**

The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court.

### **Rule 2. Registration and Fees**

- (a) **Name and Address.** All attorneys in active or inactive good standing, duly admitted to the practice of law in the State of Indiana shall file with the Clerk of the Supreme Court, 216 State House, Indianapolis, Indiana 46204, their correct name, office and residence address, office telephone number, electronic mail address, and county of residence. Said attorneys shall notify the Clerk of the Supreme Court of any change of address

(including electronic mail address), change of telephone number, or change of name within thirty (30) days of such change. A notice of a change of name shall be accompanied by a copy of the court record or an affidavit that states the name change. The names and addresses so filed shall be effective for all notices involving licenses as attorneys and/or disciplinary matters, and a failure to file same shall be a waiver of notice involving licenses as attorneys and/or disciplinary matters. The Clerk shall annually send a certified list of attorneys, together with their addresses on file to the Indiana State Bar Association.

- (b) Annual Registration Fee--Active Attorneys.** Except as provided in sections (c) or (d), each attorney who is a member of the bar of this Court on August 1 of each year shall, so long as the attorney is a member of the Bar of this Court, pay a registration fee of one hundred eighty dollars (\$180.00) on or before October 1 of such year. A delinquent fee in the amount of one hundred thirty dollars (\$130.00) shall be added to the registration fee for fees paid after October 1 and on or before October 15 of each year; a delinquent fee in the amount of one hundred eighty dollars (\$180.00) shall be added to the registration fee for fees paid after October 15 and on or before December 31 of each year; and a delinquent fee in the amount of three hundred thirty dollars (\$330.00) shall be added to the registration fee for fees paid after December 31 of each year. An attorney who has paid the registration fee under this subsection and any applicable delinquent fees and who is otherwise eligible to practice law in this state shall be considered to be in active good standing.

Any attorney admitted to practice law in this State on a date subsequent to August 1 of each year shall, within ten (10) days of the date of his or her admission to the Bar of the Court, or by October 1 of said year, whichever date is later, pay a registration fee of one hundred eighty dollars (\$180.00).

- (c) Annual Registration Fee--Inactive Attorneys.** One-half (1/2) of the registration fee referred to in section (b) shall be required of an attorney who files with the Clerk, on or before October 1 of each year, an affidavit of inactivity, stating that he or she is currently in active good standing or wishes to retain inactive standing, and that he or she neither holds judicial office nor is engaged in the practice of law in this state. A delinquent fee in the amount of fifty dollars (\$50.00) shall be added to the registration fee for fees paid after October 1 and on or before October 15 of each year; and a delinquent fee in the amount of one hundred dollars (\$100.00) shall be added to the registration fee for fees paid after October 15 of each year. An attorney who has paid the registration fee under this section and any applicable delinquent fees shall be considered to be in inactive good standing. An inactive attorney shall promptly notify the Clerk of a desire to return to active status, and pay the applicable registration fee for the current year, prior to any act of practicing law.
- (d) Annual Registration Fee--Retired Attorneys.** No registration fee shall be required of an attorney who is sixty-five (65) years old or older and files with the Clerk, by October 1 of any year, an affidavit of retirement, stating that he or she is currently in active or inactive good standing, neither holds judicial office nor is engaged in the practice of law in this state, and does not plan to return to the practice of law. An affidavit of retirement, once filed, shall be effective for each succeeding year or until the attorney is reinstated pursuant to section (e).
- (e) Reinstatement of Retired Attorneys.** In the event there is no basis for the suspension of the attorney's license to practice law, a retired attorney's privilege to practice law shall be reinstated upon submitting to the Clerk a written application for reinstatement and payment of:
- (1) the unpaid registration fee for the year of reinstatement;
  - (2) registration fees, including delinquent fees, in the amount referred to in section (b) for each year of retirement; and
  - (3) an administrative reinstatement fee of two hundred dollars (\$200.00).

The Clerk shall deposit the administrative reinstatement fee referred to in subsection (e)(3) into the "Clerk of the Courts-Annual Fees" account, described in section (m).

- (f) IOLTA Certification.** On or before October 1 of each year, every attorney admitted to practice law in this state shall certify to the Clerk of this Court that all client funds that are nominal in amount or to be held for a short period of time by the attorney so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account (as that term is defined in Indiana Rules of Professional Conduct, Rule 1.15(f)) of the attorney or law firm or that the attorney is exempt under the provisions of Prof. Cond. R. 1.15(g)(2). Any attorney who fails to make an IOLTA certification on or before October 1 of each year shall be assessed a delinquent fee according to the schedule set forth in section (b) if the attorney is active or section (c) if the attorney is inactive.
- (g) Annual Registration Notice.** On or before August 1 of each year, the Clerk of this Court shall mail a notice to or notify via electronic mail each attorney then admitted to the bar of this Court who is in active or inactive good standing that: (i) a registration fee must be paid on or before October 1; and (ii) the certification required by section (f) of this rule and by Ind. Prof. Cond. R. 1.15(g) must be filed with the Clerk on or before October 1. The Clerk shall also send such notice to the Clerk for each circuit and superior court in this State for posting in a prominent place in the courthouse, the Indiana State Bar Association, and such print and other media

publishers of legal information as the Clerk reasonably determines appropriate. Provided, however, that the failure of the Clerk to send such notice will not mitigate the duty to pay the required fee and file the required certification.

**(h) Failure to Pay Registration Fee; Reinstatement.** Any attorney who fails to pay a registration fee required under section (b) or (c) or fails to file the certification required by section (f) of this rule and by Ind.Prof. Cond. R. 1.15(g) shall be subject to suspension from the practice of law and sanctions for contempt of this Court in the event he or she thereafter engages in the practice of law in this State. In the event there is no basis for the continued suspension of the attorney's license to practice law, such an attorney's privilege to practice law shall be reinstated upon submitting to the Clerk a written application for reinstatement and payment of:

- (1) the applicable unpaid registration fee for the year of suspension;
- (2) any delinquent fees for the year of suspension due pursuant to section (b) or (c);
- (3) the applicable unpaid registration fee for the year of reinstatement, if different from the year of suspension;
- (4) a registration fee, including delinquent fees, in the amount referred to in section (c) for all intervening years of suspension;
- (5) an administrative reinstatement fee of two hundred dollars (\$200.00); and
- (6) the certification required by section (f) of this rule.

The Clerk shall deposit the administrative reinstatement fee referred to in subsection (h)(5) in to the "Clerk of the Courts-Annual Fees" account, described in section (m).

**(i) Certification of Good Standing.** The Clerk of this Court shall issue a certificate of active good standing or inactive good standing approved by this Court to any attorney upon the receipt of the annual registration fee and any applicable delinquent fees referred to in sections (b) and (c), respectively. The certificate of active good standing shall include a statement to the effect that the lawyer has filed the certification required by section (f) of this rule.

**(j) Annual Continuing Education Fee -- Non-attorney Judges.**

- (1) On or before August 1, of each year, the Clerk shall mail to each non-attorney judge a notice that an education fee of forty-five dollars (\$45.00) must be paid on or before the first day of October. Failure to pay the education fee on or before October 1, will result in the imposition of a delinquency fee of forty-five dollars (\$45.00).
- (2) Any non-attorney judge who fails to pay the education fee shall be automatically suspended from judicial office. A non-attorney judge may resume office upon written application, payment of unpaid education fees and payment of the delinquency fee set out in subsection (1).

**(k) Effective Dates.**

- (1) The requirement in section (c) that inactive attorneys pay an annual registration fee shall apply to all inactive attorneys and shall be effective for the annual fee due on or before October 1, 2002. Notwithstanding any other provision in this rule, any inactive attorney who filed an affidavit of inactivity on or before October 1, 2001 and who, after suspension for nonpayment of the annual registration fee referred to in section (c), thereafter seeks reinstatement to active or inactive attorney status pursuant to section (h), shall not be required to pay unpaid registration or delinquent fees pursuant to (h)(4) for any year prior to October 1, 2002.
- (2) Notwithstanding any other provision in this rule, any attorney who, after suspension for nonpayment of the annual registration fee referred to in section (b), thereafter seeks reinstatement to active or inactive attorney status pursuant to section (h), shall not be required to pay unpaid registration or delinquent fees pursuant to section (h)(4) for any year prior to October 1, 2002.
- (3) Notwithstanding any other provision in this rule, any retired attorney who seeks reinstatement to active attorney status pursuant to section (e) shall not be required to pay unpaid registration or delinquent fees pursuant to (e)(2) for any year prior to October 1, 2002.

**(l) Affidavit of Permanent Withdrawal.** An attorney in good standing, who is current in payment of all applicable registration fees and other financial obligations imposed by these rules, and who is not the subject of an investigation into, or a pending proceeding involving, allegations of misconduct, who desires to relinquish permanently his or her license to practice law in the State of Indiana may do so by tendering an Affidavit of Permanent Withdrawal from the practice of law in this State to the Executive Secretary of the Indiana Supreme Court Disciplinary Commission. The Executive Secretary shall promptly verify the eligibility of the attorney to resign under this section, and if eligible, forward a certification of eligibility, together with the Affidavit of Permanent Withdrawal to the Clerk of the Indiana Supreme Court, and the Clerk shall show on the roll of

attorneys that the attorney's Indiana law license has been relinquished permanently and that the lawyer is no longer considered an attorney licensed to practice law in the State of Indiana. An attorney who permanently withdraws under this section shall not be eligible for reinstatement under section (e) or (h), but may apply for admission under Admission and Discipline Rules 3 through 21. In the event the attorney is not eligible to permanently withdraw under this section, the Executive Secretary shall promptly notify the attorney of all reasons for ineligibility.

**(m) Deposit and Use of Funds.**

- (1) *Deposit of Funds.* All funds collected by the Clerk under this rule shall be deposited in an account to be maintained by the Clerk and designated "Clerk of the Courts-Annual Fees." The Clerk shall thereafter issue those funds as directed by the Indiana Supreme Court.
- (2) *Use of Funds.* The Indiana Supreme Court shall periodically apportion the registration fees collected pursuant to this rule for the operation of the Indiana Supreme Court Disciplinary Commission, the Indiana Commission for Continuing Legal Education, and the Judges and Lawyers Assistance Committee.

**Rule 2.1. Legal Interns**

**Section 1. Requirements.**

- (a) A law student may serve as a legal intern when the following requirements are met:
1. The law student is enrolled in a school accredited pursuant to Admission and Discipline Rule 13;
  2. The law student has satisfactorily completed one-half of the academic requisite for a first professional degree in law;
  3. The law student has received permission of the Dean of the law school to participate in a legal intern program determined to be beneficial to the law student's training pursuant to the guidelines jointly developed by the law schools of this State; and
  4. The law student has completed or is enrolled in a legal ethics or professional responsibility course as set forth in Admission and Discipline Rule 13.
- (b) A law school graduate may serve as a legal intern when the following requirements are met:
1. The law graduate has received a first professional degree in law from a school accredited pursuant to Admission and Discipline Rule 13;
  2. The law graduate is eligible to take the Bar examination under Admission and Discipline Rule 13; and
  3. The law graduate has received permission from an attorney who is a member of the Bar of this State to serve as a legal intern under that attorney's direct supervision.

**Section 2. Length of Intern Status.**

- (a) A law student may serve as a legal intern until graduation from law school or for a lesser period if so designated by the Dean of the law school.
- (b) A law school graduate may serve as a legal intern from the date of graduation until the graduate has taken and has been notified of the results of the first examination for which the graduate is eligible under Admission and Discipline Rule 13, or if successful on that examination, until the first opportunity thereafter for formal admission to the Bar of Indiana.

**Section 3. Certification.**

- (a) The Dean of a law school sponsoring a legal intern program shall advise the Indiana Supreme Court Board of Law Examiners of those students who qualify to be legal interns and the length of that internship.
- (b) An Attorney, who is a member of the Bar of this State and who wishes to sponsor and supervise a graduate as a legal intern, shall so advise the Indiana Supreme Court Board of Law Examiners; and also, the Dean of the law school from which the graduate received the first professional degree in law shall advise the Indiana Supreme Court Board of Law Examiners of the date of graduation and the date at which such graduate will be first eligible for examination under Admission and Discipline Rule 13.

**Section 4. Scope of Conduct.**

A legal intern may interview, advise, negotiate for, and represent parties in any judicial or administrative proceeding in this State, provided all activities undertaken are supervised and approved by an attorney who is a member of the Bar of this State. A legal intern shall inform each client of his or her intern status, and that the intern is not a licensed attorney. A legal intern shall not interview any person represented by an attorney without the express permission of such attorney. In

no event may a person (including private corporations) be charged for the services of a legal intern acting in a representative capacity. The personal presence of a supervising attorney is required in any proceeding in open court.

### **Rule 3. Admission of Attorneys**

#### **Section 1. Admission of Attorneys.**

The Supreme Court shall have exclusive jurisdiction to admit attorneys to practice in Indiana. Admission to practice law by the Court pursuant to Rule 21 shall entitle attorneys to practice in any of the courts of this state.

#### **Section 2. Temporary Admission on Petition.**

- (a) *Requirements for Temporary Admission on Petition.* Any court of the State of Indiana, in the exercise of discretion, may permit a member of the bar of another state or territory of the United States, or the District of Columbia, not admitted pursuant to Rule 21, to appear in a particular case or proceeding, only if the court before which the attorney wishes to appear or in the case of an administrative proceeding, the Supreme Court, determines that there is good cause for such appearance and that each of the following conditions is met:
- (1) A member of the bar of this state has appeared and agreed to act as co- counsel.
  - (2) The attorney is not a resident of the state of Indiana, regularly employed in the state of Indiana, or regularly engaged in business or professional activities in the state of Indiana.
  - (3) The attorney has made payment to the Clerk of the Supreme Court an annual registration fee in the amount set forth in Admission and Discipline Rule 2(b), accompanied by a copy of the Verified Petition for Temporary Admission that the attorney intends to file pursuant to subdivision (4) below. Upon receipt of the registration fee and petition, the Clerk of the Supreme Court will issue a temporary admission attorney number and payment receipt to the attorney seeking admission. If the attorney's verified petition for temporary admission is thereafter denied, the attorney shall provide a copy of the order denying temporary admission to the Clerk of the Supreme Court, and the Clerk shall issue a refund of the registration fee.
  - (4) The attorney files a verified petition, co-signed by co-counsel designated pursuant to subdivision (a)(1), setting forth:
    - (i) The attorney's residential address, office address, office telephone number, electronic mail address, and the name and address of the attorney's law firm or employer, if applicable;
    - (ii) All states or territories in which the attorney has ever been licensed to practice law, including the dates of admission to practice and any attorney registration numbers;
    - (iii) That the attorney is currently a member in good standing in all jurisdictions listed in (ii);
    - (iv) That the attorney has never been suspended, disbarred or resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction; or, if the attorney has been suspended, disbarred or resigned from the practice of law, the petition shall specify the jurisdiction, the charges, the address of the court and disciplinary authority which imposed the sanction, and the reasons why the court should grant temporary admission notwithstanding prior acts of misconduct;
    - (v) That no disciplinary proceeding is presently pending against the attorney in any jurisdiction; or, if any proceeding is pending, the petition shall specify the jurisdiction, the charges and the address of the disciplinary authority investigating the charges. An attorney admitted under this rule shall have a continuing obligation during the period of such admission promptly to advise the court of a disposition made of pending charges or the institution of new disciplinary proceedings;
    - (vi) A list of all cases and proceedings, including caption and case number, in which either the attorney, or any member of a firm with which the attorney is currently affiliated, has appeared in any court or administrative agency of this state during the last five (5) years by temporary admission.
    - (vii) Absent good cause, repeated appearances by any person or by members of a single law firm pursuant to this rule shall be cause for denial of the petition. A demonstration that good cause exists for the appearance shall include at least one of the following:
      - (a) the cause in which the attorney seeks admission involves a complex field of law in which the attorney has special expertise,
      - (b) there has been an attorney-client relationship with the client for an extended period of time,
      - (c) there is a lack of local counsel with adequate expertise in the field involved,
      - (d) the cause presents questions of law involving the law of the foreign jurisdiction in which the applicant is licensed, or

- (e) such other reason similar to those set forth in this subsection as would present good cause for the temporary admission.
  - (viii) A statement that the attorney has read and will be bound by the Rules of Professional Conduct adopted by the Supreme Court, and that the attorney consents to the jurisdiction of the State of Indiana, the Indiana Supreme Court, and the Indiana Supreme Court Disciplinary Commission to resolve any disciplinary matter that might arise as a result of the representation.
  - (ix) A statement that the attorney has paid the registration fee to the Clerk of the Supreme Court in compliance with subdivision (a)(3) of this rule, together with a copy of the payment receipt and temporary admission attorney number issued by the Clerk of the Supreme Court pursuant to subdivision (3).
- (b) *Notice of Temporary Admission.* All attorneys granted temporary admission under the provisions of subsection 2(a) shall file a Notice with the Clerk of the Supreme Court within thirty (30) days after a court grants permission to appear in the case or proceeding. A separate Notice of Temporary Admission must be filed with the Clerk of the Supreme Court for each case or proceeding in which a court grants permission to appear. Failure to file the notice within the time specified shall result in automatic exclusion from practice within this state. The notice shall include the following:
- (1) A current statement of good standing issued to the attorney by the highest court in each jurisdiction in which the attorney is admitted to practice law; and
  - (2) A copy of the verified petition requesting permission to appear along with the order granting permission.
- (c) *Renewal of Registration for Temporary Admission.* If an attorney continues to appear on the basis of a temporary admission in any case or proceeding pending as of the first day of a new calendar year, the attorney shall pay a renewal fee equal to the annual registration fee set out in Admission and Discipline Rule 2(b). This renewal fee shall be due within thirty (30) days of the start of that calendar year and shall be tendered to the Clerk of the Supreme Court, accompanied by a copy of the Notice of Temporary Admission for each continuing case or proceeding in which a court has granted permission to appear. Failure to pay the required renewal fee within the time specified shall result in automatic exclusion from practice within this state. The Clerk of the Indiana Supreme Court shall notify the trial court or administrative agency of the attorney's exclusion. If the proceeding has concluded or if the attorney has withdrawn his or her appearance, the attorney must so notify the Clerk of the Supreme Court by the deadline for renewal of registration.
- (d) *Responsibilities of Attorneys.* Members of the bar of this state serving as co-counsel under this rule shall sign all briefs, papers and pleadings in the cause and shall be jointly responsible therefore. The signature of co-counsel constitutes a certificate that, to the best of co-counsel's knowledge, information and belief, there is good ground to support the signed document and that it is not interposed for delay or any other improper reason. Unless ordered by the trial court, local counsel need not be personally present at proceeding before the court.
- (e) *Failure to Register, Renew, or Otherwise Perform as Required.* Any foreign attorney who fails to register or pay the registration fee as required under subsection (a), fails to file a Notice of Temporary Admission under subsection (b), or fails to pay a renewal registration fee required under subsection (c) shall be subject to discipline in this state. Members of the bar of this state serving as co-counsel under this rule shall be subject to discipline if the attorney admitted under this rule fails to pay the required fees or otherwise fails to satisfy the requirements of this rule.
- (f) *Scope and Effect of Automatic Exclusion from Practice Within the State.*
- (1) When an attorney is automatically excluded from practice within the state under Section 2(b) or (c), any further action taken by that attorney in any case or proceeding in the state shall constitute the unauthorized practice of law.
  - (2) An attorney may seek relief from the automatic exclusion from practice within the state by filing a "Petition for Relief from Automatic Exclusion" with the Supreme Court. The petition shall be captioned: "In re Temporary Admission of [Attorney's name]." The petition shall describe the circumstances causing the exclusion, shall list all pending cases or proceedings, including court or administrative agency and case number, in which the attorney had been granted temporary admission prior to the automatic exclusion, and shall be accompanied by a "Notice of Temporary Admission" if the exclusion is under Section 2(b) or a renewal admission fee, together with a delinquent fee in the amount of one hundred eighty dollars (\$180.00), if the exclusion is under Section 2(c).
  - (3) If the Supreme Court grants the petition, the exclusion from practice shall be lifted and the Clerk of the Supreme Court shall notify all courts and administrative agencies in which the attorney had been granted temporary admission to practice in cases or proceedings pending at the time of the automatic exclusion. Unless the Supreme Court directs otherwise, all actions taken by the attorney during the period of automatic

exclusion from practice shall be deemed valid to the extent the actions would have been valid if the attorney had not been subject to automatic exclusion. However, the attorney remains subject to a charge of the unauthorized practice of law for actions taken during the automatic exclusion.

The amendments apply only to requests for Temporary Admission on Petition filed on or after January 1, 2007.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subpart (b) of the Rule in one case or proceeding in any given calendar year, the attorney need not pay another fee for any other case in which the attorney seeks Temporary Admission on Petition during that same calendar year.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subparts (a) and (b) of the Rule in a particular calendar year, and a new calendar year begins and the attorney is still appearing in any case or proceeding pursuant to a Temporary Admission on Petition, the attorney must file a new notice and pay a fee within 30 days of the start of the new calendar year.

If more than one (1) attorney from one firm is appearing pursuant to a Temporary Admission on Petition in a particular case or proceeding on behalf of the same client, each attorney appearing nevertheless has an individual obligation to comply with the Rule as amended.

#### **Rule 4. Roll of Attorneys**

A record shall hereafter be made and entered on the order book of this court of the admission, enrollment, resignation, suspension, disbarment, reinstatement, and recertification of any and all members of the bar of this court. In addition, the clerk of this court shall keep, and from time to time revise, a permanent alphabetical card index roll of the members of the bar of this court who have been enrolled as such, showing the name, address, and date of admission of each living member.

#### **Rule 5. Foreign Legal Consultants**

**(1) General Regulation as to Licensing.** In its discretion, the Supreme Court may license to practice in Indiana as a foreign legal consultant, without examination, an applicant who:

- (a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (b) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country;
- (c) possesses the good moral character and general fitness requisite for a member of the bar of Indiana; and
- (d) intends to practice as a foreign legal consultant in Indiana and to maintain an office in this State for that purpose.

**(2) Proof Required.** An applicant under this Rule shall file with the State Board of Law Examiners:

- (a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent;
- (b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country and a letter of recommendation from at least one attorney who is licensed to practice law in the State of Indiana other than as a foreign legal consultant;
- (c) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English;
- (d) the National Conference of Bar Examiners questionnaire and affidavit along with the payment of the requisite fee and such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule as the State Board of Law Examiners may require;
- (e) a copy or summary of the law and customs of the foreign country that describes the opportunity afforded to members of the Bar of Indiana to establish offices for the giving of legal advice to clients in such foreign country, together with an authenticated English translation if it is not in English; and
- (f) the requisite documentation evidencing compliance with the immigration laws of the United States.

**(3) Reciprocal Treatment of Members of the Bar of Indiana.** In considering whether to license an applicant to practice as a foreign legal consultant, the Supreme Court may in its discretion take into account whether a member of

the bar of Indiana would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the Court may do so *sua sponte*.

**(4) Scope of Practice.** A person licensed to practice as a foreign legal consultant under this Rule shall be limited to rendering professional legal advice on the law of the foreign country where the foreign legal consultant is admitted to practice. A foreign legal consultant shall not:

- (a) appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State other than upon admission *pro hac vice*;
- (b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
- (c) prepare:
  - (i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof; or
  - (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
- (d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
- (e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;
- (f) be, or in any way hold himself or herself out as, a member of the bar of Indiana; or
- (g) use any title other than "foreign legal consultant" and affirmatively state in conjunction therewith the name of the foreign country in which he or she is admitted to practice (although he or she may additionally identify the name of the foreign or domestic firm with which he or she is associated).

