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Nora Borja



NORTHERN MARIANA ISLANDS

RULES OF ATTORNEY DISCIPLINE AND

PROCEDURE

Effective February 14, 2015



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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
RULES OF ATTORNEY DISCIPLINE AND PROCEDURE

ADMINISTRATIVE ORDER 2015-ADM-0005-RUL

ORDER

¶ 1 On December 15, 2014, the attached proposed *Northern Mariana Islands Rules of Attorney Discipline and Procedure* were submitted to the Eighteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rules.

¶ 2 IT IS HEREBY ORDERED that the *Northern Mariana Islands Rules of Attorney Discipline and Procedure* are adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. The Rules became effective on February 14, 2015, and the former *Disciplinary Rules and Procedures*, which took effect on July 24, 1999, are hereby replaced by these Rules.

SO ORDERED this 3rd day of March, 2015.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

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INTRODUCTION

The license to practice law in the Commonwealth of the Northern Mariana Islands (“Commonwealth”) is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney. The power to regulate the practice of law is conferred to the Supreme Court by article IV, section 9 of the Commonwealth Constitution. It is the duty of every recipient of the conditional privilege to practice law to always act, both professionally and personally, in conformity with the standards imposed upon members of the Commonwealth of the Northern Mariana Islands Bar Association.

The purpose of the Northern Mariana Islands Rules of Attorney Discipline and Procedure is to set appropriate standards of professional conduct and establish procedures governing attorney disciplinary matters. These rules protect the public and the administration of justice.

Rule 1. Definitions

- (a) **Allegation.** A written statement setting forth possible misconduct under these rules.
- (b) **Attorney.** A person who is (1) licensed by the Bar Association; (2) suspended by the Bar Association; (3) provisionally licensed as a Commonwealth government attorney; (4) admitted pro hac vice; or (5) a legal intern as defined by the NMI Rules of Admission.
- (c) **Bar Association.** The Commonwealth of the Northern Mariana Bar Association.
- (d) **Chief Justice.** The Chief Justice of the NMI Supreme Court or a designee.
- (e) **Complaint.** A written statement prepared by the prosecuting counsel setting forth specific instances of misconduct under these rules. The filing of this document is a prerequisite to a disciplinary hearing.
- (f) **Disciplinary Committee (“Committee”).** A Bar Association committee that is responsible for reviewing and prosecuting violations of these rules.
- (g) **Judge.** Unless otherwise noted, any reference to a judge refers to the Presiding Judge of the Superior Court or a designee.
- (h) **Prosecuting Counsel.** An individual who is appointed to fulfill the duties and responsibilities set out in these rules.
- (i) **Respondent.** An attorney who is the subject of an allegation, complaint, or incapacity hearing.

Rule 2. Applicability; Statute of Limitations

These rules apply to every attorney and do not deny any Commonwealth court their inherent and contempt powers necessary to maintain control over proceedings.

The statute of limitations is 10 years from completion of the act that would otherwise be grounds for discipline. This limitation does not apply to proceedings triggered by Rule 15, proceedings triggered by Rule 16, or acts that an attorney intentionally concealed.

Rule 3. Grounds for Discipline

An attorney is subject to discipline for any of the following causes occurring within or outside the Commonwealth:

- (1) Any act or omission that violates the most recent version of the Model Rules of Professional Conduct of the American Bar Association.
- (2) The commission of any act involving moral turpitude, dishonesty, or corruption. A criminal conviction is not a condition precedent to discipline.
- (3) Willful disobedience or violations of a court order directing the attorney: (1) to do an act that the attorney in good faith ought to do; or (2) to cease an act that the attorney in good faith ought to forbear from doing.
- (4) Violation of his or her oath or duties as an attorney.
- (5) Willful appearance without authority as an attorney for a party to an action or proceeding.
- (6) Misrepresentation or concealment of a material fact made in his or her application for admission to the Bar Association, or for reinstatement, or in support thereof.
- (7) Failure to voluntarily report suspension, disbarment, or other discipline by competent authority in any state, territory, commonwealth, or federal or foreign jurisdiction.
- (8) Practicing law with or in cooperation with a disbarred or suspended attorney. This includes, but is not limited to: (1) maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney; (2) permitting a disbarred or suspended attorney to use his or her name for the practice of law; (3) practicing law for or on behalf of a disbarred or suspended attorney; or (4) practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.
- (9) Repeated acts that evidence a disregard for civility and professionalism and are unbecoming of an officer of the court and a member of the Bar Association.