**(5) Rights and Obligations.** Subject to the limitations set forth in Section 4 of this Rule, a person licensed as a legal consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

- (a) the rights and obligations set forth in the Indiana Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of Indiana under the Indiana Rules of Court; and
- (b) the rights and obligations of a member of the bar of Indiana with respect to:
  - (i) affiliation in the same law firm with one or more members of the bar of Indiana with respect to:
    - (A) employing one or more members of the bar of Indiana;
    - (B) being employed by one or more members of the bar of Indiana or by any partnership or professional corporation which includes members of the bar of this State or which maintains an office in this State;
    - (C) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of Indiana or which maintains an office in this State; and
  - (ii) attorney-client privilege, work product privilege and similar professional privileges.

**(6) Disciplinary Provisions.** A person licensed to practice as a legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of Indiana and to this end:

- (a) every person licensed to practice as a foreign legal consultant under these Rules:
  - (i) shall be subject to control by the Supreme Court and to censure, suspension, removal or revocation of his or her license to practice by the Supreme Court and shall otherwise be governed by the Admission and Discipline Rules; and
  - (ii) shall execute and file with the Supreme Court, in such form and manner as such court may prescribe:
    - (A) his or her commitment to observe the Rules of Professional Conduct and the Indiana Rules of Court to the extent applicable to the legal services authorized under Section 4 of this Rule;
    - (B) a written undertaking to notify the court of any change in such person's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and



- (C) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designation the clerk of such court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of Indiana, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this State as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.
- (b) service of process on such clerk, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of ten dollars (\$10). Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such foreign legal consultant at the address specified by him or her as aforesaid.
- (7) Application and Renewal Fees.** An applicant for a license as a foreign legal consultant under this Rule shall pay an application fee which shall be equal to the fee required to be paid by a person applying for admission as a member of the bar of Indiana under Ind. Admission and Discipline Rule 6. A person licensed as a foreign legal consultant shall pay the annual registration fee required by Admis. Disc. R. 23(21).
- (8) Revocation of License.** In the event that a person licensed as a legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or 1(c) of this rule, the license granted to such person hereunder is revoked.
- (9) Admission to Bar.** In the event that a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of Indiana under the provisions of the Rules governing such admissions, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of Indiana.
- (10) Application for Waiver of Provisions.** The Supreme Court, upon application, may in its discretion vary the application of or waive any provision of this Rule where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

## **Rule 6. Admission on Foreign License**

### **Section 1. Provisional License**

A person who has been admitted to practice law in the highest court of law in any other state (herein defined as state or territory of the United States or the District of Columbia), may be granted a provisional license to practice law in Indiana upon a finding by the State Board of Law Examiners that said person has met each of the following conditions:

- (a) The applicant has actively engaged in the practice of law for a period of at least five (5) of the seven (7) years immediately preceding the date of application. "Actively engaged in the practice of law" shall mean:
- (i) performing legal services for the general public as a lawyer for at least 1,000 hours per year; or
  - (ii) employment by a state or local governmental or business entity as a lawyer performing duties for which admission to the practice of law is a prerequisite for at least 1,000 hours per year; or
  - (iii) performing the duties of a teacher of law on a full-time basis in an ABA accredited law school; or
  - (iv) serving as a judge of a court of record on a full-time basis; or
  - (v) serving on a full-time salaried basis as an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; or
  - (vi) a combination of the above.
- (b) The practice of law must have been in the state where the applicant is licensed and during the period of licensure unless the practice falls under (iii) or (v) above. Practice under a business counsel license admission as defined in Section 2 may apply toward years of practice for a maximum of five (5) years so long as the applicant meets all of the requirements of this Section 1 and the application for provisional license admission is made within seven (7) years of the grant of the initial business counsel license.
- (c) The applicant is a member in good standing of the bar(s) of admission.
- (d) The admission of the applicant is in the public interest.
- (e) The applicant meets the character and fitness requirements of Indiana.

- (f) The applicant has paid or tendered the required fee.
- (g) The applicant has not failed the Indiana Bar Examination within five (5) years of the date of application.
- (h) The applicant has graduated from an ABA accredited law school.
- (i) The applicant has filed an affidavit of the applicant's intent to engage in the practice of law as defined in Section 1(a) predominantly in Indiana. "Predominantly" means that the applicant's practice in Indiana must exceed, or be equal to, his or her practice in all other jurisdictions combined.

### **Section 1.1. Military Spouses**

- (a) The State Board of Law Examiners may, in its discretion, waive the minimum practice requirements in Section 1 above for an applicant who has been admitted to practice law in the highest court of law in any other state and whose spouse is a member of the armed forces of the United States subject to military transfer to Indiana for active duty military service upon a finding that said person has met the requirements specified in Sections 1 (c) through (i), above and the following conditions:
  - (i) The applicant has achieved a passing score on the Multistate Professional Responsibility Examination as established under Admission and Discipline Rule 17.
  - (ii) The applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction.
  - (iii) The applicant is the husband or wife of an individual who is a member of the armed forces of the United States or the Coast Guard when it is not operating as a service in the Navy, and that the member of the armed forces is on active military duty orders and stationed in Indiana.
  - (iv) The applicant is physically residing in Indiana.
- (b) In determining whether to waive the minimum practice requirements in Section 1(a) above for an applicant, the Board shall consider the following:
  - (i) The length of time the applicant has been admitted in other jurisdictions.
  - (ii) The applicant's practice history and experience, including type of practice, in other jurisdictions
  - (iii) The type of practice the applicant intends to undertake in Indiana and the applicant's past experience in that type of practice.
  - (iv) The level and amount of support, supervision or mentoring the applicant will have in his or her practice;
  - (v) The applicant's showing of familiarity with Indiana law, including CLE programs the applicant may have taken or other showing the applicant may make regarding study of familiarity with Indiana procedural and evidence rules and substantive Indiana law relating to the practice the applicant intends to undertake.
- (c) Applicants who have not achieved a passing score on the Multistate Professional Responsibility Examination at the time of application, but who meet all other conditions may be provisionally admitted for six (6) months in order to achieve a passing score on the examination.
- (d) When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Indiana, the provisional admission may be renewed until that unaccompanied tour or remote assignment ends, provided that the attorney complies with all the other requirements for renewal.
- (e) Notwithstanding any other provision found in this Rule, the provisional license of an attorney, who is the spouse of an active duty service member, shall terminate and the attorney, consistent with the Rules of Professional Conduct, shall immediately begin to take all steps necessary to relinquish his or her provisional license in accordance Section 5 of this Rule upon the occurrence of any of the following:
  - (i) The spouse's discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse's no longer being on military orders stationed in Indiana.
  - (ii) The attorney no longer physically residing within Indiana.
  - (iii) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security).
  - (iv) The attorney being admitted to practice law in Indiana pursuant to an admissions rule other than that of Provisional Admission.

### **Section 2. Business Counsel License**

A person who establishes an office or other systematic and continuous presence in Indiana in order to accept or continue employment by a person or entity engaged in business in Indiana other than the practice of law may be granted a business counsel license to practice law in Indiana without examination so long as granting the license is in the public interest and such person:

- (a) is admitted:
  - (i) to practice law in the highest court of law in any other state, or
  - (ii) to practice law in a foreign country and fulfills the requirements set forth in 5(1)(a);
- (b) complies with Section 1(a)(ii) and is or will be devoted solely to the business of such employer and who receives or will receive his or her entire compensation from such employer for applicants legal service, and remains in such employment;
- (c) is a member in good standing of the bar(s) of admission;
- (d) meets the character and fitness requirement;
- (e) pays or tenders the required fee; and
- (f) has not failed the Indiana Bar Examination within five (5) years of the date of the application.

A person granted a business counsel license under this Rule based upon admission to the practice of law only in a foreign country shall be subject to the limitations on scope of practice set forth in paragraphs (a)-(d) of Rule 5(4). Upon the transfer of such employment outside the State of Indiana, the right to practice law in Indiana shall terminate.

Upon the termination of such employment, the right to practice law in Indiana pursuant to a business counsel license shall terminate unless 1) such business counsel license admittee has secured employment from another person or entity within three (3) months of their termination, which employment meets the criteria of Section 2; or 2) such business counsel license admittee shall have been admitted to practice law in this state pursuant to some other rule.

### **Section 3. Fees**

The applicant shall submit his application accompanied by a fee of eight hundred seventy-five dollars (\$875.00) in accordance with procedures established by the Board. The Executive Director of the Board may refer said application to the National Conference of Bar Examiners for investigation and report. The Board is authorized to pay all expenses incident to the investigation of the qualifications of the applicant. However, in the event said application is considered and denied by the Board prior to referral to the National Conference, the Board is authorized to refund to the applicant one half (1/2) of the application fee. No part of the application fee shall otherwise be refunded.

### **Section 4. Renewal of Provisional License and Business License**

- (a) **Renewal of Provisional License.** A provisional license admission on a foreign license may continue in force for one year, and may be renewed for a like period upon the submission of such verified individualized information as will demonstrate to the satisfaction of the Board that the applicant has during the past year been both (a) engaged in the practice of law as defined in Section 1(a), and (b) predominantly in Indiana. At the time of the first renewal request, the applicant must also submit verified information to demonstrate compliance with the educational requirements of Section 5. Upon the fifth consecutive renewal of the provisional license granted to the applicant, the admission to practice shall be permanent.
- (b) **Renewal of business Counsel License.** A business counsel license may continue in force for one year, and may be renewed for a like period upon the submission of such verified individualized information as will demonstrate to the satisfaction of the Board that the applicant has during the past year been employed under the terms of the business counsel license and will continue to be so employed. At the time of the first renewal request, the applicant must also submit verified information to demonstrate compliance with the educational requirements of Section 5.
- (c) **Annual Renewal Fee - Provisional License and Business Counsel License.** Each attorney who is licensed pursuant to this Rule shall pay a renewal fee of \$50.00 on or before November 1 of each year; a delinquent fee in the amount of \$25.00 shall be added to the renewal fee for fees paid after November 1 and on or before November 15 of each year; a delinquent fee in the amount of \$50.00 shall be added to the renewal fee for fees paid after November 15 and on or before December 31 of each year; a delinquent fee in the amount of \$150.00 shall be added to the renewal fee for fees paid after December 31 of each year. Additionally, a \$100.00 surcharge will be added to the late fee for each consecutive year for which the attorney fails to timely file the renewal form. This renewal fee is in addition to any annual registration and fees paid under Admission and Discipline Rule 2.
- (d) **Failure to Pay Renewal Fee or Comply with Educational Requirements of Section 5; Revocation of License.** Any attorney who fails to pay the renewal fee required under Section 4(c) or fails to file the affidavit required under Section 4(f) or fails to comply with the educational requirements of Section 5 shall be subject to

revocation of his or her license to practice law and sanctions for contempt of this Court in the event he or she thereafter engages in the practice of law in this State.

- (e) **Annual Renewal Notice.** On or before September 1 of each year, the Executive Director of the State Board of Law Examiners shall mail a notice or notify via electronic mail to each attorney admitted to practice pursuant to this Rule that (i) a renewal fee must be paid on or before November 1; and (ii) the attorney must (a) affirm compliance with eligibility requirements to maintain the license or (b) submit the signed relinquish affidavit to the State Board of Law Examiners on or before November 1. Notice sent pursuant to this section shall be sent to the name and address maintained by the Clerk of the Supreme Court pursuant to Admission and Discipline Rule 2.
- (f) **Relinquishing of License.** Any attorney who is licensed pursuant to this Rule who is in good standing, who is current in payment of all applicable registration fees and other financial obligations imposed by these rules, who is not the subject of an investigation into or a pending proceeding involving allegations of misconduct, and who no longer is able to meet the requirements to maintain his or her license pursuant to this Rule may voluntarily relinquish his or her license to practice law in the State of Indiana by tendering the renewal form with the relinquish affidavit signed to the Executive Director of the State Board of Law Examiners. The Executive Director shall promptly verify the eligibility of the attorney to relinquish under this section and if eligible, forward a certification of eligibility to the Clerk of the Indiana Supreme Court, and the Clerk shall show on the Roll of Attorneys that the attorney's Indiana law license has been relinquished permanently and that the lawyer is no longer considered an attorney licensed to practice law in the State of Indiana. An attorney who relinquishes his license pursuant to this provision may apply for admission under Admission and Discipline Rules 3 through 21. In the event the attorney is not eligible to relinquish under this section, the Executive Director shall promptly notify the attorney of all reasons for ineligibility.

### **Section 5. Education Requirements for Provisional License and Business Counsel License**

- (a) In addition to any requirements found in Rule 29, within twelve (12) months of an applicant's initial provisional license or business counsel license admission, the applicant shall attend an annual Indiana law update seminar, which seminar shall provide a minimum of 12 hours of continuing legal education which has been approved by the Indiana Commission For Continuing Legal Education. The Board of Law Examiners shall publish a list of approved seminars that meet the requirements of this Rule.
- (b) Applicants admitted on provisional license or business counsel license are subject to, and shall comply with, the Indiana Rules For Admission to the Bar and the Discipline of Attorneys, the Rules of Professional Conduct, and all other requirements of statute and Supreme Court Rules.

### **Section 6. Application of Rules and Appearance Before Board**

The provisions of Rule 12, Sections 7, 8, and 9 apply to admission under this Rule. An applicant for admission on foreign license who is denied admission may request an appearance before the Board and a hearing thereafter.

### **Rule 6.1 Temporary License for Clinical Faculty, Legal Services, Public Defender, and Pro Bono Representation**

#### **Section 1. Temporary License**

A person who has been admitted to practice law in the highest court of law in any other state (as defined in Rule 6, section 1), and who is in good standing and has no pending disciplinary proceedings in each state of admission, may be granted a temporary license to practice law in Indiana if the person has applied for admission to the Indiana bar, either on examination or on foreign license, and meets one of the following qualifications:

- (a) The person is employed as a full-time faculty member at an ABA-accredited law school in Indiana and is supervising law students in a clinical program of that law school; or
- (b) The person is employed by a legal services organization or public defender office that provides legal assistance to persons of limited means, free of charge; or
- (c) The person offers pro bono services to persons of limited means, free of charge, through a legal services organization or public defender office.

#### **Section 2. Conditions and Limitations on Practice Under Temporary License**

- (a) All legal work performed under Section 1 of this rule must be performed under the supervision of an attorney admitted to practice in Indiana.
- (b) Except as otherwise authorized by these rules, a person authorized to practice under this rule shall not perform any legal services in Indiana except as provided in Section 1 and shall not request or accept compensation for services except such salary as may be provided by the legal services organization, public defender office, or law school.

- (c) The temporary license issued under this rule shall expire on the earliest of the following dates:
  - (1) the date the person is admitted to the Indiana bar;
  - (2) the date the person's application for the Indiana bar is denied for any reason, including but not limited to failing the bar examination or failing to satisfy character and fitness or other eligibility requirements;
  - (3) two years after the date the temporary license is issued.
- (d) At any time while a person's application for admission to the Indiana bar is pending, the Board of Law Examiners may petition the Court to revoke the temporary license if the Board determines that the person no longer meets the requirements for temporary licensure or temporary licensure no longer is in the public interest.
- (e) A person granted a temporary license under this Rule submits to the jurisdiction of the Supreme Court for disciplinary purposes and agrees to be bound by the Rules of Professional Conduct adopted by the Indiana Supreme Court.

### **Rule 7. Certificates**

An applicant admitted through examination shall be entitled to a certificate of his admission upon taking the oath of attorneys and being entered on the roll of attorneys by the clerk of this court.

### **Rule 8. [Vacated effective June 23, 1971]**

### **Rule 9. State Board of Law Examiners**

The State Board of Law Examiners of the State of Indiana shall consist of ten (10) members of the bar, two (2) from each Supreme Court judicial district, who shall be appointed by this Court to serve for terms of five (5) years and until their successors are appointed. The terms of two (2) members of such Board shall expire on December 1 of each year. The Board shall elect annually, a president, a vice-president, a secretary, and a treasurer. These officers shall take office on December 1. The Board shall maintain its office in a location determined by the Indiana Supreme Court. The Court shall appoint a person to serve as Executive Director to said Board.

### **Rule 10. Expenses and Compensation of Members of Board**

The board shall have authority to prescribe such forms and adopt such rules as are necessary, not inconsistent herewith. The board shall maintain in a separate fund the fees received under these rules which shall be expended only upon the approval of the Supreme Court. The members of the board of law examiners shall be allowed their necessary expenses and a reasonable compensation which shall be fixed from time to time by the court.

### **Rule 11. Forms**

Application for admission and all information in reference thereto shall be upon forms furnished by the secretary of the board.

### **Rule 12. Committee on Character and Fitness**

**Section 1.** The State Board of Law Examiners shall inquire into and determine the character, fitness and general qualifications to be admitted to practice law as a member of the bar of the Supreme Court of Indiana. It is a condition precedent to admission, whether upon examination or upon foreign license, that the Board report and certify to the Supreme Court that the applicant, after due inquiry, has been found to possess the necessary good moral character and fitness to perform the obligations and responsibilities of an attorney practicing law in the State of Indiana, and has satisfied all general qualifications for admission.

**Section 2.** The applicant must be at least 21 years of age and possess good moral character and fitness to practice law. The applicant shall have the burden of proving that he or she possesses the requisite good moral character and fitness to practice law. The applicant has the absolute duty to inform the Board with full candor of any facts which bear, even remotely, upon the question of the applicant's character and fitness and general qualifications to practice law, which obligation continues from the date of application to the time of admission, and includes the obligation to promptly and to fully inform the Board of any such facts occurring or discovered prior to admission. The term "good moral character" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, and of the laws of this State and of the United States, and a respect for the rights of other persons and things, and the judicial process. Anyone who has been convicted of a felony *prima facie* shall be deemed lacking the requisite of good moral character as defined in this section. The term "fitness" includes, but is not limited to, the physical and mental suitability of the applicant to practice law in Indiana. In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them, and whose record demonstrates the qualities of honesty, trustworthiness, diligence, or reliability. In the determination of good moral character and fitness, relevant considerations

may include, but are not limited to the following: unlawful conduct; academic misconduct; making of false statements, including omissions; misconduct in employment; acts involving dishonesty, fraud, deceit or misrepresentation; abuse of legal process; neglect of financial responsibilities; violation of an order of a court; evidence of mental or emotional instability; evidence of drug or alcohol dependency; denial of admission to the bar in another jurisdiction on character and fitness grounds; and disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

General qualifications are those requirements to be admitted to the practice of law established by these rules, other than those dealing with examinations and character and fitness.

**Section 3.** No person who advocates the overthrow of the government of the United States or this state by force, violence or other unconstitutional or illegal means, shall be certified to the Supreme Court of Indiana for admission to the bar of the court and a license to the practice of law.

**Section 4.** There shall be appointed by this Court a Committee on Character and Fitness in each Supreme Court judicial district, consisting of at least one attorney-at-law from each county in such district. The members of such committee shall continue in office until their successors are appointed. The State Board of Law Examiners shall provide a copy of each application for admission to the bar of this state to the local member of the Committee on Character and Fitness in the Indiana county which the applicant selects. A member of the committee, or some member designated by the State Board of Law Examiners, shall require the personal attendance of each applicant before the member, and inquire into the question as to whether or not the applicant is possessed of those requisites of good moral character and fitness, has adequate knowledge of the standards and ideals of the profession, and is familiar with and agrees to be bound by the Indiana Supreme Court Rules of Professional Conduct, all as necessary to qualify him to serve as an attorney. The member of the committee shall make such further inquiry into the matter as the member sees fit. At least thirty (30) days before the examination, the member of the committee conducting the inquiry, or promptly, if upon application for admission upon foreign license, the Board member conducting the inquiry shall make a finding: (1) That the applicant is familiar with and agrees to be bound by the Indiana Supreme Court Rules of Professional Conduct and that such Applicant is a person of good moral character and is fit to practice law in Indiana; or (2) That the member is unable to certify that the Applicant is a person of good moral character and is fit to practice law in Indiana, setting forth the reasons for this conclusion; or (3) That there is some question as to the Applicant's good moral character and/or fitness to practice law in Indiana and therefore recommends that the State Board of Law Examiners conduct a personal inquiry with the Applicant, stating the reasons for the member's conclusion. The committee member shall forward such findings and recommendations and all papers filed in connection therewith to the State Board of Law Examiners, which Board shall at its next meeting review said findings, make such further inquiry as it sees fit, and take such action as the matter requires.

**Section 5.** The Board may, upon its own motion, require an applicant to appear before the full Board, or a committee composed of members of the Board, for inquiry into the applicant's character and fitness. The Board may continue such appearance and require that the applicant submit additional information, evaluations or proofs before concluding such appearance.

**Section 6.** The Board of Law Examiners shall make a finding regarding each applicant:

- (a) That the applicant possesses the requisite good moral character and fitness and has satisfied the general qualifications to be eligible to be admitted to practice law in Indiana, subject to continued qualification; or
- (b) That the applicant has failed to sustain his or her burden of proof that the applicant possesses good moral character and fitness, and has satisfied all of the general qualifications to be admitted to the practice of law, in which case the Board may find that the applicant should not be permitted to reapply for admission to practice law or should be permitted to reapply only after a specific period of time; or
- (c) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the applicant has satisfied the Board as to his or her character and fitness, and has also satisfied the general qualifications, sufficiently to be eligible for conditional admission upon such terms and conditions as specified by the Board, said conditional admission to be administered by the Board over a period of time not to exceed five (5) years. The conditional admission shall be governed by Internal Rules and Policies adopted by the Board. The fact that the admission is conditional shall be confidential; or
- (d) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the applicant's admission be withheld for a specified period of time, not to exceed two (2) years, to allow the applicant to establish and prove rehabilitation. If at the end of the specified period of time the applicant shall have satisfied requirements to be eligible for admission to practice law, barring subsequent disclosure of matters adversely reflecting upon the applicant's character and fitness, the applicant will be eligible for admission upon passing the examination requirements. The Board may permit the applicant to take any examination administered during that period; or

- (e) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the behavior giving rise to the special concern has occurred of such recent date to prevent the Board from determining whether the applicant has sufficiently established his or her qualifications and the Board extends the time for further inquiry for a reasonable time, not to exceed one (1) year, and the Board may permit the applicant to take any examination administered during that period.

**Section 7.** If the Board finds that the applicant is not eligible for admission, or if the Board finds that an applicant is eligible for admission only upon condition under Section 6(c), whether after inquiry into the applicant's character and fitness to practice law, or determination that the applicant has failed to establish satisfaction of general qualifications, or in the case of an applicant for admission on foreign license, failure to prove that he or she has met the requirements of Rule 6, Sections 1 through 3, or if a conditional admittee has violated the terms of conditional admission, the applicant or conditional admittee may request a hearing under Section 9 of this Rule by filing a written request for such hearing with the Board within thirty (30) days of mailing of notice to the applicant of the finding of the Board.

**Section 8.** The necessity of a hearing as provided in Section 9 of this Rule may be dispensed with by the Board where the evidence is not in dispute and the subject matter of the hearing may be submitted to the Supreme Court upon written findings and specifications adopted by the Board.

**Section 9.** If the applicant or conditional admittee timely requests a hearing, or if the State Board of Law Examiners in connection with further inquiry shall deem it advisable to hold a hearing, the State Board of Law Examiners will schedule a hearing pursuant to the provisions of this Section.

- (a) In such event, the Board may appoint a hearing panel from the members of the Board, consisting of three members. Said panel shall select from among its members a presiding officer and shall schedule and conduct such hearing. All of the above rules and regulations with respect to the action of the Board shall apply at said hearing.
- (b) If, in connection with said further inquiry, the State Board of Law Examiners shall deem it advisable to hold a hearing, the applicant or conditional admittee shall be informed of the substance of the matter to be inquired into by written notice served on the applicant or conditional admittee by mailing such notice to the applicant or conditional admittee at such person's last known address as shown by the Board's record by certified mail, return receipt requested, at least ten (10) days before the date set for said hearing.
- (c) A record of the proceedings shall be taken by electronic recording equipment provided by the Board. If necessary this record shall be transcribed by the staff of the Executive Director.
- (d) The panel shall report its findings to the Board for consideration and decision.
- (e) The State Board of Law Examiners, at any such hearing, or otherwise, shall have the power to administer oaths, to issue subpoenas to require attendance at said hearing and for the production of documentary or other evidence. In case of the refusal of a witness to attend said hearing, to produce documentary or other evidence or to testify, the said Board shall certify such failure to the Court, and such witness shall be dealt with as for a contempt. Witnesses shall receive the fees and mileage provided by law for witnesses in civil cases. The Board may employ outside legal counsel to represent the interest of the State of Indiana at such hearing.
- (f) The applicant or conditional admittee shall have the right to attend such hearing in person, to examine and cross-examine witnesses and otherwise participate in said hearing and to require the attendance of witnesses and production of documentary and other evidence by subpoena. An applicant or conditional admittee may be represented by counsel at such person's expense.
- (g) Upon the conclusion of said hearing, the State Board of Law Examiners shall enter findings as provided in Section 6 (a) through (e) of this Rule.
- (h) In the event the Board makes a finding other than that the applicant or conditional admittee does possess good moral character and fitness and has satisfied the general qualifications to be admitted to practice as provided in Section 6 (a) of this Rule, a final report of the proceedings, including specific findings of fact, conclusion and recommendations shall be prepared. The Board shall notify the applicant or conditional admittee and all counsel of record of the action of the Board, including with such notice a copy of the final report.

**Section 10.** If, after following the hearing procedures in Section 5, 8 & 9 of this Rule, the Board determines that a conditional admittee has violated any of the conditions of the admission, or if the Board determines that any applicant admitted under these rules falsified or failed to fully inform the Board of facts bearing upon the applicant's character and fitness and general qualifications to practice law prior to admission, the Board may impose additional conditions, including without limitation, an additional term of conditional admission for up to five (5) years, or the Board may certify such findings to the Supreme Court of Indiana with the recommendation that the Court revoke such admission, along with a recommended period of time before the conditional admittee can submit a new application for admission. A conditional

admittee whose conditional admission has been revoked by the Supreme Court shall not be readmitted, except upon a new application and examination, after the expiration of the revocation period set by order of the Supreme Court.

### **Rule 13. Educational Requirements For Admission To Examination**

**Section 1. Authority.** Constitution of Indiana, Article 7, Section 4, and this court's inherent power.

**Section 2. Purpose.** The purpose of this rule is to establish minimal educational prerequisites for the effective assistance of counsel in civil or criminal matters and cases in the State of Indiana, which minimal educational prerequisites shall be held by all persons admitted to the bar of this Court by written examination after the effective date of this rule.

**Section 3. Notice.** Notice is hereby given to all persons who seek admission to the bar of this Court by written examination, after the effective date of this Rule, that minimal educational prerequisites for the effective assistance of counsel in civil or criminal matters and cases are established by this rule.

**Section 4. Educational Qualifications.** Each applicant for admission to the bar of this Court by written examination shall be required to establish to the satisfaction of the State Board of Law Examiners that the applicant is:

- (A) A graduate of a law school located in the United States which at the time of the applicant's graduation was on the approved list of the Council of Legal Education and Admission to the Bar of the American Bar Association (the Supreme Court of Indiana reserves the right to disapprove any school regardless of ABA approval);
- (B) A person who satisfactorily has completed the law course required for graduation and furnishes to the Board of Law Examiners a certificate from the Dean thereof, or a person designated by the Dean, that the applicant will receive the degree as a matter of course at a future date, pursuant to Indiana Rules of Admission and Discipline, Rule 15; and
- (C) A person who has completed in an approved school of law two cumulative semester hours of legal ethics or professional responsibility.

**Section 5. Early Examination Rule.** An applicant, who has fewer than five (5) hours to complete and is within one hundred (100) days of graduation from an approved law school, satisfactorily has passed work in the subject matter as set forth in the provisions of this section, and otherwise has completed all requirements for admission to the bar, shall be entitled to take the examination for admission to the bar, but may not be admitted to the bar of the Court until said applicant has met all other requirements for admission and has graduated from an approved law school.

**Section 6. Certification of Educational Qualifications.** Certification of the completion of the subject matter requirements under the provision of section 4 of this rule shall be made by the dean of the law school, or his designee, who shall have faculty status. Said certification shall be filed with the board twenty (20) days prior to the date of the examination.

### **Rule 14. Review**

Review of final action by the State Board of Law Examiners shall be as follows:

**Section 1.** The State Board of Law Examiners shall adopt such procedure for review of an applicant, aggrieved by failure of said board to award said applicant a satisfactory grade upon the bar examination, as shall be approved by the Supreme Court of Indiana. All applicants who have achieved a combined scaled score of 255 to 263 shall be eligible to appeal. The eligible examinees must make a written request to appeal on forms provided by the Board within fourteen (14) days of the issuance by the Board of the eligible examinee's results. No response other than the written request to appeal is permitted. The President of the Board shall designate certain of the Board's members as "Appeals Reviewers." The Appeals Reviewers shall consider and decide all appeals of bar examination results. In the appeals process, all of an eligible examinee's responses shall be subject to review by the Appeals Reviewers. Multistate Bar Examination scores will also be available to the Appeals Reviewers. Eligible examinees that are deemed to have passed after review shall be treated as having passed that administration of the Indiana Bar Examination. No change in score shall be effectuated. The determination by the Appeals Reviewers whether to treat an appealing applicant as having passed the bar examination shall be final, subject to general principles of procedural due process.

**Section 2.** Any applicant aggrieved by the final action of the State Board of Law Examiners in refusing to recommend to the Supreme Court of Indiana the admission of the applicant to practice law in Indiana for any reason other than the failure to pass any examination as set forth in section (1) may, within twenty (20) days of receipt of notification setting forth the reason for refusal, file a petition with the Supreme Court of Indiana requesting review by this Court of such final determination. The notification referenced herein shall be sent to the applicant by certified mail with return receipt requested. In the petition the applicant shall set forth specifically the reasons, in fact or law, assigned as error in the Board's determination. The Court may order further consideration of the application, in which event the State Board of Law Examiners shall promptly transmit to the Court the complete file relating to such applicant and his or her application, including the transcript of the record of any hearing held by the State Board of Law Examiners relating thereto. The Court shall enter such order as in its judgment is proper, which shall thereupon become final. The petition for review must be



accompanied by a fifty dollar (\$50.00) filing fee unless the petitioner previously paid an application fee to the State Board of Law Examiners as provided in these rules.

### **Rule 15. Applications, Filing Dates and Fees for Examination and Re-Examination**

Applications for admission on first examination must shall be filed through the electronic application procedures prescribed by the State Board of Law Examiners. The application shall be in such form and shall request such information as may be required by the Board of Law Examiners. The Board of Law Examiners may require additional information as is deemed by it to be necessary.

An affidavit of the dean of the applicant's law school, or the dean's designee, to the effect that there is nothing in the school records or personal knowledge of the dean or faculty of such school to indicate that the applicant is not of good moral character or that the applicant is not fit for admission to the practice of law must be filed with the State Board of Law Examiners. The Board shall provide forms for such certification.

A certified transcript of the law school record of the applicant showing the date of graduation and the degree conferred must be filed with the Board of Law Examiners before the applicant can be admitted to the bar.

For an application to be properly filed, an applicant must submit the electronic application and prescribed filing fee by the stated filing deadline. No requests for filing past the stated deadlines or for waiver of filing deadlines will be accepted by the Board of Law Examiners or by the Supreme Court.

Applications for admission on first examination for the July examination must be filed by April 1, and accompanied by a filing fee of two hundred fifty dollars (\$250). A late filing period is permitted until April 15. The filing fee for late filing is five hundred dollars (\$500).

The deadline filing date for the February examination is November 15 of the previous year. The filing fee is two hundred fifty dollars (\$250). The late filing period is from that date to November 30 of the previous year. The late filing fee is five hundred dollars (\$500).

If an applicant fails to pass the first examination and is permitted to take further examinations, the application for re-examination must be made on forms prescribed by the Board and filed with the Executive Director by the following dates. Applications for re-examination for the July examination must be filed by May 30 and accompanied by a filing fee of two hundred fifty dollars (\$250). The late filing deadline is June 15 and the late filing fee is five hundred dollars (\$500). Applications for re-examination for the February examination must be filed by December 15 of the previous year. The regular filing fee is two hundred fifty dollars (\$250). The late filing deadline is December 30 of the previous year. The late filing fee is five hundred dollars (\$500).

There are no other provisions for or consideration of requests for late filing by the Board or by the Indiana Supreme Court.

Applicants who have a petition before the Board or an appeal before the Supreme Court of the grading of their examination will be required to meet all filing deadlines for re-examination. If an applicant is successful on petition or on appeal, the applicant will receive a full refund of any re-examination fee.

If an applicant whose application has been approved and processed fails to take the examination first following its approval, such applicant shall have the privilege of having that application held in abeyance and of taking the next regularly scheduled examination given by the Board without payment of any additional fee. Any applicant whose application has been approved and processed who fails to take that examination, or the next following examination, shall have that application dismissed. The applicant will be entitled to a refund of one-half ( 1/2 ) of the fee paid.

If an applicant applies to sit for a first examination after his or her application has been dismissed, a new application must be filed and a two hundred fifty dollar (\$250) filing fee must be paid and the first examination deadlines must be met. If an applicant applies to sit for a re-examination after his or her application has been dismissed, a new application must be filed and a two hundred fifty dollar (\$250) filing fee must be paid, but these applicants will be permitted to file by the re-examination time deadline and will have the opportunity to file within that late filing period. All applicants applying after dismissal must meet the regular deadlines or late filing deadlines and pay the regular fee or the late fee as they apply to those deadlines.

### **Rule 16. [Vacated effective January 1, 1998]**

### **Rule 17. Examinations**

**Section 1.** No person shall be licensed to practice law in this state who has not taken and passed a Bar examination as provided in these rules, except attorneys who are licensed in another jurisdiction and who qualify for admission without examination under the provisions of Admission and Discipline Rule 6.

**Section 2.** In addition, each applicant for admission upon examination, before being admitted, must pass the Multistate Professional Responsibility Examination (MPRE). The passing score for the MPRE shall be a scaled score of eighty (80)

and must be achieved within two (2) years before or after the date the applicant successfully takes the Indiana two-day essay bar examination.

**Section 3.** An applicant who successfully passes the Bar examination must complete all requirements for, and receive, a law degree and be admitted to the practice of law before the Court within two (2) years of the last date of the applicant's bar examination, or the bar examination must be repeated.

**Section 4.** The bar examination shall be administered with the identity of the applicant remaining anonymous throughout the examination, grading and review. The Executive Director shall adopt such procedures necessary for the identity of all applicants by number only. It shall be a violation of these Rules for the applicant, or anyone upon the applicant's behalf, to attempt to reveal the identity, origin, gender or race of the applicant at any time throughout the examination and review process.

**Section 5.** The Executive Director of the Board of Law Examiners shall notify each applicant, promptly after request for application, of the subject matter which the applicants may expect to be covered in the bar examination interrogatories.

Since the bar examination attempts to establish the applicant's ability to practice law in the State of Indiana, questions requiring answers determining an understanding of Indiana law will be expected. From time to time, the Board shall publish a listing of subject matters to be covered on examinations.

### **Rule 18. Report on Examinations**

**Section 1.** Unless otherwise ordered by the Court, there shall be two (2) bar examinations held annually, in February and July. The examination shall be supervised by the Board. The number and form of the questions and the subject matter tested shall be determined by the Board of Law Examiners with the approval of the Supreme Court.

**Section 2.** The Board of Law Examiners shall act on and report passing or failing to the applicant on all bar examinations within one hundred (100) days after the final day of the examination, and may inform interested news media of the names of the applicants successfully passing the bar examination.

**Section 3.** The Board shall certify to the Court the applicants for admission who have passed the bar examination and the Multistate Professional Responsibility Examination (MPRE), and its recommendations for admission based upon the applicant's satisfaction of the provisions and requirements of these Rules.

### **Rule 19. Confidentiality**

**Section 1.** All information and all records obtained and maintained by the Board of Law Examiners in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana shall be confidential, except as otherwise provided by these rules, or by order of (or as otherwise authorized by) the Supreme Court of Indiana.

**Section 2.** All materials and information in the possession or knowledge of the Board of Law Examiners, its Executive Director, or its agents or employees, shall be the property of the Supreme Court of Indiana, and the Board shall serve as custodian of such materials and information. This shall include, but not be limited to, the applications and files of all the applicants, reports and correspondence regarding investigation of applicants, inter-office and inter-member memoranda, minutes and records of all meetings and hearings, and all examination materials and results.

**Section 3.** The Board is authorized to disclose information relating to applicants or members of the bar only as follows:

- (a) The names of applicants successfully passing the law examination.
- (b) The name of any applicant admitted to the practice of law at any admission ceremony.
- (c) The name, date of birth, Social Security number, and other information relating to a bar application, an applicant, and the result of the bar application for placement in a national data bank operated by or on behalf of the National Conference of Bar Examiners.
- (d) Upon request of any law school, the names of each of its graduating students that took the law examination and whether each passed or failed the exam.
- (e) Information requests by the National Conference of Bar Examiners or from a foreign bar admitting agency, when accompanied by a written authorization and release duly executed by the person about whom such information is sought, providing, however, that no information received by the Board under an agreement of confidentiality or designation of confidentiality or otherwise restricted by law or these rules shall be disclosed.
- (f) Information relating to a violation of the Indiana Rules of Professional Conduct or to the unauthorized practice of law may be supplied to the Indiana Disciplinary Commission either at the request of the Disciplinary Commission or on the Board's own motion, except that information received by the Board under an agreement of confidentiality or otherwise restricted by law shall not be disclosed.
- (g) Copies of documents previously filed by an applicant may be provided upon the applicant's written request. Copies of documents submitted by other parties regarding an applicant may be supplied to the applicant only

upon written consent by the party submitting such documents. The complete record of any hearing, including any and all documents or exhibits formally introduced into the record, and any transcript of such hearings may be made available to the applicant who was a party to the hearing pursuant to other provisions of these rules.

## **Rule 20. Immunity**

### **Section 1. Persons Providing Information to the State Board of Law Examiners.**

Every person or entity shall be immune from civil liability for providing, in good faith, documents, statements of opinion, records, or other information regarding an applicant or potential applicant for admission to the bar of this State to the State Board of Law Examiners; to its officers, Executive Director, staff, employees or agents; or to the Committees on Character and Fitness and their members and agents.

### **Section 2. Immunity for Board, Staff and Character and Fitness Committee.**

The State Board of Law Examiners and its officers, members, Executive Director, staff, employees and agents, and the Committees on Character and Fitness and their members and agents, are immune from all civil liability for acts performed in the course of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

## **Rule 21. Admissions**

An applicant who is eligible for admission under the foregoing rules may be admitted by appearing in person before the bar of this Court and by taking the oath hereinafter set forth after establishing to the satisfaction of the Court that the applicant is a person of good moral character and fitness.

## **Rule 22. Oath of Attorneys**

Upon being admitted to practice law in the state of Indiana, each applicant shall take and subscribe to the following oath or affirmation:

“I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God.”

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

**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:

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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

Exhibit B to Section 30

**Attorney Trust Account Notification**

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

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

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

\_\_\_\_\_  
City State Zip Code  
56



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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 \_\_\_\_\_.

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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

#### **Rule 24. Rules Governing the Unauthorized Practice of Law**

Original actions, under I.C. 33-24-1-2, to restrain or enjoin the unauthorized practice of law in this state may be brought in this court by the attorney general, the Indiana Supreme Court Disciplinary Commission, the Indiana State Bar Association or any duly authorized committee thereof, without leave of court, and by any duly organized local bar association by leave of court. The action against any person, firm, association or corporation, shall be brought by verified petition, in the name of the state of Indiana, on the relation of the authorized person or association or committee, and shall charge specifically the acts constituting the unauthorized practice.

Within time allowed, a respondent may file a verified return showing any reason in law or fact why an injunction should not issue. No other pleading in behalf of a respondent will be entertained. All allegations of fact in the petition and return shall be specific and not by way of ultimate fact or conclusion. The return shall specifically deny or admit each allegation of fact in the petition, and it may allege new facts in mitigation or avoidance of the causes alleged in the petition.

The parties shall file an original and five [5] copies of all pleadings, including exhibits, plus an additional copy for each adverse party. If any exhibit shall be a matter of public record one [1] certified copy thereof shall be filed with the original petition or return. No pleading or exhibit thereto will be considered which has words or figures on both sides of the same sheet of paper.

No restraining order will issue without notice except upon the filing of an undertaking with conditions and surety to the approval of the court. Notice of the filing of the petition will be given and served upon any respondent as may be directed by the court, such notice to be accompanied by a copy of the petition. The clerk will mail a copy of any return to the relator.

The verified petition and return shall constitute the evidence upon which the issues are decided, unless the court shall deem it necessary to, and shall appoint, a commissioner, in which event such commissioner, who shall have full authority to subpoena witnesses and records, shall hear the evidence and report his findings of fact to the court.

A copy of any pertinent agreement, made by any recognized bar association concerning the unauthorized practice of law, may be attached to and made a part of any pleading and unless denied under oath shall be deemed to be a true copy without further proof of the execution thereof.

The costs and expenses incurred by such hearing shall be borne by the losing party. Briefs need not conform to requirements of Appellate Rules 43-48. Arguments will not be heard as of right.

#### **Rule 25. Judicial Disciplinary Proceedings**

**Preamble.** The regulation of judicial conduct is critical to the integrity of the judiciary and to public confidence in the judicial system. The purpose of this rule is to provide a mechanism for the discipline of judicial officers of the State of Indiana.

##### **I. Jurisdiction.**

- A. Pursuant to Article 7, Section 4 of the Constitution of Indiana, the Supreme Court of Indiana (the Supreme Court) has exclusive, original jurisdiction for the discipline, removal, and retirement of all judicial officers of this state.
- B. The Indiana Commission on Judicial Qualifications (the Commission), established by Article 7, Section 9 of the Constitution of Indiana, shall receive and investigate complaints against all judicial officers of the state, regardless of the origin of such judicial position, and shall, in accordance with the procedures established under these rules, forward to the Supreme Court of Indiana any recommendation for the discipline, removal, or retirement of any judicial officer of this state. This provision shall not in any way curtail the authority of Judicial Nominating Commissions appointed in any county of this state.
- C. The Commission shall have jurisdiction over conduct committed by a judicial officer, whether or not related to the judicial office and whether or not committed during the judicial officer's term of office.

- D. The Commission may refer to the Indiana Supreme Court Disciplinary Commission allegations of misconduct committed by a judicial officer while an attorney and not during the judicial officer's term of office.
- E. The Commission shall have jurisdiction over violations of Canon 4 of the Code of Judicial Conduct committed by a candidate for judicial office.
- F. The jurisdiction of the Commission survives the resignation or retirement of a judicial officer.

**II. Application and Definitions.** These rules shall apply to all judicial officers of the State of Indiana regardless of the origin of their judicial office.

For the purposes of this rule the following definitions shall apply:

“Deferred Resolution”--A confidential agreement between the Commission and a judicial officer entered into prior to the filing of formal proceedings which defers the resolution of a complaint for a specific period of time upon condition that the judicial officer take appropriate specified corrective action.

“Judicial Officer”--A Justice of the Indiana Supreme Court, Judge of the Indiana Court of Appeals, Judge of the Indiana Tax Court, Judge of any Circuit, Superior, County, City or Town Court of the State, and a pro tempore or senior judge, magistrate, commissioner, master or referee thereof, and any person eligible to perform a judicial function, whether or not a lawyer, whether part-time or full-time, temporary or permanent, excluding mediators and arbitrators and administrative law judges of independent state agencies. This rule applies to candidates for judicial office who are subject to the jurisdiction of the Commission as if they were judicial officers.

“Private Caution”--A confidential statement from the Commission to a judicial officer stating that the Commission has inquired into or investigated a complaint and has considered the judicial officer's written response to the allegations, and has voted to close the inquiry or investigation by cautioning the judicial officer that misconduct was established which, in light of all the circumstances, does not warrant further inquiry.

“Public Admonition”--A public statement from the Commission concluding that misconduct occurred, which is issued by the Commission after a determination that formal proceedings are warranted and which is issued in lieu of formal proceedings and with the written consent of the judicial officer.

“Settlement Agreement”--A written agreement submitted to the Supreme Court after the Commission has filed charges, and after the judicial officer has had an opportunity to answer, in which the parties agree to facts which establish grounds for discipline under this rule and to an appropriate sanction.

**III. Grounds for Discipline or Involuntary Retirement.**

- A. Any judicial officer may be disciplined for any of the following acts:
  - (1) conviction of any felony, or any crime which involves moral turpitude or conduct that adversely affects the ability to perform the duties of judicial office;
  - (2) willful and persistent failure to perform duties;
  - (3) willful misconduct in office;
  - (4) willful misconduct unrelated to the judicial office that brings such office into disrepute;
  - (5) habitual intemperance;
  - (6) conduct prejudicial to the administration of justice, including the repeated failure to adhere to the rules of procedure; or
  - (7) a violation of the Code of Judicial Conduct, the Rules of Professional Conduct, or other professional rules duly adopted by the Indiana Supreme Court.
- B. A judicial officer may be involuntarily retired when a physical or mental disability seriously interferes with the performance of judicial duties.
- C. A judicial officer involuntarily retired by the Supreme Court shall be considered to have retired voluntarily. A judicial officer removed from office by the Supreme Court under an order of discipline, excluding retirement or disability, shall be ineligible for judicial office and, pending further order of the Supreme Court, shall be suspended from the practice of law in the State of Indiana.
- D. These rules shall not be construed to impair any vested right or benefit of a judicial officer, now or hereafter existing as provided by law.

**IV. Sanctions.** Upon a finding of misconduct pursuant to Section III A. or disability pursuant to Section III B., the Supreme Court may impose any of the following:

- (1) removal;

- (2) retirement;
- (3) suspension;
- (4) discipline as an attorney;
- (5) limitations or conditions on the performance of judicial duties;
- (6) private or public reprimand or censure;
- (7) fine;
- (8) assessment of reasonable costs and expenses; or
- (9) any combination of the above sanctions.