Rule 4. Types of Discipline

- (a) **Types.** Discipline may consist of, but is not limited to, the imposition of one or more of the following:
- (1) Disbarment;
 - (2) Suspension;
 - (3) Public censure;
 - (4) Monetary sanction and/or restitution;
 - (5) Pro bono and/or community service;
 - (6) Remedial legal or ethical education;
 - (7) Substance abuse treatment and/or counseling;
 - (8) Private reprimand; or
 - (9) A period of probation during which the Committee may audit the attorney's practice of law to insure the action(s) underlying the discipline are not being repeated.
- (b) **Costs.** In addition to the types of discipline set forth in Rule 4(a), the court may impose on a disciplined person any portion or all reasonable costs associated with the investigation and prosecution of the disciplinary matter.

Rule 5. Confidentiality

- (a) **Public Records.** The complaint and subsequent court filings are public records unless the court where the records are filed orders otherwise.
- (b) **Committee Confidentiality.** The Committee deliberations and votes are confidential and not subject to discovery. No person is competent to testify to the deliberations or voting.
- (c) **Disclosure of Allegations.**
- (1) **Waiver of Confidentiality.** The Committee can disclose all relevant documents to individuals or entities approved by the respondent if the respondent waives the right to confidentiality.
 - (2) **Committee Disclosure.** The Committee has the discretion to provide relevant information on any allegation that was investigated if that information is requested by: (a) a corresponding disciplinary authority from another U.S. jurisdiction; (b) a recognized governmental law enforcement agency; or (c) the president, governor, or an entity lawfully empowered to conduct investigations in connection with the selection or appointment of judges. Prior to disclosure of the information, the requestor must certify that the information is necessary for: (a) a pending investigation for a disciplinary matter within their jurisdiction; (b) an investigation of an

applicant for admission to that jurisdiction; or (c) a thorough vetting of a potential judicial nominee.

- (3) **Notification; Opportunity to Waive.** Before disclosing any information under Rule 5(c)(2), the Committee must notify the respondent what information will be disclosed and offer the respondent 72 hours to waive the right to confidentiality concerning the documents.

Rule 6. Immunity

All Committee members and staff, investigators, and prosecuting counsel are absolutely immune from civil suit and liability for any conduct in the course of their official duties under these rules. This immunity extends to cases previously decided, pending, or yet to be investigated and/or prosecuted.

Rule 7. Committee

- (a) **Composition of the Committee.** The Committee has five members who each serve two-year terms. Committee members must:
 - (1) Be active members in good standing with the Bar Association;
 - (2) Be elected by a majority vote of active members of the Bar Association;
 - (3) After each election, elect one among them to be the Chairperson, Vice-Chairperson, and Secretary.
- (b) **Action by Committee.** The Committee takes action by a majority vote. The Committee cannot act unless there is quorum. Quorum requires five Committee members who are eligible to vote. Quorum may be met by the member being physically present at the meeting or attending telephonically
- (c) **Adoption of Procedural Rules.** The Committee may adopt necessary procedural rules consistent with these attorney discipline rules.
- (d) **Duties and Powers.** The Committee has the power to:
 - (1) Review allegations and determine whether to appoint an investigator;
 - (2) Review investigation reports and recommend whether the further action should be taken;
 - (3) Request interim suspensions; and
 - (4) Recommend discipline.
- (e) **Conflict of Interest.**
 - (1) **Ad Hoc Members.** After receipt of an allegation, Committee members must inform the Committee chairperson if a conflict of interest prevents the member from fairly evaluating the

matter. The Chairperson must appoint an *ad hoc* member from the Bar Association to replace any member who has a conflict of interest. An *ad hoc* member must meet the qualifications for election to the Committee. An *ad hoc* member is: (1) considered a Committee member; and (2) appointed solely for the purpose of deliberating, evaluating, and voting on the matters that gave rise to the conflict of interest.

- (2) **Lack of Quorum.** The Committee must notify the Chief Justice if there is a lack of quorum because sufficient *ad hoc* members cannot or have not been timely appointed. Following such notice, the Chief Justice must review the matter pursuant to Rule 10(a)(2).

Rule 8. Interim Suspension

The Committee may request that the Superior Court impose an interim suspension of the respondent when: (1) the respondent's actions reveal a pattern of professional misconduct involving a violation of the same or similar rule; and (2) the respondent poses a substantial threat of irreparable harm to his or her clients and/or prospective clients.

- (a) **Standard.** By clear and convincing evidence, the Superior Court must find the same elements required for the issuance of a Temporary Restraining Order.
- (b) **Expiration.** The interim suspension expires 90 days after the date entered, unless a further hearing is held and good cause is shown why the interim suspension should be extended.

Rule 9. Allegations

- (a) **Filing.** An allegation concerning the violation of these rules must be filed with the Committee. If an allegation is mistakenly submitted to the Superior Court, Supreme Court, or the Bar Association, the recipient must promptly forward the allegation to the Committee.
- (b) **Review.**
 - (1) **Non-Committee Allegation.** The Committee must review an allegation not made by the Committee and determine if the allegation warrants initiating an investigation pursuant to Rule 10(a)(1).
 - (2) **Committee Allegation.** The Committee can appoint an investigator if an allegation has not been filed. If the Committee acts without an allegation, the Committee must state the basis for the investigation.
- (c) **Notice.** After voting to initiate an investigation, the Committee must notify the Chief Justice. The notice must state: (1) the respondent's

name; (2) the date the Committee voted to investigate; and (3) the case number assigned to the investigation within the Committee.

Rule 10. Investigation

(a) Appointing Investigator.

- (1) **Committee Action.** If the Committee votes to initiate an investigation, the Committee Chairperson designates a person to investigate the allegation.
- (2) **Judicial Action.** If the Committee notifies the Chief Justice pursuant to Rule 7(e)(2) that there is a lack of quorum, the Chief Justice has 45 days from that notification to: (1) determine whether to appoint an investigator for the complaint and (2) if necessary, appoint an investigator. Alternatively, if no further investigation is necessary, the Chief Justice may appoint prosecuting counsel. The matter is closed if, within 45 days of the Committee's notice, the Chief Justice does not appoint an investigator or prosecuting counsel.

(b) Report. The investigator is required to file a report about his investigation.

- (1) **Submission.** If the investigator was appointed under Rule 10(a)(1), the report is submitted to the Committee. But if the investigator was appointed under Rule 10(a)(2), the report is submitted to the Chief Justice.
- (2) **Contents.** The report must address the merits of the allegation and recommend whether to take further action. The report must include copies of the witnesses' statements, documentary evidence related to the allegation, and a summary of the investigation's findings.
- (3) **Response.** The report cannot be submitted until the respondent has had a reasonable opportunity to provide the investigator any evidence relevant to the allegation. This evidence, if any, must be attached to the report. The investigator must note in the report if the respondent was given an opportunity to respond to the request for information but declined to do so or failed to respond within 45 days of the request. For good cause, the time to respond may be extended by whoever appointed the investigator.
- (4) **Timeline.** The investigator must submit the report within 90 days. For good cause, the deadline may be extended by whoever appointed the investigator.

(c) Deliberations and Recommendations.

- (1) **Committee.** Within a reasonable time after receiving the investigator's report, the Committee must vote on whether to recommend appointing prosecuting counsel. The Committee

Chairperson must submit a letter to the Chief Justice that conveys the Committee's recommendation and includes the investigator's report. Disclosure of the report to the court does not make the report discoverable.

- (A) **No Further Action Recommended.** If the Committee recommends against appointing prosecuting counsel, the matter is closed unless the Chief Justice, within 20 days of receiving the Committee's recommendation, requests the matter be forwarded to his or her office for further review. After the Chief Justice requests the matter, the matter becomes subject to Rule 10(c)(2).
 - (B) **Further Action Recommended.** If the Committee recommends further action, the Chief Justice must appoint prosecuting counsel.
- (2) **Chief Justice.** When the Chief Justice acts pursuant to his or her power in Rule 10(a)(2) or has requested the matter pursuant to Rule 10(c)(1)(A), the Chief Justice reviews the investigator's report. Within 45 days of receiving the report from the investigator or the Committee, the Chief Justice must: (1) determine whether the report warrants appointing prosecuting counsel and (2) if warranted, appoint prosecuting counsel. The matter is closed if, within 45 days of receiving the report, the Chief Justice fails to act or concludes no further action is necessary.