**V. Interim Suspension.**

- A. A judicial officer shall be suspended with pay by the Supreme Court without the necessity of action by the Commission upon the filing of an indictment or information charging the judicial officer in any court in the United States with a crime punishable as a felony under the laws of Indiana or the United States.
- B. A judicial officer shall be suspended with pay while there is pending before the Supreme Court a recommendation from the Commission for the retirement or removal of the judicial officer.
- C. Upon a finding of guilty, plea of guilty, or plea of no contest to a crime punishable as a felony under the laws of Indiana or the United States, or any crime that involves moral turpitude under the law, a judicial officer may be suspended without pay by the Supreme Court.
- D. A judicial officer may be suspended with pay by the Supreme Court without the necessity of action by the Commission upon the filing of an indictment or information charging the judicial officer with a misdemeanor which suggests conduct that adversely affects the ability to perform the duties of the judicial office. In the event the Supreme Court suspends a judicial officer under this provision without a hearing, the suspended judicial officer shall thereafter be permitted a hearing and review of the basis for the suspension.
- E. Upon petition by the Commission, the Supreme Court may impose, pending the disposition of formal charges, an interim suspension with pay if the Court deems the interim suspension necessary to protect public confidence in the integrity of the judiciary. This provision is applicable in proceedings involving the disability of the judge as well as proceedings involving discipline.

**VI. Staff.**

- A. The Division of State Court Administration shall serve the Commission in the performance of the Commission's constitutional and statutory duties. Any attorney specifically appointed by the Supreme Court for such purpose may serve as Counsel for the Commission in the course of a judicial disciplinary proceeding. In the event a judicial disciplinary proceeding involves a current member of the Supreme Court, a regular employee of the Supreme Court shall not serve as Counsel.
- B. A quorum of the Commission shall have the authority to employ investigators and such experts and staff as the Commission, in its discretion, determines necessary to the performance of its duties.

**VII. Immunity.** Members of the Commission, Masters, Commission Counsel, and staff are absolutely immune from suit for all conduct in the course of their official duties.

**VIII. Disciplinary Procedure.**

- A. *Meetings of Commission.*
  - (1) The Commission shall meet from time to time as may be necessary to discharge its responsibilities. The Commission shall elect a Vice-Chair to perform the duties of the Chair when the Chair is absent or unable to act by reason of unavailability or disqualification. Meetings of the Commission shall be called by the Chair, or the Vice-Chair, whenever deemed necessary or upon the request of any four members of the Commission, and each member of the Commission shall be given at least five days' written notice by mail of the time and place of every meeting, unless the Commission at its previous meeting designated the time and place of its next meeting. A quorum for the transaction of business shall be four members of the Commission.
  - (2) Meetings of the Commission are to be held at such place in Indiana as the Chair of the Commission, or the Vice-Chair, may arrange.
  - (3) The Commission shall act only at a meeting. Meetings may be conducted by telephone conference, electronic mail, written and facsimile communication, or other means of communication, on all matters that do not involve deliberating and voting on whether to file formal charges, when the Commission shall

meet in person. The Commission shall have the power to adopt reasonable and proper rules and regulations for the conduct of its meeting and the discharge of its duties.

B. *Confidentiality.*

- (1) Before the filing and service of formal charges, the Commission shall not publicly disclose information relating to a complaint, inquiry, or investigation, except that the Commission may disclose information:
  - (a) upon waiver or agreement by the judicial officer; or
  - (b) where the Commission has determined that there is a need to notify another person or agency in order to protect the public or to assure the proper administration of justice; or
  - (c) where the Commission elects to respond to publicly disseminated statements by a complainant or a judicial officer.
- (2) After the filing of formal charges, all pleadings and proceedings are public unless the Masters or Supreme Court find extraordinary circumstances warranting limitations on the public nature of the proceedings.
- (3) Commission deliberations, settlement conferences, and proposed settlement agreements shall remain confidential. Settlement agreements submitted to the Supreme Court for approval shall become public when the Supreme Court accepts the agreement in whole or in part and issues an order or opinion resolving the judicial disciplinary case.

C. *Civil Immunity.* Each person shall be immune from civil suit for all sworn or written statements, if made without malice, and intended for transmittal only to the Commission, Counsel, or staff, or made in the course of investigatory, hearing, or review proceedings under this rule.

D. *Complaint.* Any person may file a complaint with the Commission about the judicial activities, fitness, or qualifications of any judicial officer. Complaints directed to the Commission or to any member of the Commission concerning a judicial officer shall be in writing and verified. No specified form of complaint shall be required.

E. *Consideration of Complaint.*

- (1) The Commission shall provide written acknowledgment of the complaint and shall notify the complainant in writing of its final disposition.
- (2) The Commission shall make such initial inquiry as is necessary to determine if the complaint is founded and within the jurisdiction of the Commission. The Commission, without receiving a complaint, may make such an initial inquiry on its own motion. The Commission shall dismiss any complaint or inquiry which is frivolous, groundless, not within the Commission's jurisdiction, or upon a finding that no misconduct occurred. The notification of dismissal to the complainant shall contain the basis for the Commission's decision. The Commission may also conduct further inquiry, begin an investigation, agree to a deferred resolution, or issue a private caution. If the final disposition is by deferred resolution or private caution, the judicial officer shall have had the opportunity to respond to the allegations in writing and the complainant shall be notified that appropriate action was taken without specifying the nature of the disposition.
- (3) If the Commission deems it necessary as the result of its initial inquiry to conduct an investigation, the judicial officer involved shall be notified of the investigation, the nature of the charge, and the name of the person making the complaint, if any, or that the investigation is on the Commission's own motion, and shall be afforded a reasonable opportunity in the course of the investigation to present such matters as the judicial officer may choose. Such notice shall be given by certified mail addressed to the judicial officer's chambers or address of record and shall be clearly marked "Personal and Confidential." Delivery of all other papers or notices shall be made in accordance with the Rules of Procedure.
- (4) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Any member of the Commission shall have the power to subpoena witnesses or the production of evidence and may administer oaths and affirmations to witnesses in any matter within the jurisdiction of the Commission. The quashing and enforcement of subpoenas, and the enforcement of any other power delegated to the Commission shall be upon application to the Supreme Court or to the Masters, if appointed.
- (5) If the investigation does not disclose probable cause to warrant further proceedings, the Commission may dismiss the complaint with a finding that no misconduct occurred, may conduct further investigation, or may issue a deferred resolution or private caution, and the judicial officer shall be so notified. Where a deferred resolution or private caution is imposed, the judicial officer shall have had an opportunity to respond in writing to the allegations. The Commission shall have the power to make investigations by

members of the Commission, staff, or by special investigators employed by the Commission and to hold confidential hearings with the judicial officer involved.

- (6) During the course of an investigation by the Commission, the judicial officer whose conduct is being investigated may demand, in writing, that the Commission either institute formal proceedings or enter a formal finding that there is not probable cause to believe that the judicial officer is guilty of misconduct, and the Commission shall, within sixty days after such demand, comply therewith.
- (7) If, upon the conclusion of a full investigation, the Commission does not find probable cause to believe that misconduct has occurred, the Commission shall dismiss the complaint. If the Commission determines the existence of probable cause, the Commission may vote that one or more of the following is appropriate:
  - (a) dismissal;
  - (b) deferred resolution or private caution;
  - (c) formal charges;
  - (d) petition for suspension;
  - (e) a stay.

At any time after the Commission has determined the existence of probable cause to file charges, the judicial officer may demand that the charges be filed within sixty days rather than consent to a private caution, a public admonition, deferred resolution, or a stay.

If the Commission votes to file formal charges against a judicial officer, it may, with the judicial officer's written consent, dismiss the complaint after issuing a public admonition of the judicial officer's conduct.

#### *F. Notice of Formal Proceedings.*

- (1) After the investigation has been completed and the Commission concludes that there is probable cause to believe in the existence of grounds for discipline or involuntary retirement under Section III of this Rule and that formal proceedings should be instituted, it shall give written notice to the judicial officer advising of the institution of formal proceedings. This notice shall be filed as an original action in the Supreme Court.
- (2) The notice shall be issued in the name of the Commission, shall specify in ordinary and concise language the charges against the judicial officer and the alleged facts upon which such charges are based, and shall advise the judicial officer of the right to file a written answer to the charges within twenty days after service of notice. No charge shall be sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge.
- (3) The notice shall be made by certified mail to the judicial officer's chambers or address of record and shall be clearly marked "Personal and Confidential".
- (4) In the event the notice filed under Rule VIIIIF(1) is directed toward a member of the Supreme Court, the provisions of this paragraph shall apply.
  - (a) At the time the notice is filed, all Justices of the Supreme Court, except the Chief Justice, shall recuse themselves from the proceedings. Should the Chief Justice, for any reason, be unable to participate in such proceedings, the most senior member of the Supreme Court, not otherwise disqualified, shall continue to serve. The Chief Justice or the member of the Supreme Court continuing to serve under this provision shall be the presiding member of the Supreme Court for all proceedings relating to the notice.
  - (b) The vacancies on the Supreme Court created by the above procedure shall be filled for the limited purpose of the judicial disciplinary proceedings by members of the Indiana Court of Appeals chosen pursuant to this provision. Six Judges of the Court of Appeals shall be randomly selected by the Clerk of the Supreme Court and Court of Appeals. Advisement of the members of the Court of Appeals selected under this procedure shall be given to the Commission and the judicial officer. Within seven days after advisement of the selection is issued, the Commission shall strike one judge selected and within seven days after the judge is stricken by the Commission, the judicial officer shall strike one judge. If the Commission or the judicial officer fails to strike a judge under this procedure, the Clerk of the Supreme Court shall strike at random in their stead.
  - (c) In the event all members of the Supreme Court are unable to participate in a judicial disciplinary proceeding, the Clerk of the Supreme Court and Court of Appeals shall randomly select seven members of the Indiana Court of Appeals to serve in such proceedings and each side shall strike one judge under the procedure set forth in Rule VIIIIF(4)(b) above.

- G. *Answer.* Within twenty days after service of the notice of formal proceedings, the judicial officer may file with the Supreme Court, under the cause initiated by the filing of the notice of formal proceedings, an answer, and serve a copy of the answer on Counsel for the Commission by mail.

All pleadings shall be filed with the Clerk of the Supreme Court and shall be served to the Commission at its published address.

- H. *Settlement Agreements.* The Commission and the judicial officer may enter into a settlement agreement, either prior to the appointment of Masters, or at any time prior to a final disposition by the Supreme Court. The Supreme Court may accept the agreement resolving the case or it may reject the agreement and return the matter to the Commission for further action.

- I. *Masters.* Upon the filing of an answer or upon the expiration of the time for its filing, the Supreme Court shall, within thirty days, appoint three Masters and designate a Presiding Master. Each Master shall be an active or retired member of a court of record in the State of Indiana. The Masters shall hear and take evidence in the judicial disciplinary proceeding and report thereon to the Supreme Court. The appointed Masters shall set a time and place for a hearing, to be conducted within ninety days of their appointment, and shall give notice of such hearing to the judicial officer charged and Counsel for the Commission at least twenty days prior to the date set. At the discretion of the Masters, the cause may be set for a pretrial conference or such other hearing as may be deemed necessary under the circumstances. Continuances shall be granted only by agreement or upon good cause shown. All differences of opinion by the Masters shall be resolved by majority vote, except that a minority opinion may be submitted to the Supreme Court with the final report and the recommended findings of fact and conclusions of law.

- J. *Pretrial Procedure.*

- (1) In all formal proceedings, discovery shall be available to the Commission and to the judicial officer in accordance with the Indiana Rules of Trial Procedure. Any motions requesting court orders for discovery shall be made to the Masters appointed to hear the case.
- (2) In all formal proceedings, Counsel for the Commission shall furnish to the judicial officer not less than twenty days prior to any hearing the following, unless modified by agreement or by an order on discovery:
  - (a) The names and addresses of all witnesses whose testimony Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of Counsel or the Commission and copies of all documentary evidence which Counsel expects to offer in evidence at the hearing. The testimony of any witness whose name and address has not been furnished to the judicial officer, and documentary evidence copies of which have not been furnished to the judicial officer, as provided above, shall not be admissible in evidence at said hearing over objection.
  - (b) After formal proceedings have been instituted, Counsel shall furnish to the judicial officer, within ten days, the names and addresses of all witnesses, then or thereafter known to Counsel, who have information which may be relevant to any charge against the judicial officer, and to any defense. Counsel shall also furnish copies of such written statements, transcripts of testimony, and documentary evidence as are then or thereafter in the possession of Counsel for the Commission, which are relevant to any such charge or defense and which have not previously been furnished to the judicial officer.

- K. *Hearing.*

- (1) At the time and place set for hearing, the Masters may proceed with the hearing whether or not the judicial officer has filed an answer or appears at the hearing.
- (2) The failure of the judicial officer to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the facts alleged or constitute grounds for discipline, retirement, or removal, however the failure to cooperate in the prompt resolution of a complaint by the refusal to respond to Commission requests or by the use of dilatory practices, frivolous or unfounded arguments, or other obdurate behavior may be considered as aggravating factors affecting sanctions or may be the basis for the filing of separate counts of judicial misconduct.
- (3) In any proceeding for involuntary retirement for disability, the failure of the judicial officer to testify in his or her own behalf or to submit to medical examination requested by the Commission or Masters may be considered, unless it appears that such failure was due to circumstances beyond the judicial officer's control.
- (4) The proceedings shall be reported verbatim.

- (5) At the hearing before the Masters for the taking of testimony with regard to the pending charges, the Indiana Rules of Evidence shall apply.
- (6) The Commission shall have the burden to prove misconduct on the part of the judicial officer by clear and convincing evidence.
- (7) Whenever a witness invokes the privilege against self-incrimination as a basis for refusing to answer a question or to produce other evidence that may be relevant to a disciplinary or disability proceeding, the Commission may apply in a court of record for a grant of immunity from criminal prosecution, and shall give notice of the application to the judicial officer and to the prosecuting attorney of the jurisdiction. If the court grants the order, the witness may not refuse to comply with the order on the basis of the privilege of the witness against self-incrimination, but no testimony or other evidence compelled under such an order shall be used against the witness in any criminal case. The witness may be prosecuted for perjury or contempt committed in answering or failing to answer in accordance with the order.
- (8) The Masters shall have such jurisdiction and powers as are necessary to conduct a hearing, including the power to compel the attendance of witnesses, to administer oaths and affirmations, to make findings and issue sanctions for contempt, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. The quashing and enforcement of subpoenas shall be upon application to the Masters.

L. *Defense Rights of Judicial Officer.*

- (1) In formal proceedings involving discipline, retirement, or removal, a judicial officer shall have the right to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. A judicial officer shall also have the right to the issuance of subpoenas for the attendance of witnesses to testify or to produce books, papers, and other evidentiary matters.
- (2) Whenever a transcript of any proceedings hereunder is requested by the judicial officer, the Commission or Commission Counsel, the Masters or the Supreme Court, it shall be produced promptly, and it shall be provided to the judicial officer without cost.
- (3) If the judicial officer has been adjudicated incompetent, the Supreme Court shall appoint an attorney ad litem unless a guardian has been appointed. The guardian or attorney ad litem shall exercise any right and privilege, make any defense and receive process for the judicial officer.

M. *Amendments to Notice or Answer.* The Masters, at any time prior to the conclusion of the hearing, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judicial officer shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters charged thereby.

N. *Report of Hearing by Masters.*

- (1) After the conclusion of the hearing, the Masters shall, within forty-five days, file with the Supreme Court a report which shall contain a brief statement of the proceedings, recommended findings of fact and conclusions of law, and any minority opinion. The recommended findings of fact and conclusions of law are not binding upon the Supreme Court. An original and six copies of the report and the original transcript of the testimony together with all exhibits shall be filed with the Supreme Court.
- (2) The Masters may include a recommendation in the report to the Supreme Court as to the discipline, removal, or retirement of the judicial officer involved in the proceeding. The recommended sanction is not binding on the Supreme Court.
- (3) At the time the report and transcript is filed with the Supreme Court, the Masters shall serve a copy of the report and transcript on the judicial officer and Counsel for the Commission.

O. *Recommendation of Commission.* Within twenty days of the filing of the report by the Masters, the Commission shall make a recommendation to the Supreme Court as to the disposition of the judicial disciplinary proceeding under consideration. If the Commission does not concur in the proposed findings of fact, conclusions of law, and, if appropriate, the recommended sanction, the Commission's recommendation as to disposition shall specifically set forth all objections to the report of the Masters and shall be accompanied by a memorandum brief in support of the recommended disposition.

P. *Petition for Review.*

- (1) Within twenty days of the filing of the Commission's recommendation, the judicial officer may file with the Supreme Court a petition for review setting forth all objections to the report or recommendation and the reasons in opposition to the recommended findings of fact, conclusions of law, and, if appropriate, the



recommended sanction contained in the report and recommendation. A copy of the petition for review shall be served on all other parties to the proceeding.

- (2) The petition shall be verified, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by a brief in support of the arguments offered. Within ten days of service of the petition for review and brief, the Commission may file a reply brief.
- (3) Failure to file a petition for review within the time provided may be deemed by the Supreme Court as agreement on the Commission's recommendation. The Supreme Court, however, conducts its review *de novo* and retains the discretion to adopt or reject all or part of the proposed findings of fact, conclusions of law, or recommended disposition with or without objection by a party.
- (4) To the extent necessary to implement this provision and if not inconsistent with this provision, the Indiana Rules of Appellate Procedure shall be applicable to reviews by the Supreme Court in judicial disciplinary proceedings.

## **Rule 26. Group Legal Service Plans**

- (A)** A “group legal service plan” is a plan or arrangement by which legal services are rendered (1) to individual members of a group identifiable in terms of substantial common interest; (2) by a lawyer provided, secured, recommended or otherwise selected by: (a) the group, its organization, or its officers; (b) some other agency having an interest in obtaining legal services for members of the group; or (c) the individual members. Not-for-profit legal services programs funded through governmental appropriations are excluded from this rule.
- (B)** A lawyer may not render legal services pursuant to a group legal service plan unless the following conditions have been satisfied:
- (1) The entire plan has been reduced to writing and a description of its terms has been distributed to the Indiana members or beneficiaries thereof;
  - (2) The plan and description clearly describe and specify:
    - (a) the benefits to be provided, exclusions therefrom and conditions thereto,
    - (b) the extent of the undertaking to provide benefits and reveal such facts as will indicate the ability of the plan to meet the undertaking,
    - (c) that there shall be no infringement upon the independent exercise of professional judgment of any lawyer furnishing service under the plan,
    - (d) that a lawyer providing legal service under the plan shall not be required to act in derogation of his professional responsibilities,
    - (e) the procedures for the objective review and resolution of disputes arising under the plan,
    - (f) that the plan shall provide for an advisory group which should include members of the Bar and members of the plan who shall meet periodically to review and evaluate the organization and operation of the plan and to offer suggestions for its improvement, and
    - (g) that the plan shall state in writing that the satisfaction of the conditions under this rule shall not be construed as an approval of such plan by the Supreme Court of Indiana;
  - (3) A copy of the group legal service plan has been filed with the Clerk of the Supreme Court and Court of Appeals together with a one hundred dollar (\$100) filing fee; and
  - (4) The requirements, as appropriate, for an initial disclosure statement or annual report have been met.
- (C)** Concurrent with the filing of the plan, an initial disclosure statement, relating to the first year of operation or any portion thereof, also must be filed. This initial disclosure statement shall state:
- (1) The names and addresses of all the attorneys who will be rendering any legal service for Indiana residents for the coming year or part thereof ending January 31st;
  - (2) All relevant financial data including any projected income from fees, dues, premiums, or subscriptions to be collected from Indiana group members or beneficiaries for the first year of operation or part thereof, ending January 31st and the period of time covered by such fee, dues, premium or subscription charge;
  - (3) The total number of hours of legal service projected to be provided to Indiana members;
  - (4) The number of Indiana members in the plan or projected to be in the plan for the first year or part thereof, ending January 31st; and
  - (5) Whether legal service provided under the plan is to be funded, in any part, on an actuarial basis.

**(D)** Every group legal services plan shall file an annual report with the Clerk of the Supreme Court. A fifty dollar (\$50) annual fee shall accompany the report. The annual report shall be filed between February 1st and March 31st of each year. A copy of said annual report shall be sent to plan members by March 31st of each year. An additional twenty-five dollar (\$25) late fee shall accompany all annual reports filed after March 31st. The annual report shall update any information regarding the plan as originally filed and shall specifically set forth:

- (1) The names and addresses of all attorneys under the plan who will be rendering any legal service to Indiana residents for the year, ending on January 31st; and
- (2) All relevant financial data, including:
  - (a) the actual gross income generated by fees, dues, premiums, or subscriptions, paid by Indiana members of the group for the past year or part thereof, ending on January 31st;
  - (b) the number of hours of legal service provided to Indiana members during the past year, and ending January 31st;
  - (c) the number of Indiana members of the plan as of January 31st;
  - (d) the projected gross income, expected to be generated from fees, dues, premiums or subscriptions from Indiana group members during the coming year (February 1st through January 31st); and
  - (e) the amount each Indiana group member will pay as a fee, dues, premium or subscription charge for the next year (February 1st through January 31st).

An annual report form may be obtained from the Clerk of the Supreme Court and Court of Appeals to assist in the filing of the annual report.

- (E)** A group legal service plan which discontinues operation, shall file a final report so stating. There shall be no filing fee for such report.
- (F)** Whenever a new attorney is employed by any plan, the plan shall, within ten days of the employment, transmit to the Clerk of the Supreme Court and Court of Appeals the name of such attorney so employed.
- (G)** No representation that a plan has been filed or approved shall be made. If such representation is made, all function under the plan shall cease.
- (H)** Any lawyer rendering legal services in Indiana pursuant to a group legal service plan shall be bound by and comply with the Rules of Professional Conduct adopted January 1, 1987, as amended.
- (I)** Failure to comply with the above requirements could subject plans and individuals involved to legal action. In addition, if a plan member represented by a plan attorney is a party in an action in a court of this State, any other party to the action may file a motion to dismiss the action if the plan has not filed its initial disclosure statement or its annual report as required under Subsections C and D of this Rule. Provided, however, that the motion to dismiss shall only dismiss the case, after hearing, if the initial disclosure statement and plan or the annual report are not filed with the Clerk of the Supreme Court and Court of Appeals within sixty (60) days after the filing of the motion to dismiss.

**ADMISSION AND DISCIPLINE RULE 26. GROUP  
LEGAL SERVICE PLAN DISCLOSURE STATEMENT**

1. Date of Statement \_\_\_\_\_.
2. Name of the Group Legal Services Plan and address of administrator.
3. Names and addresses of all attorneys who will be rendering any legal service under the plan to Indiana residents this year (year ends January 31st of following year):

Name	Address
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

9.

10.

(Use additional sheets if necessary).

4. Relevant Financial Data--Income Projection:

(a) Gross income actually received in the form of fees, dues, premiums, or subscriptions from Indiana members for the past year or part of year (February 1, 19\_\_\_\_ to January 31, 19\_\_\_\_): \$\_\_\_\_\_.

(b) Number of hours of legal service provided to Indiana members during past year: \_\_\_\_\_.

(c) Number of Indiana members of plan as of January 31, 19\_\_\_\_.

5. Projections:

(a) Projected gross income expected from fees, dues, premiums or subscription charges from Indiana members during the coming year (February 1, 19\_\_\_\_ to January 31, 19\_\_\_\_): \$\_\_\_\_\_.

(b) Projected amount each Indiana group member will pay as a fee, dues, premium or subscription charge for the coming year (February 1, 19\_\_\_\_ to January 31, 19\_\_\_\_).

6. Names and addresses of plan advisory group members:

Name	Address
1.	
2.	
3.	
4.	
5.	

7. Attach one copy of plan as revised during the past year (or revisions).

Submitted By:

\_\_\_\_\_

**Rule 27. Professional Corporations, Limited Liability Companies and Limited Partnerships**

**Section 1. General Provisions.** One or more lawyers may form a professional corporation, limited liability company or a limited liability partnership for the practice of law under Indiana Code 23-1.5-1, IC 23-18-1 and IC 23-4-1, respectively.

- (a) The name of the professional corporation, limited liability company or limited liability partnership shall contain the surnames of some of its members, partners or other equity owners followed by the words "Professional Corporation," "PC," "P.C.," "Limited Liability Company," "L.L.C.," "LLC," "Limited Liability Partnership," "L.L.P.," or "LLP," as appropriate. Such a professional corporation, limited liability company, or limited liability partnership shall be permitted to use as its name the name or names of one or more deceased or retired members of a predecessor law firm in a continuing line of succession, subject to Rule of Professional Conduct 7.2.
- (b) The professional corporation, limited liability company or limited liability partnership shall be organized solely for the purpose of conducting the practice of law, and, with respect to the practice of law in Indiana, shall conduct such practice only through persons licensed by the Supreme Court of Indiana to do so.
- (c) Each officer, director, shareholder, member, partner or other equity owner shall be an individual who shall at all times own his or her interest in the professional corporation, limited liability company or limited liability partnership in his or her own right and, except for illness, accident, time spent in the armed services or during vacations and/or leaves of absence, shall be actively engaged in the practice of law through such professional corporation, limited liability company or limited liability partnership.
- (d) The practice of law in Indiana as a professional corporation, limited liability company or limited liability partnership shall not modify any law applicable to the relationship between the person or persons furnishing professional legal services and the person or entity receiving such services, including, but not limited to, laws regarding privileged communications.

- (e) The practice of law in Indiana as a professional corporation, limited liability company or limited liability partnership shall not relieve any lawyer of or diminish any obligation of a lawyer under the Rules of Professional Conduct or under these rules.
- (f) Each officer, director, shareholder, member, partner or other equity owner of a professional corporation, limited liability company, or limited liability partnership shall be liable for his or her own acts of fraud, defalcation or theft or errors or omissions committed in the course of rendering professional legal services as provided by law including, but not limited to, liability arising out of the acts of fraud, defalcation or theft or errors or omissions of another lawyer over whom such officer, director, shareholder, member, partner or other equity owner has supervisory responsibilities under Rule 5.1 of the Rules of Professional Conduct, without prejudice to any contractual or other right that the aggrieved party may be entitled to assert against a professional corporation, limited liability company, limited liability partnership, an insurance carrier, or other third party.
- (g) A professional corporation, limited liability company or limited liability partnership shall maintain adequate professional liability insurance or other form of adequate financial responsibility for any liability of the professional corporation, limited liability company, or limited liability partnership arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services by an officer, director, shareholder, member, partner, other equity owner, agent, employee or manager of the professional corporation, limited liability company or limited liability partnership.

- (1) "Adequate professional liability insurance" means one or more policies of attorneys' professional liability insurance or other form of adequate financial responsibility that insure the professional corporation, limited liability company or limited liability partnership or both;
  - (i) in an amount for each claim, in excess of any insurance deductible or deductibles, of fifty thousand dollars (\$50,000), multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership; and
  - (ii) in an amount of one hundred thousand dollars (\$100,000) in excess of any insurance deductible or deductibles for all claims during the policy year, multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership.

However, no professional corporation, limited liability company or limited liability partnership shall be required to carry insurance or other form of adequate financial responsibility of more than five million dollars (\$5,000,000) per claim, in excess of any insurance deductibles, or more than ten million dollars (\$10,000,000) for all claims during the policy year, in excess of any insurance deductible.

The maximum amount of any insurance deductible under this Rule shall be as prescribed from time to time by the Board of Law Examiners.

- (2) "Other form of adequate financial responsibility" means funds, in an amount not less than the amount of professional liability insurance applicable to a professional corporation, limited liability company or limited liability partnership under section (g)(1) of this Rule, available to satisfy any liability of the professional corporation, limited liability company or limited liability partnership arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services by an officer, director, shareholder, other equity owner, member, partner, agent, employee or manager of the professional corporation, limited liability company or limited liability partnership. These funds shall be available in the form of a deposit in trust of cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit or surety bonds, segregated from all other funds of the professional corporation, limited liability company or limited liability partnership and held for the exclusive purpose of protecting any aggrieved party of the professional corporation, limited liability company or limited liability partnership in compliance with this Rule.
- (h) Each officer, director, shareholder, member, partner or other equity owner of a professional corporation, limited liability company or limited liability partnership shall be jointly and severally liable for any liability of the professional corporation, limited liability company or limited liability partnership based upon a claim arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services while he or she was an officer, director, member, shareholder, partner or other equity owner, in an amount not to exceed the aggregate of both of the following:
  - (1) The per claim amount of professional liability insurance or other form of adequate financial responsibility applicable to the professional corporation, limited liability company or limited liability partnership under this Rule, but only to the extent that the professional corporation, limited liability company or limited liability partnership fails to have the professional liability insurance or other form of adequate financial responsibility required by this Rule; and
  - (2) The deductible amount of the professional liability insurance applicable to the claim.

The joint and several liability of the shareholder, member, partner or other equity owner shall be reduced to the extent that the liability of the professional corporation, limited liability company or limited liability partnership has been satisfied by the assets of the professional corporation, limited liability company or limited liability partnership.

- (i) Lawyers seeking to organize or practice by means of a professional corporation, limited liability company or limited liability partnership shall obtain applications to do so and instructions for preparing and submitting these applications from the State Board of Law Examiners. Applications shall be upon a form prescribed by the State Board of Law Examiners. Two copies of the application for a certificate of registration shall be delivered to the State Board of Law Examiners, accompanied by a registration fee of two hundred dollars (\$200.00), plus ten dollars (\$10.00) for each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice law in Indiana of the professional corporation, limited liability company or limited liability partnership, two copies of a certification of the Clerk of the Supreme Court and Court of Appeals of Indiana that each officer, director, shareholder, member, partner, other equity owner or lawyer employee who will practice law in Indiana holds an unlimited license to practice law in Indiana, and two copies of a certification of the Indiana Disciplinary Commission that each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice in Indiana has no disciplinary complaints pending against him or her and if he or she does, what the nature of each such complaint is. Applications must be accompanied by four copies of the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership with appropriate fees for the Secretary of State. All forms are to be filed with the State Board of Law Examiners.

Upon receipt of such application form and fees, the State Board of Law Examiners shall make an investigation of the professional corporation, limited liability company or limited liability partnership in regard to finding that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees licensed to practice law in Indiana are each duly licensed to practice law in Indiana and that all hereinabove outlined elements of this Rule have been fully complied with, and the Clerk of the Supreme Court and Court of Appeals shall likewise certify this fact. The Executive Secretary of the Indiana Disciplinary Commission shall certify whether a disciplinary action is pending against any of the officers, directors, shareholders, members, partners, other equity owners, managers or lawyer employees

licensed to practice law in Indiana. If it appears that no such disciplinary action is pending and that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees required to be are duly licensed to practice law in Indiana are, and that all hereinabove outlined elements of this Rule have been fully complied with, the Board shall issue a certificate of registration which will remain effective until January 1st of the year following the date of such registration.

Upon written application of the holder, upon a form prescribed by the State Board of Law Examiners, accompanied by a fee of fifty dollars (\$50.00), the Executive Director of the Board shall annually renew the certificate of registration, if the Board finds that the professional corporation, limited liability company or limited liability partnership has complied with the provisions of the statute under which it was formed and this Rule. Such application for renewal shall be filed each year on or before June 30th. Within ten (10) days after any change in the officers, directors, shareholders, members, partners, other equity owners or lawyer employees licensed to practice law in Indiana, a written listing setting forth the names and addresses of each shall be filed with the State Board of Law Examiners with a fee of ten dollars (\$10.00) for each new person listed.

Copies of any amendments to the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership thereafter filed with the Secretary of State's office shall also be filed with the State Board of Law Examiners.

## **Section 2. Applications for Registration.**

- (a) Lawyers seeking to organize or practice by means of a professional corporation, limited liability company or limited liability partnership shall submit an application for a certificate of registration to the State Board of Law Examiners.
- (b) The Board of Law Examiners shall publish instructions for submission of the application and a prescribed form for use by all lawyers seeking to organize under this Rule. The application shall include, at a minimum, the following:
  - (1) Two copies of the application for a certificate of registration shall be delivered to the State Board of Law Examiners; and,
  - (2) A registration fee of two hundred dollars (\$200.00), plus ten dollars (\$10.00) for each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice law in Indiana of the professional corporation, limited liability company or limited liability partnership; and,

- (3) Two copies of a certification of the Clerk of the Supreme Court and Court of Appeals of Indiana that each officer, director, shareholder, member, partner, other equity owner or lawyer employee who will practice law in Indiana holds an unlimited license to practice law in Indiana; and,
  - (4) Two copies of a certification of the Indiana Disciplinary Commission that each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice in Indiana has no disciplinary complaints pending against him or her and if he or she does, what the nature of each such complaint is; and,
  - (5) Four copies of the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership with appropriate fees for the Secretary of State.
- (c) Upon receipt of such application form and fees, the State Board of Law Examiners shall make an investigation of the professional corporation, limited liability company or limited liability partnership in regard to finding that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees licensed to practice law in Indiana are each duly licensed to practice law in Indiana and that all hereinabove outlined elements of this Rule have been fully complied with, and the Clerk of the Supreme Court and Court of Appeals shall likewise certify this fact. The Executive Secretary of the Indiana Disciplinary Commission shall certify whether a disciplinary action is pending against any of the officers, directors, shareholders, members, partners, other equity owners, managers or lawyer employees licensed to practice in Indiana. If it appears that no such disciplinary action is pending and that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees required to be are duly licensed to practice law in Indiana are, and that all hereinabove outlined elements of this Rule have been fully complied with, the Board shall issue a certificate of registration which will remain effective until June 30<sup>th</sup> of the year following the date of such registration.

### **Section 3. Renewal of Certificate of Registration; Fees**

- (a) A certificate of registration shall continue in force for one year (July 1 thru the following June 30), and may be renewed for a like period upon the submission of such verified information to the Board of Law Examiners as will demonstrate that the professional corporation, limited liability company or limited liability partnership has complied with the provisions of the statute under which it was formed and this Rule.
- (b) Each professional corporation, limited liability company or limited liability partnership formed pursuant to this Rule shall pay a renewal fee of fifty dollars (\$50.00) on or before June 30 of each year; a delinquent fee in the amount of twenty-five dollars (\$25.00) shall be added to the renewal fee for fees paid after June 30 and on or before July 15 of each year; a delinquent fee in the amount of fifty dollars (\$50.00) shall be added to the renewal fee for fees paid after July 15 and on or before August 31 of each year; a delinquent fee in the amount of one hundred fifty dollars (\$150.00) shall be added to the renewal fee for fees paid after August 31 of each year. Additionally, a one hundred dollar (\$100.00) surcharge will be added to the late fee for each consecutive year for which the attorney fails to timely file the renewal form. This renewal fee is in addition to any annual registration and fees paid under Rule 2 and/or Rule 6.

### **Section 4. Registration of Changes; Fees**

- (a) Within thirty (30) days after any change in the officers, directors, shareholders, members, partners, other equity owners or lawyer employees licensed to practice in Indiana, a written listing setting forth the names and addresses of each shall be filed with the State Board of Law Examiners with a fee of ten dollars (\$10.00) for each new person listed
- (b) A delinquent fee of ten dollar (\$10.00) for each new person listed shall be added to the Registration Change Fee for fees paid after the 30<sup>th</sup> day. Additionally, a twenty-five dollar (\$25.00) surcharge will be added to the late fee for each consecutive time for which the Registration of Changes fails to be timely filed. This Registration of Changes fee is in addition to any annual registration and fees paid under Rule 2, Rule 6 or otherwise in this Rule.
- (c) Copies of any amendments to the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership thereafter filed with the Secretary of State's office shall also be filed with the State Board of Law Examiners.

### **Section 5. Failure to Pay Renewal Fee; Revocation of Certificate of Registration**

- (a) Any lawyer practicing under a certificate of registration who fails to pay the renewal fee required under Section 3(b) or fails to file the affidavit required under Section 7 shall be subject to revocation of the certificate of registration and sanctions for contempt of this Court in the event he or she thereafter engages in the practice of law under the professional corporation, limited liability company or limited liability partnership in this State.

- (b) Any lawyer whose certificate of registration has been revoked pursuant to this provision and wishes to engage in the practice of law under the professional corporation, limited liability company or limited liability partnership in this State may apply for a new certificate of registration pursuant to Section 2 of this Rule.

**Section 6. Annual Renewal Notice.** On or before May 1 of each year, the Executive Director of the State Board of Law Examiners shall mail a notice to or notify via electronic mail each professional corporation, limited liability company or limited liability partnership registered pursuant to this Rule that (i) a renewal fee must be paid on or before June 30; and (ii) the attorney must (a) affirm continued compliance with this Rule to maintain the certificate of registration or (b) submit the signed relinquish affidavit to the State Board of Law Examiners on or before June 30. Notice sent pursuant to this section shall be sent to the name and address maintained by the Clerk of the Supreme Court pursuant to Admission & Discipline Rule 2 for the attorney listed as the registered agent pursuant to the records previously filed with the State Board of Law Examiners.

**Section 7. Relinquishing of Certificate of Registration.** Any lawyer who is registered to practice law pursuant to this Rule who is current in payment of all applicable registration fees and other financial obligations imposed by this rule who no longer is able to meet the requirements to maintain such registration or who no longer practices under the professional corporation, limited liability company or limited liability partnership may voluntarily relinquish his or her certificate of registration by tendering a signed relinquish affidavit to the Executive Director of the State Board of Law Examiners no later than June 30 of the reporting year (July 1 through June 30). The Executive Director shall promptly verify the eligibility of the lawyer to relinquish the certificate of registration under this section and if eligible, forward a notice of the relinquishment to the Secretary of State. In the event that the lawyer is not eligible to relinquish under this section, the Executive Director shall promptly notify the lawyer of all reasons for ineligibility.

## **Rule 28. Mandatory Continuing Judicial Education**

### **SECTION 1. PURPOSE.**

It is essential to the public that Judges continue their education in order to maintain and increase their professional competence, to fulfill their obligations under the Indiana Code of Judicial Conduct, and to ensure the delivery of quality judicial services to the people of the State of Indiana. The purpose of this Rule is to establish minimum continuing judicial education requirements for each Judge in the State of Indiana.

### **SECTION 2. DEFINITIONS.**

As used in this Rule:

- (a) *Approved Courses* shall mean those Substantive Continuing Judicial and Legal Education Courses and those Non Legal Subject Matter Courses which are approved under the Commission's Accreditation Policies in the Guidelines to this Rule. Any course approved for continuing legal education credit under the Commission's Accreditation Policies is also approved for continuing judicial education credit.
- (b) *Attorney* shall mean a person who has been admitted to practice law in the State of Indiana and whose name appears in the files of the Board of Law Examiners as provided under Admission and Discipline Rule 4.
- (c) *Bar* shall mean the Indiana Bar and includes those persons who are Attorneys under subsection (b) above.
- (d) *Business Day* shall mean Monday, Tuesday, Wednesday, Thursday, and Friday of each week but shall not include Federal or Indiana state holidays.
- (e) *Clerk* shall mean Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.
- (f) *Commission* shall mean the Indiana Commission For Continuing Legal Education created by Section 4 of Rule 29.
- (g) *Commissioner* shall mean a person who is a member of the Commission.
- (h) *Educational Period* shall mean a three-year period during which a Senior Judge, City or Town Court Judge, Marion County Small Claims Court Judge, or a part-time Court Commissioner or Referee must complete thirty-six (36) hours of Approved Courses. Educational Periods shall be sequential, in that once a particular three-year period terminates, a new three-year period and thirty-six (36) hour minimum shall commence.
- (i) *Full-time Court Commissioner or Referee* shall mean an attorney serving as a court commissioner or referee in a circuit, superior or probate court and who does not practice law regardless of the number of hours worked per week for the court.
- (j) *Judge* shall mean a regularly sitting Justice of the Indiana Supreme Court, Judge of the Indiana Court of Appeals or Tax Court, Judge of an Indiana circuit, superior or probate court, Magistrate, court commissioner or referee of any such court, Judge of an Indiana city or town court including non-attorney Judges, and Senior Judge certified by the Indiana Supreme Court Division of State Court Administration. The term Judge does not

include state or federal administrative law Judges. State and federal administrative law Judges are governed by the provisions of Admission and Discipline Rule 29.

- (k) Judicial Officer Educational Period shall mean a three-year period during which a State Level Judicial Officer (as defined below) must complete fifty-four (54) hours of Approved Courses. Judicial Officer Education Periods shall be sequential in that once a particular three-year period terminates, a new three-year period and fifty-four (54) hour minimum shall commence.
- (l) Non-attorney Judge shall mean a person who has been elected or appointed to serve as the Judge of a city or town court and who is not required by statute to be a licensed attorney to hold the office of city or town court Judge.
- (m) Non Legal Subject Matter (NLS) Courses shall mean courses that the Commission approves for Non Legal Subject Matter credit pursuant to the Commission's Accreditation Policies in the Guidelines to this Rule because, even though they lack substantive judicial or legal content, they nonetheless enhance an attendee's proficiency in the management or administration of a court.
- (n) Part-time Court Commissioner or Referee shall mean an attorney serving as a court commissioner or referee in a circuit, superior or probate court and who continues to practice law regardless of the number of hours worked per week for the court.
- (o) State Level Judicial Officer shall mean a sitting Justice of the Indiana Supreme Court, Judge of the Indiana Court of Appeals or Tax Court, Judge of a circuit, superior or probate court, magistrate, and a full-time court commissioner or referee of a circuit, superior or probate court.
- (p) Substantive Continuing Judicial and Legal Education Courses shall mean courses that the Commission approves for credit pursuant to the Commission's Accreditation Policies in the Guidelines to this Rule because the course pertains to subject matter having significant intellectual or practical content relating to the administration of justice, the adjudication of cases, the management of cases or court operations by the judicial officer or to the education of judicial officers with respect to their professional or ethical obligations.
- (q) Supreme Court shall mean the Supreme Court of the State of Indiana.
- (r) Year shall mean calendar year unless otherwise specified in this Rule.
- (s) Professional Responsibility Credits shall mean credits for topics that specifically address judicial ethics or professional responsibility. Any course that is approved for ethics or professional responsibility under the Commission's accreditation policies is also approved for judicial ethics credit.
- (t) Distance Education shall mean instructional delivery that does not constrain the student to be physically present in the same location as the instructor and does not require an attendant at the learning site to monitor attendance.
- (u) New Judge Orientation Program shall mean the General Jurisdiction Orientation Program conducted by the Indiana Judicial Center.

### **SECTION 3. EDUCATION REQUIREMENTS.**

- (a) Every State Level Judicial Officer shall complete no less than fifteen (15) hours of Approved Courses each year and shall complete no less than fifty-four (54) hours of Approved Courses each Judicial Officer Educational Period as defined in Section 2(k). At least five (5) hours of Approved Courses in Professional Responsibility, either as a free standing program or integrated as part of a substantive program, shall be included within the hours of continuing education required during each three (3) year Judicial Officer Educational Period. No more than eighteen (18) hours of the Judicial Officer Educational Period requirement shall be filled by Non Legal Subject Matter Courses. No more than twelve (12) hours of the Judicial Officer Educational Period requirement shall be filled through interactive Distance Education. All credits for a single educational activity will be applied in one (1) calendar year.
- (b) Any judge not covered by (a) shall complete no less than six (6) hours of Approved Courses each year and shall complete no less than thirty-six (36) hours of Approved Courses each Educational Period as defined in Section 2(h). At least three (3) hours of Approved Courses in Professional Responsibility, either as a free standing program or integrated as part of a substantive program, shall be included within the hours of continuing education required during each three (3) year Educational Period. No more than twelve (12) hours of the Educational Period requirement shall be filled by Non Legal Subject Matter Courses. No more than nine (9) hours of the Educational Period requirement shall be filled through interactive Distance Education. No more than three (3) hours of the Educational Period Requirement shall be filled through in-house education programs in accordance with the Guidelines. All credits for a single educational activity will be applied in one (1) calendar year.



- (c) Every Judge of a circuit, superior or probate court first elected or appointed to the bench after January 1, 2006 shall attend the next regularly scheduled New Judge Orientation Program following the date of the Judge's election or appointment unless the Chief Justice of Indiana, for good cause shown in a written request, excuses attendance.
- (d) For all current sitting State Level Judicial Officers, their existing three-year Continuing Legal Education cycle under Rule 29 terminates as of December 31, 2010. A State Level Judicial Officer's first three (3) year Judicial Officer Educational Period as defined in Section 2(k) of this Rule shall commence on January 1, 2011 with no carry-over hours.
- (e) An Attorney serving as a Senior Judge, City or Town Court Judge, Marion County Small Claims Court Judge or a part-time Court Commissioner or Referee shall remain in their current three (3) year cycle established under Section 3(b) of Rule 29. For Non-attorney Judges, the first three year Educational Period shall commence on January 1 of the first full calendar year in office.
- (f) In the event an Attorney becomes a State Level Judicial Officer during a three (3) year Educational Period as defined in Section 2(h) of Rule 29, the State Level Judicial Officer must complete the year of appointment with the same requirements as those of an Attorney under Rule 29. Thereafter, a State Level Judicial Officer's Educational Period shall commence January 1 of the first full calendar year in office.
- (g) In the event a State Level Judicial Officer ceases to be such an officer within a State Level Judicial Officer Educational Period, the former officer must complete the year and three (3) year Educational Period with the same requirements as those of an Attorney as required by Rule 29 or those of a Senior Judge under Section 3(b) of this Rule if senior judge status is obtained. Hours earned during the State Level Judicial Officer Educational Period will be converted to CLE hours for the remainder of the three year Educational Period.
- (h) Educational seminars or programs conducted by the Indiana Judicial Center shall be approved for Substantive Continuing Judicial and Legal Education credit.
- (i) A Judge who fails to comply with the educational requirements of this rule shall be subject to suspension from office and to all sanctions under Section 7. A Judge so suspended shall be automatically reinstated upon compliance with Section 7(b) "Reinstatement Procedures". The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the Roll of Attorneys that the Judge is in good standing.
- (j) For an attorney newly admitted to the bar, at least six (6) hours of the educational requirements of Sections (a) or (b) above shall be satisfied by attending an applied professionalism program that has been accredited by the Commission.

**SECTION 4. POWERS AND DUTIES OF THE INDIANA COMMISSION FOR CONTINUING LEGAL EDUCATION AND EXECUTIVE DIRECTOR.**

The powers and duties of the Indiana Commission for Continuing Legal Education and its Executive Director under this Rule shall be the same as under Sections 6 and 7 of Rule 29.