Rule 11. Subpoena Power

- (a) **Scope.** During an investigation, the Committee may issue a subpoena to compel the attendance of witnesses at a deposition and the production of documents if the information likely to be obtained from the subpoena is reasonably related to an allegation under investigation. After a complaint has been filed, prosecuting counsel and the respondent can compel by subpoena the attendance of witnesses at a deposition and the production of documents reasonably related to the complaint.
- (b) **Oaths.** A person designated to investigate a matter under these rules may administer oaths and affirmations.
- (c) **Issuance.** Before a complaint has been filed, the Committee may issue a subpoena permitted under Rule 11(a). After a complaint has been filed, the Superior Court, at the request of a party, issues a subpoena permitted under Rule 11(a).
- (d) **Enforcement.** The failure to comply with a subpoena issued by the Committee will be forwarded to the Superior Court for contempt proceedings.
- (e) **Service.** The service of a subpoena is governed by the NMI Rules of Civil Procedure.

(f) Limited Depositions.

- (1) **Availability.** Before a complaint has been filed, the Committee may depose any person or entity. After a complaint has been filed, the respondent and prosecuting counsel may depose any person or entity relevant to the complaint. Unless good cause is shown, a committee member may not be deposed. A court finding good cause to depose a Committee member must set forth the scope of the deposition.
- (2) **Restrictions.** The following restrictions apply after a complaint a file has been filed. Unless good cause is shown, (1) each deposition is limited to 8 hours; (2) the prosecuting counsel and respondent are each allowed to depose prospective witnesses one time; and (3) the party who conducted the deposition must file the audio and video of the deposition with the Superior Court within 45 days from when service of the complaint on the respondent is perfected.

- (g) Additional Discovery.** Unless the Superior Court orders otherwise, Rule 11 presents an exhaustive list of the available means of discovery.

Rule 12. Prosecuting Counsel

- (a) Appointment.** The Chief Justice appoints prosecuting counsel. Prosecuting counsel may be appointed when: (1) the Committee recommends further action under Rule 10(c)(1); (2) the Chief Justice acts under Rule 10(c)(2); or (3) the Supreme Court Clerk of Court acts under Rule 15(c).
- (b) Duties.** Prosecuting counsel must: (1) prosecute allegations of misconduct; (2) prepare a complaint for filing with the Superior Court; (3) file a complaint within 60 days of appointment; (4) present all evidence relevant to the complaint; and (5) if necessary, conduct further investigation regarding the respondent's alleged misconduct.
- (c) Settlement.** Prosecuting counsel can settle the charges only if the Superior Court consents.

Rule 13. Hearing; Appeal

- (a) Hearing Generally.** Except as otherwise provided by these rules, all hearings are conducted by the Superior Court.
- (b) Service**
 - (1) **Complaint.** Consistent with the NMI Rules of Civil Procedure, the prosecuting counsel must serve the complaint by personal service. If the respondent cannot be found or is not in the Commonwealth, prosecuting counsel may conduct service through registered mail to respondent's last known address.

- (2) **Other Documents.** Unless otherwise provided, service of any other papers or notices required by these rules is governed by the NMI Rules of Civil Procedure.
- (3) **Address.** For those subject to these rules, the failure to maintain a current mailing address with the Bar Association constitutes a waiver of any defect in service of process under these rules.
- (c) **Complaint.** Formal disciplinary proceedings before any court are instituted by the filing of a complaint. The complaint must be sufficiently clear and specific so as to inform the respondent of the alleged misconduct. A copy of the complaint must be served upon the respondent.
- (d) **Answer.** The respondent must serve an answer on the Superior Court Clerk of Court. Unless granted additional time by the Superior Court, the respondent must file the original and two copies with the court within 20 days after service of the complaint. If the respondent fails to answer within the time allowed then the charges are deemed admitted.
- (e) **Hearing Date.** The Superior Court must give the respondent notice of the time and place of the hearing at least 15 days prior to the hearing. Unless delayed by the court for good cause, the hearing will be conducted between 30 and 90 days after an answer is filed.
- (f) **Venue.** All disciplinary hearings are held in a Commonwealth court or at such other venue that may be designated by the judge having jurisdiction over the hearing.
- (g) **Public Exclusion from Hearing.** For good cause, the Superior Court may exclude the public from the disciplinary hearing.
- (h) **Witnesses.** At every hearing, the respondent must have the full opportunity to present witnesses and cross-examine all witnesses presented by the prosecuting counsel.
- (i) **Evidence.** The Superior Court is not bound by the NMI Rules of Evidence. However, the court may only admit trustworthy evidence.
- (j) **Standard.** The standard of proof for establishing misconduct is clear and convincing evidence.
- (k) **Findings and Conclusions.** Within a reasonable time after the hearing, the Superior Court must enter findings of fact and conclusions of law in support of its decision.
- (l) **Discipline.**
 - (1) **Hearing.** If it is likely that the Superior Court will impose discipline other than a private reprimand, the court must set the matter for a hearing at which the prosecuting counsel and the respondent may introduce: (1) aggravating and mitigating factors; and (2) recommended discipline.
 - (2) **Committee Recommendation.** If the Superior Court orders a hearing pursuant to Rule 13(1)(1), the court must notify the Committee so that it can prepare and file a discipline