**SECTION 5. EXEMPTIONS AND OTHER RELIEF FROM THE RULE.**

- (a) United States Supreme Court Justices, United States Court of Appeals Judges, United States District Court Judges and full-time Magistrates, and United States Bankruptcy Court Judges are exempt from this Rule and Rule 29 on Mandatory Continuing Legal Education. The educational requirements imposed on such Judges and full-time magistrates by federal rules are deemed to satisfy the requirements of this Rule and Rule 29.
- (b) A Judge shall be exempted from the educational requirements of the Rule for such period of time as shall be deemed reasonable by the Commission upon the filing of a verified petition with the Commission and a finding by the Commission that special circumstances unique to the petitioning Judge have created undue hardship. Subsequent exemptions may be granted. Judges in the military who are mobilized or deployed outside the United States and who present their orders to the Commission along with a verified petition to establish undue hardship may be CLE exempted for a period of up to three years. The Commission may set forth further requirements and/or limitations for any exemption that is issued or granted under this subsection, including but not limited to the requirement of annual renewals or reporting.
- (c) A Judge who is physically impaired shall be entitled to establish an alternative method of completing the educational requirements of this Rule upon the filing of a verified petition with the Commission and a finding by the Commission that the alternative method proposed is necessary and consistent with the educational intent of this Rule. Any petition filed under this subsection shall contain a description of the physical impairment, a statement from a physician as to the nature and duration of the impairment, a waiver of any privileged information as to the impairment and a detailed proposal for an alternative educational method. Judges in the military who are on active duty in the United States and who present their orders to the Commission along with

a verified petition may be allowed to complete their educational requirements through an alternative educational method. This allowance may be extended for a period of up to three years.

- (d) A Judge who believes that he or she will be unable to make timely compliance with the educational requirements imposed by this Rule may seek relief from a specific compliance date by filing a verified petition with the Commission. The petition shall set forth reasons from which the Commission can determine whether to extend such compliance date. A petition seeking such an extension of time must be filed as much in advance of the applicable compliance date as the reasons which form the basis of the request afford. The Commission, upon receipt and consideration of such petition, shall decide if sufficient reasons exist, and may grant an extension for such period of time as shall be deemed reasonable by the Commission. Judges in the military who are on active duty may petition for an extension of time to complete their educational requirements. In no event shall such an extension be granted beyond the time when the next compliance date, as required by the Rule, occurs.

#### **SECTION 6. ANNUAL REPORTING TO JUDGES.**

- (a) On or before September 1 of each year, the Commission shall mail or electronically transmit to each Judge, a statement showing the Approved Courses which the Judge is credited on the records of the Commission with having attended during the current year and the current Educational Period. This statement will be sent to the mailing or e-mail address for the Judge listed on the Roll of Attorneys maintained by the Clerk. A Judge shall at all times keep his or her address and e-mail address current with the Roll of Attorneys. If the Judge has completed the minimum hours for the year or Educational Period, the statement will so reflect and inform the Judge that he or she is currently in compliance with the education requirements of the Rule. It shall not be a defense to noncompliance that a Judge has not received an annual statement. Additional statements will be provided to a Judge upon written request and a five dollar (\$5.00) fee made payable to the Continuing Legal Education Fund.

If the statement shows the Judge is deficient in educational hours, but the Judge believes he or she is in compliance for the year or Educational Period the Judge shall file a letter of explanation, a Sponsor certification of course attendance, a personal affidavit of attendance, and an application for course accreditation. All fees must be included with the submission. The documents required by this subsection shall be filed by December 31 of the year or Educational Period in question unless an extension of time to file the same has been granted by the Commission. When a Judge has resolved the above discrepancies, the Commission shall issue a statement showing that the Judge is in compliance with the Rule for the year or Educational Period. In the event credit is not granted, the Judge shall have thirty (30) days after written notification of that fact to comply with the educational requirements or appeal the determination pursuant to Section 8. Failure to do so will result in referral to the Supreme Court for suspension.

- (b) If the statement incorrectly reflects that the Judge has completed the minimum hours for the year or the Educational Period, then it shall be the duty of the Judge to notify the Commission and to complete the educational requirements mandated by this Rule.
- (c) All fees must be paid in order for a Judge to be considered in compliance with this Rule.

#### **SECTION 7. SANCTIONS AND REINSTATEMENTS.**

- (a) *Sanctions.* On January 1, a one-hundred fifty dollar (\$150.00) late fee accrues against each Judge who has not met his/her yearly or Educational Period requirements for the period ending December 31st of the previous year. On February 1 of each year the Commission shall mail or electronically transmit a notice assessing a one-hundred fifty dollar (\$150.00) late fee to those Judges who are shown as not having completed the yearly or Educational Period requirements. The Commission will consider the Judge delinquent for Continuing Judicial Education (CJE) until both certification of attendance at an approved program and payment of the late fee are received. Late fees and surcharges are to be deposited by the Commission immediately upon receipt. If the delinquent Judge has not fulfilled the yearly or Educational Period requirements at the time the Court issues an order suspending that Judge from office and the practice of law, the delinquency fee is forfeited. If the Judge is reinstated to the office and the practice of law pursuant to the provisions of this Section within one year of suspension, any forfeited late fee shall be credited toward the reinstatement fee. A one hundred dollar (\$100.00) surcharge will be added to the late fee for each consecutive year for which a Judge fails to timely comply with CJE requirements.

On May 1 of each year, a list of those Judges still failing to complete the yearly or Educational Period requirements will be submitted to the Supreme Court for immediate suspension from the practice of law and suspension from the office of judge. These Judges will suffer the suspension of their license to practice law and suspension from the office of Judge and all related penalties until they are reinstated.

- (b) *Reinstatement Procedures.* A Judge suspended shall be automatically reinstated upon petition to the Commission and payment of a two hundred dollar (\$200.00) reinstatement fee in addition to any applicable

surcharge. The petition must demonstrate the petitioner's compliance according to the following reinstatement schedule:

- (1) for a suspension of one (1) year or less the petitioner must, between the date of suspension and the date of the petition for reinstatement:
  - (i) complete the hours required to satisfy the deficiency which resulted in the suspension; and
  - (ii) complete six (6) additional hours of Approved Courses in a separate course or courses;
- (2) for a suspension of more than one (1) year a petitioner must, between the date of suspension and the date of the petition for reinstatement:
  - (i) complete the hours required to satisfy the deficiency which resulted in the suspension;
  - (ii) complete thirty-six (36) hours of Approved Courses, twelve (12) hours of which must have been completed within the last twelve (12) month period prior to the date of the petition; and
  - (iii) begin a new Educational Period as of January 1st of the year of reinstatement pursuant to Section 3(a) of this Rule.

The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the Roll of Attorneys that the Judge is in good standing. A Judge suspended by the Supreme Court who continues to hold office or practice law shall be subject to sanctions by the Supreme Court.

Extensions to provide course attendance certifications for courses which were timely taken may be granted for good cause shown; extensions of time to complete educational requirements are not permitted except under Section 5 of this Rule. Providing or procuring of false certifications of attendance at educational courses shall be subject to appropriate discipline under the Admission and Discipline Rules. All fees must be paid in order for a Judge to be considered in compliance with this Rule.

#### **SECTION 8. APPEALS REGARDING COMMISSION RECORDS.**

Any Judge who disagrees with the records of the Commission in regard to the credits recorded for the Judge during the current year or Educational Period and is unable to resolve the disagreement pursuant to Section 6 of this Rule, may petition the Commission for a determination as to the credits to which the Judge is entitled. Petitions pursuant to this Section must be received by the Commission within thirty (30) days of the Commission's written notification that credit has not been granted and shall be considered by the Commission at its next regular or special meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The Judge filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal. The determination of the Commission shall be final as to the number of credits for the Judge and shall be appealable directly to the Supreme Court. In the event of a good faith dispute pursuant to this Section, the educational and reporting deadlines of this Rule shall be extended until thirty (30) days after the full Commission has ruled on the disputed issue, or if an appeal is taken, until thirty (30) days after the Supreme Court has ruled on the disputed issue.

#### **SECTION 9. PETITIONS.**

Any petition filed with the Commission pursuant to this Rule shall be in writing and shall be signed and verified by the Judge seeking relief. The petition shall be sent by registered or certified mail to the attention of the Executive Director at the Commission's offices at the address shown on the most recent statements or on the Commission's web page pursuant to Section 6 of this Rule.

#### **SECTION 10. CONFIDENTIALITY.**

Unless otherwise directed by the Supreme Court or by another court having jurisdiction, the files, records and proceedings of the Commission, as they may relate to or arise out of a Judge or Sponsor attempting to satisfy the continuing judicial educational requirements of this Rule shall be confidential and shall not be disclosed except in furtherance of the duties of the Commission or upon the request of the Judge or Sponsor affected.

#### **SECTION 11. CONFLICT OF INTEREST.**

A member, agent or administrator of the Commission shall abstain from participating in any decision involving a sponsor or provider of educational services of which he or she is an officer. A member, agent or administrator of the Commission shall not be an employee of an entity principally engaged in sponsoring or providing continuing legal education services.

### **Rule 29. Mandatory Continuing Legal Education**

#### **SECTION 1. PURPOSE.**

The purpose of this Rule is to establish minimum continuing legal education requirements for each Attorney admitted to the Bar of the State of Indiana. The minimum continuing education requirements for an Attorney who serves as a Judge in the State of Indiana shall be governed by the provisions of Admission and Discipline Rule 28.

## **SECTION 2. DEFINITIONS.**

As used in this Rule:

- (a) *Approved Courses* shall mean those Substantive Legal Courses and those Non Legal Subject Matter Courses (as defined below) which are approved under the Commission's Accreditation Policies in the Guidelines to this Rule.
- (b) *Attorney* shall mean a person who has been admitted to practice law in the State of Indiana and whose name appears in the files of the Board of Law Examiners as provided under Admission and Discipline Rule 4. The term Attorney includes a state or federal administrative law judge.
- (c) *Bar* shall mean the Indiana Bar and includes those persons who are Attorneys under subsection (b) above.
- (d) *Business Day* shall mean Monday, Tuesday, Wednesday, Thursday, and Friday of each week but shall not include Federal or Indiana state holidays.
- (e) *Clerk* shall mean Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.
- (f) *Commission* shall mean the Indiana Commission For Continuing Legal Education created by Section 4 of this Rule.
- (g) *Commissioner* shall mean a person who is a member of the Commission.
- (h) *Educational Period* shall mean a three-year period during which an Attorney must complete thirty-six (36) hours of Approved Courses. Educational Periods shall be sequential, in that once an Attorney's particular three-year period terminates, a new three-year period and thirty-six hour minimum shall commence.
- (i) [Deleted, eff. January 1, 2011]
- (j) *Non Legal Subject Matter (NLS) Courses* shall mean courses that the Commission approves for Non Legal Subject Matter credit pursuant to Section 3(a) of this Rule because, even though they lack substantive legal content, they nonetheless enhance an attendee's proficiency in the attorney's practice of law.
- (k) *Supreme Court* shall mean the Supreme Court of the State of Indiana.
- (l) *Year* shall mean calendar year unless otherwise specified in this Rule.
- (m) *Professional Responsibility Credits* shall mean credits for topics that specifically address legal ethics or professional responsibility.
- (n) *Distance Education* shall mean instructional delivery that does not constrain the student to be physically present in the same location as the instructor and does not require an attendant at the learning site to monitor attendance.

## **SECTION 3. EDUCATION REQUIREMENTS.**

- (a) Every Attorney, except as provided below, shall complete no less than six (6) hours of Approved Courses each year and shall complete no less than thirty-six (36) hours of Approved Courses each Educational Period. At least three (3) hours of Approved Courses in professional responsibility shall be included within the hours of continuing legal education required during each three year Educational Period. Such hours may be integrated as part of a substantive program or as a free standing program. No more than twelve (12) hours of the Educational Period requirement shall be filled by Non Legal Subject Matter Courses. No more than nine (9) hours of the Educational Period requirement shall be filled through interactive Distance Education. No more than three (3) hours of the Educational Period requirement shall be filled through in-house education programs in accordance with the Guidelines. All credits for a single educational activity will be applied in one (1) calendar year.
- (b) Attorneys admitted to the Indiana Bar before December 31, 1998, on the basis of successfully passing the Indiana Bar examination, shall have a grace period of three (3) years commencing on January 1 of the year of admission and then shall commence meeting the minimum yearly and Educational Period requirements thereafter. Attorneys admitted after December 31, 1998, shall commence meeting the yearly and Educational Period requirements starting on January 1 after the year of their admission by completing programs designated by the Commission as appropriate for new lawyers.

For Attorneys admitted after December 31, 1998, at least six (6) of the thirty-six (36) Educational Period requirements shall be satisfied by attending an Applied Professionalism Program for Newly Admitted Attorneys which has been accredited by the Commission.

- (c) Attorneys admitted on foreign license or Attorneys who terminate their inactive status shall have no grace period. Their first three-year Educational Period shall commence on January 1 of the year of admission or termination of inactive status.
- (d) In recognition of the nature of the work, commitment of time, and the benefit of Attorney participation in the Indiana General Assembly, during an Attorney's Educational Period, for each calendar year in which the Attorney serves as a member of the Indiana General Assembly for more than six (6) months, the Attorney's minimum number of continuing legal education hours for that Educational Period shall be reduced by six (6) hours.

#### **SECTION 4. COMMISSION FOR CONTINUING LEGAL EDUCATION.**

- (a) *Creation of the Commission.* A commission to be known as the Indiana Commission For Continuing Legal Education is hereby created and shall have the powers and duties hereinafter set forth. The Commission shall consist of eleven (11) Commissioners.
- (b) *Appointment of Commissioners and Executive Director.* All Commissioners and the Executive Director shall be appointed by the Supreme Court.
- (c) *Diversity of Commissioners.* It is generally desirable that the Commissioners be selected from various geographic areas and types of practice in order to reflect the diversity of the Bar and consideration should be given to the appointment of one (1) non-lawyer public member. The three (3) geographic divisions used for selecting Judges for the Indiana Court of Appeals in the First, Second and Third Districts may be used as a model for achieving geographic diversity.
- (d) *Terms of Commissioners.* Commissioners shall be appointed for five (5) year terms. All terms shall commence on January 1 and end on December 31. Any Commissioner who has served for all or part of two (2) consecutive terms shall not be reappointed to the Commission for at least three (3) consecutive years.

#### **SECTION 5. ORGANIZATION OF THE COMMISSION.**

- (a) *Election of Officers.* At the first meeting of the Commission after each December 1, the Commissioners shall elect from the membership of the Commission a Chair who shall preside at all meetings, a Vice Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the minutes of the meetings of the Commission and a Treasurer who shall be responsible for keeping the records of account of the Commission.
- (b) *Meetings.* The Commission shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six (6) Commissioners may call special meetings of the Commission.
- (c) *Notices.* The Secretary shall send notice of each meeting of the Commission, stating the purposes of the meeting, to all Commissioners at least five (5) business days before the meeting. Commissioners may waive notice of a meeting by attending the meeting or by delivering a written waiver to the Secretary either before or after the meeting.
- (d) *Quorum.* Six (6) Commissioners shall constitute a quorum for the transaction of business. The Commission shall act by a majority of the Commissioners constituting the quorum. Commissioners may participate in meetings of the Commission and committees thereof by telephone or other similar device.
- (e) *Vacancies.* Any vacancy on the Commission shall be filled as soon as practical and the new Commissioner so appointed shall serve out the unexpired term of the Commissioner being replaced.
- (f) *Executive Committee.* The officers of the Commission described in subsection (a) of this Section shall comprise the Executive Committee which shall have the power to conduct all necessary business of the Commission that may arise between meetings of the full Commission. Three (3) officers of the Commission shall constitute a quorum of the Executive Committee, and the Executive Committee shall act by a vote of a majority of the officers constituting the quorum. All action taken by the Executive Committee shall be reported to the full Commission at its next meeting.
- (g) *Other Committees.* The Commission may appoint such other committees having such powers and duties as the Commission may determine from time to time.

#### **SECTION 6. POWERS AND DUTIES OF THE COMMISSION AND EXECUTIVE DIRECTOR.**

- (a) In addition to the powers and duties set forth in this Rule or Rule 28, the Commission shall have the power and duty to:
  - (1) Approve all or portions of individual educational activities which satisfy the legal education requirements of this Rule.

- (2) Approve Sponsors who meet the Requirements of Section 4 of the Commission's Guidelines and whose educational activities satisfy the legal education requirements of this Rule. The Judicial Conference and all seminars conducted by the Judicial Center shall be approved for credit.
  - (3) Determine the number of credit hours allowed for each educational activity.
  - (4) Establish an office to provide administrative and financial record-keeping support of the Commission and to employ such persons, sponsors, or providers as the Commission may in its discretion determine to be necessary to assist in administering matters solely of a ministerial nature under this Rule.
  - (5) Review this Rule and Commission Guidelines from time to time and make recommendations to the Supreme Court for changes.
  - (6) Upon approval of the Supreme Court publish proposed guidelines and procedures through West Publishing Company and Res Gestae and file the proposed guidelines and procedures with the Clerk.
  - (7) Provide quarterly financial reports and an annual report of the Commission activity to the Chief Justice of the Supreme Court. A proposed budget for the coming fiscal year (July 1-June 30) shall be submitted to the Chief Justice no later than May 1 of each year.
  - (8) Do all other things necessary and proper to carry out its powers and duties under this Rule.
  - (9) Perform all other duties as set forth in Indiana Admission and Discipline Rule 30 and the Indiana Alternative Dispute Resolution Rules.
- (b) In addition to the powers and duties set forth in this Rule, the Executive Director shall have the power and the duty to:
- (1) Administer the Commission's work.
  - (2) Appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule.
  - (3) Supervise and direct the work of the Commission's staff.
  - (4) Supervise the maintenance of the Commission's records.
  - (5) Enforce the collection of fees that attorneys, sponsors, mediators and independent certifying organizations must pay pursuant to this Rule, Admission and Discipline Rule 28, Admission and Discipline Rule 30 and the Indiana Alternative Dispute Resolution Rules.
  - (6) Enforce the continuing legal education requirements of Judges and Attorneys under this Rule.
  - (7) Assist the Commission in developing guidelines.
  - (8) Perform such other duties as may be assigned by the Commission in the furtherance of its responsibilities hereunder.

#### **SECTION 7. SOURCES AND USES OF FUNDS.**

- (a) The Indiana Supreme Court shall periodically designate a portion of the registration fee charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Commission on Continuing Legal Education. The Executive Director of the Commission shall deposit such funds into an account designated "Supreme Court Continuing Legal Education Fund."
- (b) Disbursements from the fund shall be made solely upon vouchers signed by or pursuant to the direction of the Chief Justice of this Court.
- (c) The Supreme Court shall specifically approve all salaries to be paid out of Continuing Legal Education Fund.
- (d) Not later than May 1 of each year, the Commission shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.
- (e) Commissioners shall be paid one hundred dollars (\$100) for each meeting of the Commission they attend and be reimbursed for expenses in accordance with guidelines established by the State of Indiana.

#### **SECTION 8. EXEMPTIONS AND OTHER RELIEF FROM THE RULE.**

- (a) An Attorney shall be exempted from the educational requirements of the Rule for such period of time as shall be deemed reasonable by the Commission upon the filing of a verified petition with the Commission and a finding by the Commission that special circumstances unique to the petitioning Attorney have created undue hardship. Subsequent exemptions may be granted. Attorneys in the military who are mobilized or deployed outside the United States and who present their orders to the Commission along with a verified petition to establish undue hardship may be CLE exempted for a period of up to three years. The Commission may set forth further

requirements and/or limitations for any exemption that is issued or granted under this subsection, including but not limited to the requirement of annual renewals or reporting.

- (b) An Attorney who is physically impaired shall be entitled to establish an alternative method of completing the educational requirements of this Rule upon the filing of a verified petition with the Commission and a finding by the Commission that the alternative method proposed is necessary and consistent with the educational intent of this Rule. Any petition filed under this subsection shall contain a description of the physical impairment, a statement from a physician as to the nature and duration of the impairment, a waiver of any privileged information as to the impairment, and a detailed proposal for an alternative educational method. Attorneys in the military who are on active duty in the United States and who present their orders to the Commission along with a verified petition may be allowed to complete their educational requirements through an alternative educational method. This allowance may be extended for a period of up to three years.
- (c) An Attorney shall be exempt from the educational and reporting requirements of this Rule if the Attorney has filed an affidavit of inactivity or a retirement affidavit under Section (c) or (d) of Ind. Admission and Discipline Rule 2. An Attorney who has been inactive for less than a year, and desires to resume active status, shall complete any balance of his or her yearly Educational Period requirements as of the date of inactive status.
- (d) An Attorney who believes that he or she will be unable to make timely compliance with the educational requirements imposed by this Rule may seek relief from a specific compliance date by filing a verified petition with the Commission. The petition shall set forth reasons from which the Commission can determine whether to extend such compliance date. A petition seeking such an extension of time must be filed as much in advance of the applicable compliance date as the reasons which form the basis of the request afford. The Commission, upon receipt and consideration of such petition, shall decide if sufficient reasons exist, and may grant an extension for such period of time as shall be deemed reasonable by the Commission. Attorneys in the military who are on active duty may petition for an extension of time to complete their educational requirements. In no event shall such an extension be granted beyond the time when the next compliance date, as required by the Rule, occurs.

#### **SECTION 9. ANNUAL REPORTING TO ATTORNEYS.**

- (a) On or before September 1 of each year, the Commission shall mail or electronically transmit to each Attorney, a statement showing the Approved Courses which the Attorney is credited on the records of the Commission with having attended during the current year and the current Educational Period. This statement will be sent to the mail or e-mail address for the Attorney listed on the Roll of Attorneys maintained by the Clerk. An Attorney shall at all times keep his or her mailing or e-mail address current with the Roll of Attorneys. If the Attorney has completed the minimum hours for the year or Educational Period, the statement will so reflect and inform the Attorney that he or she is currently in compliance with the education requirements of the Rule. It shall not be a defense to noncompliance that an Attorney has not received an annual statement. Additional statements will be provided to an Attorney upon written request and a five dollar (\$5.00) fee made payable to the Continuing Legal Education Fund.

If the statement shows the Attorney is deficient in educational hours, but the Attorney believes he or she is in compliance for the year or Educational Period the Attorney shall file a letter of explanation, a Sponsor certification of course attendance, a personal affidavit of attendance, and an application for course accreditation. All fees must be included with the submission. The documents required by this subsection shall be filed by December 31 of the year or Educational Period in question unless an extension of time to file the same has been granted by the Commission. When an Attorney has resolved the above discrepancies, the Commission shall issue a statement showing that the Attorney is in compliance with the Rule for the year or Educational Period. In the event credit is not granted, the Attorney shall have thirty (30) days after written notification of that fact to comply with the educational requirements or appeal the determination pursuant to Section 11. Failure to do so will result in referral to the Supreme Court for suspension.

- (b) If the statement incorrectly reflects that the Attorney has completed the minimum hours for the year or the Educational Period, then it shall be the duty of the Attorney to notify the Commission and to complete the educational requirements mandated by this Rule.
- (c) All fees must be paid in order for an Attorney to be considered in compliance with this Rule.

#### **SECTION 10. SANCTIONS AND REINSTATEMENTS.**

- (a) *Sanctions.* On January 1, a one hundred fifty dollar (\$150.00) late fee accrues against each Attorney who has not met his/her yearly or Educational Period requirements for the period ending December 31st of the previous year. On February 1 of each year the Commission shall mail or electronically transmit a notice assessing a one hundred fifty dollar (\$150.00) late fee to those Attorneys who are shown as not having completed the yearly or Educational Period requirements. The Commission will consider the Attorney delinquent for CLE until both certification of attendance at a CLE program and payment of the late fee are received. Late fees and surcharges are to be deposited by the Commission immediately upon receipt. If the delinquent Attorney has not fulfilled the

yearly or Educational Period requirements at the time the Court issues an order suspending that Attorney, the delinquency fee is forfeited. If the Attorney is reinstated to the practice of law pursuant to the provisions of Admission and Discipline Rule 29(10) within one (1) year of suspension, any forfeited late fee shall be credited toward the reinstatement fee. A one hundred dollar (\$100.00) surcharge will be added to the late fee for each consecutive year for which an Attorney fails to timely comply with CLE requirements.