recommendation. If the Committee files a recommendation, the Committee must also provide a copy to the respondent and prosecuting counsel no later than 5 days before the Rule 13(l)(1) hearing. The Committee's recommendation should consider, among other things, the following factors:

- (A) Prior disciplinary history of the respondent;
 - (B) Cooperation, or lack thereof, of the respondent with the Committee investigation;
 - (C) Attempt by the respondent to mitigate any damage to clients or the public;
 - (D) Remedial action taken by respondent to minimize the reoccurrence of the same misconduct.
- (3) **Ordering Discipline.** A Superior Court order imposing discipline must be forwarded to the Supreme Court Clerk of Court within 7 days of issuance. The order becomes effective when the Supreme Court issues an implementing order.
- (A) **Timeline.** Unless the Supreme Court stays the Superior Court's order, the implementing order must be issued within 7 days after the earlier of the deadline to file an appeal or the filing of an appeal.
 - (B) **Transmittal.** After the Supreme Court orders discipline or issues an implementing order, the Supreme Court Clerk of Court must transmit a certified copy of the order to the: (1) judges within the Commonwealth; (2) jurisdictions and courts where the attorney has been admitted to practice; (3) the Bar Association; and (4) as appropriate, other government entities.
- (m) **Appeal.** The respondent may appeal the Superior Court's decision and imposition of discipline within 20 days after the entry of judgment. Unless otherwise specified in these rules, the NMI Supreme Court Rules govern the procedure of an appeal. The Supreme Court may: (1) affirm, reverse, or modify the Superior Court's decision; or (2) remand the matter for further consideration.
- (1) **Briefing Timeline:** The opening brief must be filed within 20 days after the certificate of record is filed. The response brief must be filed within 20 days after the opening brief is filed. The reply brief must be filed within 10 days after the response brief is filed. No automatic extensions are permitted.
 - (2) **Effect of Appeal.** Unless otherwise ordered, an appeal does not toll: (1) discipline imposed by the Superior Court; or (2) Rule 17's requirements for a disbarred or suspended attorney.

Rule 14. Abatement or Deferral

- (a) **Prosecuting Counsel's Action.** Prosecution of a complaint may not be abated solely because of the prosecuting counsel's unwillingness or failure to prosecute.
- (b) **Alleger's Action.** Investigation of an allegation or prosecution of a complaint may not be abated solely because the alleger and the respondent have reached a settlement or compromise.
- (c) **Respondent's Action.** Investigation of an allegation or prosecution of a complaint may not be abated solely because the respondent made restitution or took other remedial action.
- (d) **Pending Criminal or Civil Action.** Unless there is good cause, investigation of an allegation or prosecution of a complaint may not be abated or deferred because the allegation or complaint has substantially similar material allegations to any pending criminal or civil action.
- (e) **Acquittal or Favorable Verdict.** Investigation of an allegation or prosecution of a complaint may not be abated solely because, in a case with substantially similar material allegations, the respondent was acquitted in a criminal trial or received a favorable civil trial verdict.

Rule 15. Criminal Conviction

- (a) **Suspension.** The Supreme Court must enter an order immediately suspending the attorney from engaging in the practice of law if the Supreme Court Clerk of Court certifies, based on reliable evidence, that the attorney has been convicted of: (1) a felony; (2) a felony if the act had been committed in this jurisdiction; or (3) a crime involving dishonesty or a false statement. This suspension order may be modified after the disciplinary procedure is completed. The order must be entered regardless of whether: (1) the conviction came from a guilty or nolo contendere plea; and/or (2) an appeal is pending. This order may be set aside if doing so is in the interest of justice.
- (b) **Conclusive Evidence.** The final conviction of an attorney for any crime is conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him or her based upon the conviction. For the purpose of this rule, a conviction is deemed final when the availability of appeal has been exhausted.
- (c) **Initiating Prosecution.** After the Supreme Court Clerk of Court verifies an attorney has been convicted of a crime listed in Rule 15(a) and files a declaration stating such, the Chief Justice must appoint prosecuting counsel.
 - (1) **Judge or Clerk Duties.** A clerk or judge of a court within the Commonwealth who, in the course of official duties, learns that a member of the Commonwealth Bar has been convicted

of a crime (other than a non-serious traffic offense) should promptly transmit to the Bar Association a declaration attesting to the conviction.

- (d) **Conviction Reversed.** A suspension entered pursuant to Rule 15(a) must be vacated immediately after a filing with the Supreme Court demonstrating that the conviction triggering the suspension has been reversed. Any pending or ongoing formal proceeding against the attorney founded solely upon such conviction must be terminated. Any discipline imposed in a formal proceeding based solely on the conviction must be vacated.

Rule 16. Reciprocal Discipline

- (a) **Self-Reporting.** Every attorney is required to notify the Supreme Court of any pending professional disciplinary action against the attorney in another jurisdiction. This notice must be sent no later than 15 days after the attorney is made aware of the pending action, identify the jurisdiction where the matter is pending, and provide a summary of the matter. Additionally, the attorney must supply any additional information requested by the Court and provide a copy of the final adjudication within 15 days of its issuance.
- (b) **Order to Show Cause.** After receiving reliable information that the attorney has been disciplined in another jurisdiction, the Supreme Court must serve the attorney with an order to show cause why reciprocal discipline is not appropriate. The order must contain the information giving rise to the reasonable belief of discipline in the other jurisdiction, inform the attorney of the burden and criteria listed in Rule 16(d), and instruct the attorney to respond by registered mail or filing with the Supreme Court Clerk of Court no later than 30 days from the date of service.
- (c) **Hearing.** At its discretion, the Supreme Court may schedule a hearing on the matter. If a hearing is scheduled, the attorney must be served with notice no earlier than 30 days after the order to show cause is served on the attorney and no later than 30 days after the order to show cause is due.
- (d) **Burden; Criteria.** The attorney has to burden to show by clear and convincing evidence that imposing discipline based on the decision in the other jurisdiction would be improper. The attorney can demonstrate reciprocal discipline is improper by showing: (1) there were procedures so lacking in notice and opportunity to be heard as to constitute a deprivation of due process; (2) the evidence establishing the misconduct was so insufficient or questionable that it is clear the Supreme Court should not accept as final the conclusion reached in the original jurisdiction; or (3) the misconduct established warrants substantially different punishment in this jurisdiction.

- (e) **Discipline.** If the attorney fails to show why reciprocal discipline is not appropriate, the Court must discipline the attorney in a manner befitting the misconduct.

Rule 17. Disbarred or Suspended Attorney

- (a) **Notice.** A disbarred or suspended attorney must provide notice to clients and adverse parties' attorneys.
 - (1) **Notice to Clients.** A disbarred or suspended attorney must promptly notify all clients that the attorney represents in pending matters.
 - (2) **Notice to Adverse Parties' Attorneys.** The disbarred or suspended attorney must also provide notice to the attorney(s) for any adverse party and must state the place of residence of the client of the disbarred or suspended attorney.
 - (3) **Contents of Notice.** The notice must: (1) explain the attorney's disbarment or suspension and his or her inability to act as an attorney after the effective date of disbarment or suspension; and (2) advise the client to seek legal assistance elsewhere. If the attorney represents the client in pending litigation or administrative proceedings, then the attorney must also advise the client that prompt substitution of another attorney in his or her place is necessary to avoid potential prejudice to the client's pending case.
 - (4) **Method of Notice.** Any notice referenced in this section must be sent with a return receipt requested and by either registered or certified mail.
- (b) **Leave to Withdraw.** The disbarred or suspended attorney must move for leave to withdraw as attorney of record if the client does not obtain new counsel before the effective date of the attorney's disbarment or suspension.
- (c) **New Work; Pending Cases.** After entry of the disbarment or suspension order, the attorney cannot accept any new retainer or engage as the attorney in any new case or legal matter. However, during the period from the entry date of the order to its effective date, the attorney may complete on behalf of any client all matters that were pending on the entry date and which are capable of being completed prior to the effective date.
- (d) **Filing of Affidavit.** Within 10 days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney must file with the Superior Court an affidavit stating the attorney: (1) complied with the provisions of Rules 17(a)-(c) and (2) notified all other jurisdictions to which the attorney is admitted to practice of the discipline. The affidavit must also set forth the address where communications may be sent.