On May 1 of each year, a list of those Attorneys still failing to complete the yearly or Educational Period requirements will be submitted to the Supreme Court for immediate suspension from the practice of law. These Attorneys will suffer the suspension of their license to practice law and all related penalties until they are reinstated.

- (b) *Reinstatement Procedures.* An Attorney suspended shall be automatically reinstated upon petition to the Commission and payment of a two hundred dollar (\$200.00) reinstatement fee in addition to any applicable surcharge. The petition must demonstrate the petitioner's compliance according to the following reinstatement schedule:
- (1) for a suspension of one (1) year or less the petitioner must, between the date of suspension and the date of the petition for reinstatement:
    - (i) complete the hours required to satisfy the deficiency which resulted in the suspension; and
    - (ii) complete six (6) additional hours of Approved Courses in a separate course or courses;
  - (2) for a suspension of more than one (1) year a petitioner must, between the date of suspension and the date of the petition for reinstatement:
    - (i) complete the hours required to satisfy the deficiency which resulted in the suspension;
    - (ii) complete thirty-six (36) hours of Approved Courses, twelve (12) hours of which must have been completed within the last twelve (12) month period prior to the date of the petition; and
    - (iii) begin a new Educational Period as of January 1st of the year of reinstatement pursuant to Section 3(a) of this Rule.

The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the Roll of Attorneys that the Attorney is in good standing. An Attorney suspended by the Supreme Court who continues to practice law shall be subject to the sanctions for the unauthorized practice of law.

Extensions to provide course attendance certifications for courses which were timely taken may be granted for good cause shown; extensions of time to complete educational requirements are not permitted except under Section 8 of this Rule. Providing or procuring of false certifications of attendance at educational courses shall be subject to appropriate discipline under the Admission and Discipline Rules.

#### **SECTION 11. APPEALS REGARDING COMMISSION RECORDS.**

Any Attorney who disagrees with the records of the Commission in regard to the credits recorded for the Attorney during the current year or Educational Period and is unable to resolve the disagreement pursuant to Section 9 of this Rule, may petition the Commission for a determination as to the credits to which the Attorney is entitled. Petitions pursuant to this Section must be received by the Commission within thirty (30) days of the Commission's written notification that credit has not been granted and shall be considered by the Commission at its next regular or special meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The Attorney filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal. The determination of the Commission shall be final as to the number of credits for the Attorney and shall be appealable directly to the Supreme Court. In the event of a good faith dispute pursuant to this Section, the educational and reporting deadlines of this Rule shall be extended until thirty (30) days after the full Commission has ruled on the disputed issue, or if an appeal is taken, until thirty (30) days after the Supreme Court has ruled on the disputed issue.

#### **SECTION 12. PETITIONS.**

Any petition filed with the Commission pursuant to this Rule shall be in writing and shall be signed and verified by the Attorney seeking relief. The petition shall be sent by registered or certified mail to the attention of the Executive Director at the Commission's offices at the address shown on the most recent statements or Commission's web page pursuant to Section 9 of this Rule.

#### **SECTION 13. CONFIDENTIALITY.**

Unless otherwise directed by the Supreme Court or by another court having jurisdiction, the files, records, and proceedings of the Commission, as they may relate to or arise out of an Attorney, Mediator, or Sponsor attempting to satisfy the continuing legal educational requirements of this Rule, or the requirements of the Indiana Alternative Dispute



Resolution Rules shall be confidential and shall not be disclosed except in furtherance of the duties of the Commission or upon the request of the Attorney, Mediator, or Sponsor affected.

#### **SECTION 14. CONFLICT OF INTEREST.**

A member, agent or administrator of the Commission shall abstain from participating in any decision involving a sponsor or provider of educational services of which he or she is an officer. A member, agent or administrator of the Commission shall not be an employee of an entity principally engaged in sponsoring or providing continuing legal education services.

#### **Mandatory Continuing Legal Education and Mandatory Judicial Education Guidelines**

#### **SECTION 1. AUTHORITY AND PUBLICATION OF GUIDELINES.**

These guidelines have been adopted by the Court under Section 4 of Rule 28 and Section 6(a) of Rule 29 in furtherance of the efficient discharge of the Commission's duties.

The Commission shall:

- (a) file a copy of these guidelines with the Clerk;
- (b) cause these guidelines to be published from time to time as revised in a pamphlet, brochure, or the Internet along with the full text of the Rule 28 and 29 and any other materials deemed useful by the Commission in assisting Attorneys, Judges, and Sponsors to understand and comply with the Rule;
- (c) cause these guidelines and the full text of the Rules to be sent to the West Publishing Company of St. Paul, Minnesota, with a request that they be published in the *Northeast Reporter*; and
- (d) cause these guidelines and the full text of the Rules to be sent to the Editors of *Res Gestae* with a request that they be published.

#### **SECTION 2. DEFINITIONS.**

All of the definitions found in Section 2 of the Rule 28 and 29 are applicable in these guidelines. In addition, as used in these guidelines:

- (a) *Approved Courses* means any course, approved by the Commission under Section 3 of these Guidelines, or conducted by an Approved Sponsor which meets the requirements of Section 3 of these Guidelines.
- (b) *Approved Sponsor* means any person approved under Section 4 of these Guidelines.
- (c) *Course* means any educational seminar, institute, or program which is designed to contribute to the continuing legal education of Attorneys and the continuing judicial and legal education of Judges.
- (d) *Enroll* means registration for and attendance at a course.
- (e) *Person* means an individual, partnership, corporation, or any other organization.
- (f) *Rule* means Admission and Discipline Rule 28 on Mandatory Continuing Judicial Education and Admission and Discipline Rule 29 on Mandatory Continuing Legal Education.
- (g) *Sponsor* means a Person who conducts or presents a course.
- (h) *Application* means a completed application form, with all required attachments and fees, signed and dated by the applicant.
- (i) *Received*, in the context of an application, document(s), and/or other item(s) which is or are requested by or submitted to the Commission, means delivery to the Commission; mailed to the Commission by registered, certified or express mail return receipt requested or deposited with any third-party commercial carrier for delivery to the Commission within three (3) calendar days, cost prepaid, properly addressed. Sending by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.

#### **SECTION 3. ACCREDITATION POLICIES.**

- (a) *Approval of Courses.* The Commission shall approve the course if it determines that the course will make a significant contribution to the professional competency of Attorneys or Judges who enroll. In determining if a course meets this standard the Commission shall consider whether:
  - (1) the course has substantial legal content.
  - (2) the course has substantial judicial content and constitutes an organized program of learning which contributes directly to the professional competency of a Judge.
  - (3) the course deals with matters related directly to the practice of law or the professional responsibility of Attorneys or Judges.

- (4) the course pertains to subject matter having significant intellectual or practical content relating to the administration of justice, the adjudication of cases, the management of case or court operations by a Judge, or to the education of Judges with respect to their professional or ethical obligations.
  - (5) each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject.
  - (6) the physical setting for the course is suitable, including the availability of a writing surface and accessibility to persons with disabilities.
  - (7) high quality written materials including notes and outlines are available at or prior to the time the course is offered to all Attorneys or Judges who enroll.
  - (8) the course is of sufficient length to provide a substantial educational experience. Courses of less than one (1) hour will be reviewed carefully to determine if they furnish a substantial educational experience.
  - (9) there are live presentations; or there is a licensed Indiana Attorney, whose function shall be to certify attendance to accompany the replaying of tapes.
  - (10) the applicant has sufficiently identified those portions of a seminar that should be accredited. It shall be the duty of an applicant to apply separately for accreditation of the legal portions of a seminar, where the substance of a seminar is not entirely legal. The Commission may deny accreditation for an entire program where separate application is not made and where a significant portion of the program is not continuing legal education.
  - (11) the course is designed for and targeted to Attorneys or Judges.
  - (12) any attendance restrictions are grounded in a bona fide educational objective to enhance the Continuing Judicial Education or Continuing Legal Education activity. The Commission may deny accreditation to any course that restricts or that a reasonable person would perceive to restrict attendance based upon a classification protected by Indiana state law, federal law or by the Indiana Rules of Professional Conduct.
- (b) *Approval of Other Educational Activities.*
- (1) Credit may be given for the following legal subject matter courses:
    - (i) *Law School Courses.* An Attorney or Judge who attends a regularly conducted class at a law school approved by the American Bar Association. The number of credits may not exceed twenty-four (24) hours for a single law school activity.
    - (ii) *Bar Review Courses.* An Attorney or Judge who completes a bar review course may apply for continuing legal education credit. The number of credits may not exceed twenty-four (24) hours for the course.
    - (iii) *Commission-Accredited Basic Mediation Training Course.* An Attorney or Judge who completes a basic mediation training course approved by the Commission for mediation training shall receive twenty-four (24) hours.
    - (iv) *Court Administration Courses.* Courses directed at improving docket management and court administration shall be approved.
    - (v) *Ethics Concentrated Law Firm Management Courses.* An Attorney or Judge who attends a law firm management course with a concentration on: Trust accounting, ethical client contact, and ethical use of staff and resources, may apply for credit. Any portion of the course dealing with marketing of services or profit enhancement will be denied credit.
    - (vi) *Teaching Approved Courses.* An Attorney or Judge who participates as a teacher, lecturer, panelist, or author in an approved course will receive credit for:
      - (A) Four (4) hours of either approved continuing legal education or continuing judicial education, as applicable, for every hour spent in presentation.
      - (B) One (1) hour of either continuing legal education credit or continuing judicial education, as applicable, for every four (4) hours of preparation time (up to a maximum of six (6) hours of credit) for a contributing author who does not make a presentation relating to the materials prepared.
      - (C) One (1) hour of either approved continuing legal education or continuing judicial education, as applicable, for every hour the Attorney or Judge spends in attendance at sessions of a course other than those in which the Attorney or Judge participates as a teacher, lecturer or panel member.

- (D) Attorneys or Judges will not receive credit for acting as a speaker, lecturer, or panelist on a program directed to non-attorneys.
- (2) Subject to the 12-hour limitation set forth in Rule 28, Section 3(b) and Rule 29, Section 3(a) and the 18-hour limitation set forth in Rule 28, Section 3(a), credit may also be given for Non Legal Subject Matter (NLS) Courses.
- (i) *Sponsor Applications for NLS Course Approval.* A sponsor may apply for and receive accreditation of an NLS course. An NLS course may be approved without reference to Section 3(a)(1) of these guidelines. The following is a non-exclusive list of courses that may be accredited under this section:
- (A) *Law Firm Management Courses.* A Sponsor may apply for accreditation of a law office management course that does not meet the criteria of (b)(1)(v)) Ethics Concentrated Law Firm Management courses (above). To be accredited, the course must deal with law firm management as opposed to office management in general. Further, the course must be directed to Attorneys or law office administrators. Any portions of the course dealing mainly with profit enhancement or marketing of services will be denied credit.
- (B) *Medicine.* Orthopaedics or Anatomy for Lawyers.
- (C) *Accounting for Lawyers.*
- (D) *Teaching Administration Skills for Law School Teachers.*
- (E) *Wellness Courses specifically targeted to Attorneys and Judges.*
- (ii) *Attorney Application for NLS Course Approval.* In addition, individual Attorneys and Judges may apply for NLS credit for a course that does not deal with matters directly related to the practice of law. NLS credit may be approved without reference to Sections 3 (a)(1), (3), and (11) of these guidelines if the course directly related to a subject matter directly applicable to the applicant's practice. The following are non-exclusive examples of courses for which individual credit may be awarded under this provision:
- (A) Courses in anatomy or other fields of medicine, when credit is sought by an Attorney whose practice includes medical malpractice.
- (B) Courses in construction, engineering, or architecture, when credit is sought by an Attorney whose practice includes construction contracting or litigation.
- (C) Courses in financial planning, when credit is sought by an Attorney whose practice includes estate planning.
- (3) Professional Responsibility Credit shall be given when a topic has professional responsibility or ethics as its main focus, and the course has at least one-half (1/2) hour of professional responsibility content.
- (i) An Approved Sponsor must separately designate Professional Responsibility Credits when certifying attendance to the Commission.
- (ii) A Non-Approved Sponsor must separately request Professional Responsibility Credits on an application provided by the Commission.
- (4) Approved In-house education. In-house programs include those primarily designed for the exclusive benefit of Attorneys employed by a private organization or law firm. In-house programs also include those programs presented only to those Attorneys and/or their clients, even if the program was not designed for those Attorneys. Attorneys within related companies are considered to be employed by the same organization or law firm for purposes of this Rule. In-house education programs may become approved where the education is provided by a Judge, Attorney or Sponsor of legal education who is not a member, employee or acting of counsel of the participating organization or law firm. In-house CLE is subject to the following limitations and requirements:
- (i) Limited credit may be given for courses taught in-house. Non-governmental or non-academic Attorneys may report up to three (3) hours per three-year educational period for in-house programs that have been accredited by the Commission. Governmental or academic Attorney employees may receive unlimited CLE for these courses sponsored by their employers for the exclusive benefit of their Attorney employees.
- (ii) To be accredited, the Attorney or Sponsor must apply for accreditation at least thirty (30) days before the course is presented, using an Application for Accreditation. Additionally, the Sponsor or Attorney must demonstrate the facts set forth in paragraph 6 below.

- (5) Distance education courses. Limited credit may be given for courses taken through distance education methods. Subject to the nine (9) hour limitation found in Rule 28, Section 3(b) and Rule 29, Section 3(a) and the twelve (12) hour limitation found in Rule 28, Section 3(a), an Attorney or Judge may receive CLE or CJE through interactive distance education during an educational period. To be accredited, the Attorney, Judge or Sponsor must apply for accreditation at least 30 days before the course is presented using an Application for Accreditation. Additionally, the Sponsor, Attorney or Judge must demonstrate the facts set forth in paragraph 6 below.
- (6) Accreditation of in-house and distance education courses. The Sponsor, Attorney, or Judge must demonstrate that:
  - (i) the course is designed for and targeted to Attorneys or Judges;
  - (ii) continuing attendance is monitored and evidence of continuing attendance and/or participation is provided by the Sponsor to the Commission in conformance with such guidelines as the Commission may develop. In the case of distance education, the sponsor or Attorney must provide evidence that attendance is monitored by randomly polling or testing of participants during the program to ensure their participation;
  - (iii) the Sponsor will provide a certificate of continuing attendance to the Commission;
  - (iv) in content and style the program meets standards of educational quality as determined by the Commission;
  - (v) in the case of distance education courses, meaningful technical assistance will be provided at times and in ways reasonable to the attendee;
  - (vi) the course has substantial legal or judicial content (non legal subject credit is not available through in-house programs);
  - (vii) the course deals with matters related directly to the practice of law, management or administration of court, the adjudication of cases, or the professional responsibility of Attorneys or Judges;
  - (viii) each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject;
  - (ix) high quality written materials are available either through paper format or electronic format to accompany the instruction either at or prior to the time the course is offered;
  - (x) in the case of distance education courses, the program is not text-based;
  - (xi) in the case of distance education courses, either audio or video or both are provided; and,
  - (xii) the Sponsor will allow the Commission and its Executive Director or designated appointee to audit the course for regulation purposes.
- (7) Credit will be denied for the following activities:
  - (i) Legislative, lobbying or other law-making activities; and,
  - (ii) Self-study activities. Courses or activities completed by self-study will be denied credit unless approved under Section 8(c) of this rule.

(c) **Procedure for Sponsors.** Any Sponsor may apply to the Commission for approval of a course. The application must:

- (1) be received by the Commission at least thirty (30) days before the first date on which the course is to be offered; The applicant must include the nonrefundable application fee in order for the application to be reviewed by the Commission.

Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Courses presented by bar associations, Indiana Continuing Legal Education Forum (ICLEF) and government or academic entities will not be assessed an application fee, but are subject to late processing fees.

Applications received less than thirty (30) days before a course is presented must also include a late processing fee in order to be processed by the Commission.

Either the provider or the attendee must pay all application and late processing fees before an attorney may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

- (2) contain the information required by and be in the form approved by the Commission and available upon request; and
  - (3) be accompanied by the written course outline and brochure used to furnish information about the course to Attorneys or Judges.
- (d) **Procedure for Attorneys and Judges.** Except for distance education and in-house courses, an Attorney or Judge may apply for credit of a course either before or after the date on which it is offered. Application for accreditation of a distance education course or in-house course must be received at least thirty (30) days prior to the Course. The application must:

- (1) include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Either the provider or the attendee must pay all application and late fees before an Attorney may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause;

- (2) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;
- (3) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to Attorneys or Judges; and
- (4) be accompanied by an affidavit of the Attorney or Judge attesting that the Attorney or Judge attended the course together with a certification of the course Sponsor as to the Attorney's or Judge's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance. Attendance reports received more than thirty (30) days after the conclusion of a course must include a late processing fee.

Course applications received more than one-year after a course is presented may be denied as untimely.

- (e) **Executive Director's Discretionary Powers.** The Executive Director of the Indiana Commission for Continuing Legal Education may use discretion in waiving the 30-day pre-program application requirements of these Guidelines upon a showing of good cause by the applicant and may waive application or late processing fees.

#### **SECTION 4. APPROVAL OF SPONSORS.**

- (a) **Procedure.** A Person may apply to the Commission for approval as a Sponsor of continuing legal or judicial education activity. The application submitted to the Commission must contain the information required by and be in the form approved by the Commission and available upon request in the Commission office. A Person becomes an Approved Sponsor when the Commission places a Person's name on the list of Approved Sponsors.
- (b) **Standard for Approval.** The Commission shall approve the Person as a Sponsor if the Commission finds that the Person has conducted and is prepared to conduct on a regular basis programs which, if considered on an individual basis, would satisfy the standards for course approval set out in Section 3(a) of these Guidelines.

In order to determine whether a Sponsor should be granted Approved Sponsor status, the Commission may consider the following:

- (1) Whether the Sponsor has presented a minimum of an average of five (5) Approved Courses per year for the previous three (3) years.
- (2) Whether the courses within the previous three (3) years were substantively legal or judicial in nature and primarily targeted to Attorneys or Judges.
- (3) Whether the Sponsor has observed Commission Rules, Guidelines and Policies with regard to advertising, application requirements and attendance reporting.
- (4) Whether courses within the previous three (3) years were high quality and advanced the education of Attorneys or Judges.
- (5) Whether the Sponsor has substantially complied with requests from the Commission.
- (6) Whether courses have been denied accreditation by the Commission during the previous three (3) years and the reasons for the denials.

- (c) **Review of Approved Sponsors.** The Commission shall periodically audit Approved Sponsors. If the Person fails to conduct approvable courses on a regular basis, the Person shall be removed from the Commission's list of Approved Sponsors. In order to remain an Approved Sponsor, a Sponsor must certify to the Commission the name and attorney number of all Indiana Attorneys and Judges who attend any Continuing Legal Education Program or Continuing Judicial Education Program.
- (d) **Presumption of Course Accreditation.** Courses presented by an Approved Sponsor are presumed to satisfy the education requirements of Section 3 of Rule 28 and Rule 29; provided however, courses which do not meet requirements of Section 3(a) of these Guidelines will be denied credit. Approved Sponsors must seek approval of courses of less than one (1) hour duration under Section 3 of these Guidelines.
- (e) **Fees.** Approved sponsors need not pay application fees. Approved sponsors must pay a late processing fee for attendance reports received more than thirty (30) days after conclusion of a course.

**SECTION 5. PROCEDURE FOR APPEALS.**

Any Person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions pursuant to this Section must be received by the Commission within thirty (30) days of the Commission's written notification giving rise to the disagreement and shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The Person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

**SECTION 6. CONFIDENTIALITY.**

Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the Attorney, Judge or Sponsor involved, or as directed by the Supreme Court.

**SECTION 7. RULES FOR DETERMINING EDUCATION COMPLETED.**

- (a) **Formula.** The number of hours of continuing legal or judicial education completed in any course by an Attorney or Judge shall be computed by:
  - (1) Determining the total instruction time expressed in minutes;
  - (2) Dividing the total instruction time by sixty (60); and
  - (3) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\text{Total Instruction Time (in minutes)}}{\text{Sixty (60)}} = \text{Hours completed (rounded up to nearest 1/10)}$$

- (b) **Instruction Time Defined.** Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:
  - (1) Introductory remarks;
  - (2) Breaks; or
  - (3) Business meetings.

**SECTION 8. REPORT OF SPONSOR.**

The Sponsor shall, within thirty (30) days after the course is presented, submit to the Commission an alphabetical list including attorney numbers of all Attorneys admitted in Indiana and Indiana Judges who have attended the course. This list shall be certified by the Sponsor and include the hours to be credited to each Attorney and Judge for attendance and speaking. Attendance reports received more than thirty (30) days after the conclusion of a course must include a late processing fee.

If the course is presented by an Approved Sponsor under Section 4 of these Guidelines, the Sponsor shall submit a copy of the outline and brochure by which information about the program was furnished to Attorneys or Judges.

**SECTION 9. USE OF THE OFFICIAL LEGEND OF THE COMMISSION.**

- (a) **Legend of the Commission.** The Commission has adopted the official legend set forth in subsection (c) of this Section as a symbol of approval of continuing legal education activity. This legend is the subject of copyright

and may not be used in advertisement or publicity for a course unless the Sponsor complies with the requirements of subsection (b) of this Section.

- (b) A Sponsor of Approved Courses may use the legend set forth in subsection (c) of this Section if the Sponsor agrees to report hours of credit and submit materials under Section 8 of these Guidelines.
- (c) This legend which may be utilized by Sponsors is:

THIS COURSE HAS BEEN APPROVED BY THE COMMISSION FOR CONTINUING LEGAL EDUCATION OF THE STATE OF INDIANA. ATTORNEYS OR JUDGES WHO COMPLETE THIS COURSE SHALL RECEIVE

1. \_\_\_\_ HOURS OF SUBSTANTIVE CONTINUING EDUCATION, INCLUDING \_\_\_\_ HOURS OF ETHICS, OR
2. \_\_\_\_ HOURS OF NLS CONTINUING EDUCATION HOURS

UNDER INDIANA SUPREME COURT ADMISSION AND DISCIPLINE RULE 29 ON MANDATORY CONTINUING LEGAL EDUCATION AND/OR ADMISSION AND DISCIPLINE RULE 28 ON MANDATORY CONTINUING JUDICIAL EDUCATION. THE SPONSOR OF THIS COURSE IS OBLIGATED TO REPORT THE HOURS OF CONTINUING EDUCATION COMPLETED BY AN ATTORNEY OR JUDGE.

### **Rule 30. Indiana Certification Review Plan**

**Section 1. Purpose.** The purpose of this rule is to regulate the certification of lawyers as specialists by independent certifying organizations (ICO's) to:

- (a) enhance public access to and promote efficient and economic delivery of appropriate legal services;
- (b) assure that lawyers claiming special competence in a field of law have satisfied uniform criteria appropriate to the field;
- (c) facilitate the education, training and certification of lawyers in limited fields of law;
- (d) facilitate lawyer access to certifying organizations;
- (e) expedite consultation and referral; and
- (f) encourage lawyer self-regulation and organizational diversity in defining and implementing certification of lawyers in limited fields of law.

**Section 2. Power of Indiana Commission for Continuing Legal Education (CLE).** CLE shall review, approve and monitor organizations (ICO's) which issue certifications of specialization to lawyers practicing in the State of Indiana to assure that such organizations satisfy the standards for qualification set forth in this rule.

**Section 3. Authority and Discretion of CLE.** In furtherance of the foregoing powers and subject to the supervision of and, where appropriate, appeal to the Supreme Court of Indiana, CLE shall have authority and discretion to:

- (a) approve or conditionally approve appropriate organizations as qualified to certify lawyers as specialists in a particular field or closely related group of fields of law;
- (b) adopt and interpret rules and policies reasonably needed to implement this rule and which are not inconsistent with its purposes;
- (c) review and evaluate the programs of ICO's to assure continuing compliance with the purposes of this rule, the rules and policies of CLE, and the qualification standards set forth in Section 4;
- (d) deny, suspend or revoke the approval of an ICO upon CLE's determination that the ICO has failed to comply with the qualification standards or rules and policies of CLE;
- (e) keep appropriate records of those lawyers certified by ICO's approved under this rule;
- (f) cooperate with other organizations, boards and agencies engaged in the field of lawyer certification;
- (g) enlist the assistance of advisory committees to advise CLE; and
- (h) make recommendations to the Indiana Supreme Court concerning:
  - (1) the need for and appointment of a Director and other staff, their remuneration and termination;
  - (2) an annual budget;
  - (3) appropriate fees for applicant organizations, qualified organizations and certified specialists; and
  - (4) any other matter the Indiana Supreme Court requests.

### **Section 4. Qualification Standards for Independent Certifying Agencies.**

- (a) The ICO shall encompass a comprehensive field or closely related group of fields of law so delineated and identified (1) that the field of certification furthers the purpose of the rule; and (2) that lawyers can, through intensive training, education and work concentration, attain extraordinary competence and efficiency in the delivery of legal services within the field or group.
- (b) The ICO shall be a non-profit entity whose objectives and programs foster the purpose of this rule . A majority of the body within an Applicant organization reviewing applicants for certification of lawyers as specialists in a particular area of law shall consist of lawyers who, in the judgment of CLE, are experts in the field of certification.
- (c) The ICO shall have a substantial continuing existence and demonstrable administrative capacity to perform the tasks assigned it by this rule and the rules and policies of CLE.
- (d) The ICO shall adopt, publish and enforce open membership and certifications standards and procedures which do not unfairly discriminate against members of the Bar of Indiana individually or collectively.
- (e) The ICO shall provide the following assurance to the continuing satisfaction of CLE with respect to its certified practitioners:
  - (1) that certified practitioners have a demonstrated proficiency in the field of certification that is;
    - i. comprehensive;
    - ii. objectively demonstrated;
    - iii. peer recognized; and
    - iv. reevaluated at appropriate intervals;
  - (2) that members actively and effectively pursue the field of certification as demonstrated by continuing education and substantial involvement; and
- (f) The ICO shall cooperate at all times with CLE and perform such tasks and duties as CLE may require to implement, enforce and assure compliance with and effective administration of this rule.

**Section 5. Qualification Standards for Certification.**

- (a) To be recognized as certified in a field of law in the State of Indiana, the lawyer must be duly admitted to the bar of this state, in active status, and in good standing, throughout the period for which the certification is granted.
- (b) The lawyer must be certified by an ICO approved by CLE, and must be in full compliance with the Indiana Bar Certification Review Plan, the rules and policies of the ICO and the rules and policies of CLE.

**Section 6. Privileges Conferred and Limitations Imposed.**

- (a) A lawyer who is certified under this rule may communicate the fact that the lawyer is certified by the ICO as a specialist in the area of law involved. The lawyer shall not represent, either expressly or impliedly, that the lawyer's certification has been individually recognized by the Indiana Supreme Court or CLE, or by an entity other than the ICO.
- (b) Certification in one or more fields of law, shall not limit a lawyer's right to practice in other fields of law.
- (c) Absence of certification in a field of law shall not limit the right of a lawyer to practice in that field of law. Participation in the Indiana Bar Certification Review Plan shall be on a voluntary basis.
- (d) The number of certifications which a lawyer may hold shall be limited only by the practical limits of the qualification standards imposed by this rule and the rules and policies of the ICO.
- (e) An ICO shall not be precluded from issuing certificates in more than one area of certification but in such event, the ICO's qualifications shall be judged and determined separately as to each such area of certification. To the extent consistent with the purpose of the Indiana Bar Certification Review Plan, any number of ICO's may be approved to issue certifications in the same or overlapping fields or groups of closely related fields of law.

**Section 7. Fees.** To defray expenses of the Indiana Bar Certification Review program, the Indiana Supreme Court may establish and collect reasonable and periodic fees from the ICO's and from applicants and lawyers certified under the Indiana Bar Certification Review program.

**Section 8. Appeal.** CLE action or inaction may be appealed as abuse of authority under the Rules of Procedure applicable to original actions in the Indiana Supreme Court.

**Rule 31. Judges and Lawyers Assistance Program**

**Section 1. Establishment.**



The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. The Committee shall be composed of Committee members, an Executive Director, and such other persons as shall from time to time be approved by the Supreme Court and who are necessary to carry out the Committee's work.

## **Section 2. Purpose.**

The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

## **Section 3. Committee Members.**

- (a) The Committee shall consist of fifteen (15) Committee members, all of whom shall be appointed by the Supreme Court. Members shall have experience with the problems of chemical dependency and/or mental health problems. Seven (7) members shall be practicing lawyers; five (5) shall be judges; one (1) shall be a law school administrator or law school faculty member employed by, or a law student enrolled in, an Indiana law school at the time of appointment; two (2) members may be filled by judges, lawyers, and/or law student(s). A reasonable effort shall be made to provide geographical representation of the State.
- (b) Members shall be appointed for three-year terms. All terms shall commence on January 1 and end on December 31. Any member who has served three (3) consecutive terms, exclusive of filling out an unexpired term, shall not be reappointed to the Committee for at least three (3) consecutive years. Any vacancy on the Committee shall be filled as soon as practicable and the new member so appointed shall serve the unexpired term of the member being replaced. Any member may be removed by the Supreme Court for a good cause.
- (c) *Election of Officers.* The members shall elect from the membership a Chair who shall preside at all meetings, a Vice-Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the Committee's minutes, and a Treasurer who shall be responsible for keeping the Committee's record of account.
- (d) *Executive Committee.* The Officers shall comprise the Executive Committee, which shall have the power to conduct all necessary business that may arise between meetings of the full Committee. Three (3) Officers shall constitute a quorum. The Executive Committee shall act by a vote of a majority of the Officers. All action taken by the Executive Committee shall be reported to the full Committee at its next meeting.
- (e) *Meetings.* The Committee shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six Committee members may call special meetings of the Committee.
- (f) *Notices.* The Secretary shall send notice of each Committee meeting, which states the meeting's purpose, to all members at least five (5) business days before the meeting.
- (g) *Quorum.* Six (6) members shall constitute a quorum for the transaction of business. The Committee shall act by majority of the members constituting the quorum. Members may participate in meetings by telephone or other similar device.

## **Section 4. Powers and Duties of the Committee.**

In addition to the powers and duties set forth elsewhere in this Rule, the Committee shall have the power and duty to:

- (a) Adopt rules and regulations, to be known as the Judges and Lawyers Assistance Program Guidelines, for the efficient discharge of its powers and duties. The Guidelines shall become effective when approved by the Supreme Court.
- (b) Establish an office to provide administrative and financial record keeping support for the Committee.
- (c) Establish a mechanism, subject to Court approval, to arrange loans or other financial assistance to members of the bar for recovery related expenses.
- (d) Review this Rule and Guidelines from time to time and make recommendations to the Supreme Court for changes.
- (e) Publish proposed Guidelines and procedures through West Publishing Company and Res Gestae and file them with the Clerk of the Supreme and Appellate Courts.
- (f) Appoint subcommittees having such powers and duties as the Committee may determine are necessary to carry out the Committee's work; including trustees of any organization created to receive and distribute or spend grants, bequests, gifts and other monies for loans or other financial assistance to members of the bar for recovery related expenses.

- (g) Provide financial reports to the Chief Justice.
- (h) Make an annual report of its activities to the Supreme Court each year. The report shall include a statement of income and expenses for the year.
- (i) Recruit and train volunteers, as defined by the Guidelines, to assist the Committee's work with impaired members of the legal profession.
- (j) Do all other things necessary and proper to carry out its powers and duties under this Rule.

**Section 5. Executive Director.** With the assistance of the Committee members, the Chief Justice shall hire an Executive Director.

**Section 6. Powers and Duties of the Executive Director.** In addition to the powers and duties set forth in this Rule or otherwise defined by the Committee or the Supreme Court, the Executive Director shall have the power and duty to:

- (a) Administer the Committee's work.
- (b) Appoint, with approval of the Committee, such staff as may be necessary to assist the Committee to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Committee's staff and volunteers.
- (d) Assist the Committee in developing Guidelines.
- (e) Supervise the maintenance of the Committee's records.
- (f) Assist judges, courts, lawyers, law firms and law schools to identify and intervene with impaired members of the legal profession.
- (g) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

**Section 7. Sources and Uses of Funds.**

- (a) The Indiana Supreme Court shall periodically designate a portion of the registration fee charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Judges and Lawyers Assistance Committee. The Executive Director shall deposit such funds into an account designated "Supreme Court Judges and Lawyers Assistance Committee Fund."
- (b) The Supreme Court shall specifically approve the salaries to be paid out of the Judges and Lawyers Committee Fund.
- (c) Not later than May 1 of each year, the Committee shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.

**Section 8. Referrals.**

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.
- (d) The Committee may refer judges, lawyers, and law students to outside agencies, organizations, or individuals for assessment or treatment upon such terms authorized by the Guidelines.

**Section 9. Confidentiality.**

- (a) All information, including records obtained by the Committee in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana, shall be confidential, except as provided by the Program Guidelines.
- (b) Nothing in this section prevents the Committee from communicating statistical information which does not divulge the identity of any individual.
- (c) Violation of the confidentiality provisions of this rule shall be subject to disciplinary proceeding under Indiana Admission and Discipline Rules 12, 23 and 26.

**Section 10. Immunity.** The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

## **PROGRAM GUIDELINES FOR THE INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM**

The Indiana Judges and Lawyers Assistance Program (JLAP), established pursuant to Indiana Admission and Discipline Rule 31, provides assistance to judges, lawyers, and law students who suffer from physical or mental disabilities resulting from disease, chemical dependency, mental health problems, or age that impair their ability to practice or serve. JLAP neither engages in punishing nor disciplining members nor does it have the power or authority to do so. These policies and procedures have been adopted by JLAP and constitute guidelines approved by the Committee.

### **Section 1. Definitions.**

The following terms or phrases shall have the meanings assigned in this section.

- (a) **Chairperson**--the person who is currently holding the office of chairperson of the committee.
- (b) **Clinical director**--clinical director of JLAP
- (c) **Committee**--the body comprised of the persons appointed by the Supreme Court of Indiana to administer JLAP pursuant to Admis.Disc.R. 31 § 1.
- (d) **Confidential information**--all information, whether oral, written, or electronically acquired, received by, or held in the possession of a representative, which in any manner (including identity) relates to a member who is impaired, believed to be impaired or possibly has an impairment.
- (e) **Contract participant**--a participant who has entered into a formal, written agreement with JLAP.
- (f) **Court**--the Supreme Court of Indiana
- (g) **Director**--executive director of JLAP
- (h) **Impaired**--having a physical or mental disability resulting from disease, chemical dependency, mental health problems, or age that could affect a member's ability to practice law or serve as a lawyer or judge.
- (i) **Independent source**--any person consulted to verify a JLAP contact who did not initiate the contact.
- (j) **JLAP**--the Indiana Judges and Lawyers Assistance Program as established pursuant to Admis.Disc.R. 31, its staff and volunteers.
- (k) **Members or members of the legal profession** -- persons who are judges, lawyers, law students, or have applied for admission to the Indiana bar.
- (l) **Monitor**--Volunteer who oversees a contract participant's compliance with a JLAP monitoring agreement.
- (m) **Monitoring agreement**--a formal written agreement between a participant and JLAP that establishes the obligations of the participant and provides for the monitoring of the participant's compliance.
- (n) **Official referral**--referral of a member to JLAP by:
  - 1) The Indiana Supreme Court Disciplinary Commission;
  - 2) The Indiana Board of Law Examiners;
  - 3) The Indiana Commission on Judicial Qualifications; or
  - 4) Any Indiana law school administration as part of its disciplinary process.
- (o) **Participant**--any member who is referred to JLAP and, as a result thereof, receives a contact or communication from a representative.
- (p) **Permitted disclosures**--disclosure of confidential information
  - 1) Permitted or required pursuant to Rule 31 § 9(c);
  - 2) With the written consent of the participant or contract participant to whom such confidential information relates; or
  - 3) By or among representatives to carry out or accomplish the purposes of JLAP.
- (q) **Representative**--the director, clinical director, any member or employee of the committee or any volunteer.
- (r) **Self-referral**--a member's direct contact with a representative to consider becoming a participant in JLAP not in furtherance of an official referral or a third party referral.
- (s) **Staff**--any and/or all of the employees of JLAP.
- (t) **Third party referral**--any referral of a member to JLAP other than an official referral or self-referral.

- (u) **Volunteer**--any person (including members of the committee) who has entered into an agreement with JLAP to assist in providing services in accordance with JLAP policies and procedures including completing any required application process.

## **Section 2. Purpose of JLAP.**

Pursuant to Admis.Disc.R. 31 § 2, JLAP was established to assist impaired members in recovery; to educate the bench and bar; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system.

These guidelines have been adopted with these purposes in mind. The work of JLAP is designed to be educational, confidential, and responsive to the special situations faced by impaired members of the legal profession.

The JLAP committee and the executive director may take any other action required to fulfill, yet remains consistent with, the stated purpose.

## **Section 3. Organization.**

JLAP was established pursuant to Admis.Disc.R. 31. The Committee consists of fifteen (15) members appointed by the Court: seven (7) practicing attorneys, five (5) judges, one (1) law student, and two (2) judge(s), lawyer(s), or law student(s). The director operates under the direction of the committee. The clinical director, staff and volunteers operate under the direction of the director.

## **Section 4. Policies.**

- (a) JLAP designs and delivers programs to raise the awareness of the legal community about potential types of impairment and the identification, prevention and available resources for treatment and/or support.
- (b) JLAP works toward increasing the likelihood of recovery by encouraging early identification, referral and treatment.
- (c) Any person may report to the director, clinical director, or any member of the committee that a particular member of the bar needs the assistance of JLAP.
- (d) JLAP encourages and welcomes contact by any means. However, the confidentiality of e-mail communications is subject to the limitations inherent in Internet transmissions.
- (e) Neither JLAP, nor any representative, in their role as a volunteer, engages in the practice of law while fulfilling their JLAP responsibilities. Upon admission to inpatient or residential treatment, or with a physical disability case, JLAP may:
  - 1) work with the participant to find friends and/or colleagues to assist with the law practice;
  - 2) work with the relevant local and state bar association committees to assist with the practice;
  - 3) should no other arrangements be possible, attempt to facilitate movement of a participant's case files to the respective clients upon receipt of written permission from the participant.

## **Section 5. Referral Procedures**

- (a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

- (b) Self-Referrals and Other Referrals

- 1) When the participant is a self-referral, the following procedures apply:
  - i. JLAP may conduct an initial consultation to determine the nature of the participant's impairment;
  - ii. where appropriate, JLAP may make a referral to a qualified medical and/or clinical resource for further evaluation, assessment, and/or treatment;
  - iii. if appropriate, JLAP may assist in the development of a treatment plan, which may include participation in JLAP;
  - iv. with the participant's permission, a volunteer will be appointed to provide ongoing support.
- 2) When the member is referred by a third party the following procedures apply:
  - i. JLAP will obtain detailed information from the referral source regarding the nature of the impairment, the referral source's relationship to the member, and the circumstances giving rise to the referral. The identity of the referral source shall remain confidential unless the referral source instructs otherwise.

- ii. JLAP may conduct further investigations to verify the circumstances that led to the referral by contacting independent sources to determine whether the member may be impaired.
  - iii. Any independent sources shall be approached in a manner to preserve, as far as possible, the privacy of the member.
  - iv. If it is determined the member may be impaired, JLAP will determine how the member will be approached with special attention given to involving local volunteers and/or local members of the bar who may already be involved in the case.
  - v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.
- 3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:
- i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
  - ii. assistance in locating treatment resources; and
  - iii. assistance in development of continuing care including support and referral to JLAP.
- 4) The director may terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.
- (c) Official Referrals
- 1) Upon receipt of an official referral for assessment/evaluation, JLAP will:
- i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
  - ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
  - iii. Contact the official referral source for background information and direction, if necessary.
  - iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
  - v. Release information and/or the final assessment/evaluation as allowed by written release.
- 2) Upon receipt of an official referral for a monitoring agreement JLAP will:
- i. Determine if all appropriate signed releases/authorizations have been obtained.
  - ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
  - iii. Develop a monitoring agreement.
  - iv. Select and provide a monitor.
  - v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the agreement to explain JLAP's role and the agreement terms and conditions.
  - vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

**Section 6. Services.**

- (a) Any member is eligible for assistance and participation in JLAP. JLAP services will be provided without charge for initial consultation, in-house assessment, referral, and peer support.
- (b) Referrals for medical and/or clinical evaluations, treatment, therapy and aftercare services will be provided; engagement of, and payment for, such services is solely the responsibility of the participant.
- (c) Participants entering into a monitoring agreement with JLAP due to an official referral or upon their own initiative may be charged a monthly fee pursuant to JLAP's fee policy as approved by the Supreme Court from time to time.

**Section 7. Treatment--Medical Assistance.**

- (a) JLAP endeavors to provide a network of therapeutic resources that includes a broad range of health care providers, therapists, and "self-help" support groups. JLAP will maintain a statewide list of available providers.

- (b) With the written consent of the participant, JLAP may maintain contact with, and receive information from, the treatment provider. JLAP may remain involved in support during treatment, and shall endeavor to provide peer support and aftercare assistance in early recovery.
- (c) In cases where it is determined the participant is not in need of inpatient or residential treatment, JLAP may provide referrals to outpatient counseling resources and self-help groups such as 12-step programs.

**Section 8. Confidentiality.**

- (a) JLAP and its representatives will observe anonymity and confidentiality at all times. JLAP is an autonomous program, independent from the administrative offices of the Court or any other board or disciplinary organization, agency or authority.
- (b) No disclosure of confidential information will be made by any representative except for permitted disclosures and those identified in Ind. Professional Conduct Rule 8.3.

**Section 9. Role of Program Volunteers.**

JLAP will maintain a statewide network of volunteers to assist the committee in carrying out the purposes of JLAP. Volunteers fulfill the following functions:

- (a) Assist in investigations, assessments, interventions, monitoring and support;
- (b) Appear on behalf of contract participants as witnesses at the discretion of the director;
- (c) Attend ongoing training on topics that enhance their ability to assist impaired members of the legal profession; and
- (d) Disseminate information about JLAP including the offer of presentations to local and specialty bars.

**INDIANA SUPREME COURT DISCIPLINARY COMMISSION RULES GOVERNING ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING**

The following rules and procedures, issued pursuant to the authority granted to the Indiana Supreme Court Disciplinary Commission by the Supreme Court of the State of Indiana in Admission and Discipline Rule 23, Sections 24 and 29(b), govern the administration of an attorney trust account overdraft reporting program in the State of Indiana.

**Rule 1. Definitions**

As used herein:

- A. “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.
- B. “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 Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.
- C. “IOLTA (Interest on Lawyer Trust Account)” means an attorney trust account in a financial institution pursuant to Professional Conduct Rule 1.15(f).
- D. “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.

**Rule 2. Approval of Financial Institutions**

- A. Indiana Admission and Discipline Rule 23, Section 29(a)(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 hereto as Exhibit A, whereby 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, irrespective of whether or not the instrument is honored.
- B. The written agreement of any financial institution is binding upon all branches of the financial institution.
- C. The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish it on its website. The names of approved financial institutions will also be available by written or telephone inquiry to the Disciplinary Commission.
- D. The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in

writing to the Disciplinary Commission, or until such time as its approval is revoked by the Disciplinary Commission.

### **Rule 3. Disapproval and Revocation of Approval of Financial Institutions**

- A. 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 hereto 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.
- B. The 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.
- C. The Executive Secretary 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. Thereafter, the financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to file a written request with the Executive Secretary seeking reconsideration of the revocation decision. In the event an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Secretary 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 such time as the reconsideration process is final.
- D. Once the approval of a financial institution has been revoked, the institution shall not thereafter be approved as a depository for trust accounts until such time as the institution petitions the Disciplinary Commission for approval and includes within the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

### **Rule 4. Duty to Notify Financial Institutions of Trust Accounts**

- A. 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, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.
  - 1) For IOLTA accounts as required by 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.
  - 2) For non-IOLTA trust accounts as permitted by 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 as Exhibit B for each such account to the financial institution in which the account is maintained.
- B. 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 such trust account. However, every member of the firm is responsible for insuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.

### **Rule 5. Duty of Financial Institutions**

- A. Each financial institution shall report to the Indiana Supreme Court Disciplinary Commission any properly payable attorney IOLTA or non-IOLTA trust account instrument presented against insufficient funds as set forth in Indiana Admission and Discipline Rule 23, Section 29(b) through (g) and these rules irrespective of whether the instrument is honored.
- B. No financial institution shall be responsible for forwarding a report of any overdraft on an account about which it has not received notice pursuant to Rule 4(A)(1) or (2) above from the depositor attorney that it is a trust account subject to overdraft reporting.

### **Rule 6. Processing of Overdraft Reports by the Commission**

- A. Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Secretary shall send a letter to the depositor attorney seeking a documented explanation of the overdraft within ten (10) business days. This letter is a demand for information, noncompliance with which is a violation of Professional Conduct Rule 8.1(b). If bank error is claimed by the attorney, a written statement from a bank

officer must be submitted with the explanation. If office error is claimed by the attorney, affidavits from the appropriate office personnel must be submitted with the explanation.

- B. If the depositor attorney does not provide a timely explanation or if the explanation provided does not document the existence of bank error or isolated office inadvertence, the Executive Secretary shall present the matter to the full Disciplinary Commission to consider the issuance of a grievance pursuant to Indiana Admission and Discipline Rule 23, Section 10(a). Thereafter, the procedures of Admission and Discipline Rule 23 for the processing of grievances shall apply.

#### **Rule 7. Miscellaneous Matters**

- A. 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 such 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 applicable 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 such 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.
- B. Admission and Discipline Rule 23, Section 29(a)(6) contemplates that a designee who is not admitted to practice law in Indiana may be an authorized signatory on a trust account. In the event an attorney or law firm delegates trust account signature authority to any person who is not admitted to practice law in Indiana, such delegation shall be accompanied by specific safeguards, including at a minimum the following:
1. All 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; and
  2. 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 signature authority over the trust account.
- C. All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204.

**Exhibit A.** Trust Account Overdraft Reporting Agreement  
*Adopted Dec. 23, 1996, effective July 1, 1997.*

[MS Word](#)

**Exhibit B.** Attorney Trust Account Notification  
*Adopted Dec. 23, 1996, effective July 1, 1997; amended effective Apr. 20, 2005.*

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