- (e) **Proof of Compliance.** A condition precedent to any petition for reinstatement is proof of compliance with: (1) these rules and (2) the disbarment or suspension order.

Rule 18. Resignation by Attorney Under Investigation

- (a) **Permission Required.** If an investigator has been appointed under Rule 10, the attorney under investigation may resign from the Bar Association only with the consent of the Supreme Court and under any terms the Court sets forth to protect the public.
- (b) **Requirements.** An attorney wishing to resign under Rule 18 must submit a sworn written statement stating each of the following:
 - (1) The facts and alleged misconduct underlying the allegation (or complaint if it has been filed).
 - (2) The material facts in the allegation (or complaint if it has been filed) are true.
 - (3) There was no successful defense against the misconduct underlying the allegation (or complaint if it has been filed).
 - (4) The resignation is freely and voluntarily rendered.
 - (5) The attorney is not being subjected to coercion or duress.
 - (6) The attorney is fully aware of the implications of submitting the resignation.
 - (7) Whether or not the attorney has consulted or followed the advice of counsel in connection with the decision to resign.
 - (8) The attorney acknowledges the Supreme Court may take further action for the protection of the public, which may include sending copies of this statement to any jurisdiction where the attorney is admitted or to any other appropriate authorities.
- (c) **Procedure.** If an attorney under investigation wishes to resign, the Supreme Court must notify the Committee (and prosecuting counsel if one has been appointed) and give them 15 days from that notice to provide any facts or arguments that may guide the Court's Rule 18(a) decision. After waiting 15 days, the Court must promptly issue its order accepting or rejecting the attorney's resignation request.
- (d) **Decision.** If the Supreme Court grants the attorney's request to resign, the application to resign and the order granting the request become a matter of public record.
- (e) **Reinstatement.** An attorney who resigns under Rule 18 may petition the Supreme Court for reinstatement.

Rule 19. Reinstatement

- (a) **Resuming Practice.** No disbarred or suspended attorney may resume practice until reinstated by Supreme Court order.
- (b) **Timeline for Reinstatement Petition.** An attorney who has been disbarred may not apply for reinstatement until 5 years after the effective date of disbarment. An attorney suspended from practice may not apply for reinstatement until the earlier of 5 years after the effective date of suspension or the expiration of at least one-half of the period of suspension. An attorney who has resigned under Rule 18 may not apply for reinstatement until 5 years after the Supreme Court order consenting to the resignation.
- (c) **Petition for Reinstatement.** A petition for reinstatement by a disbarred or suspended attorney must be filed with the Supreme Court. The petitioner must pay the appropriate filing fee to the Commonwealth Treasurer. The petition must include:
 - (1) The name and residential address of the petitioner;
 - (2) The conduct upon which the disbarment was based;
 - (3) A copy of the suspension or disbarment order;
 - (4) A statement that the petitioner has made restitution to any person who suffered financial losses because of the petitioner's actions that gave rise to the suspension or disbarment;
 - (5) A list of the names and addresses of the people who received restitution;
 - (6) A statement that the petitioner has paid all fines or costs imposed in conjunction with the disciplinary hearing that led to suspension or disbarment;
 - (7) A copy of the petitioner's fitness and character application; and
 - (8) A copy of the Multistate Professional Responsibility Examination showing that the petitioner has passed the exam after being disbarred or suspended.
- (d) **Petition Hearing.** After receiving a petition for reinstatement, the Supreme Court must set the matter for a hearing. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she is qualified to practice law in the Commonwealth.
- (e) **Reimbursement of Expenses.** The petitioner is responsible for reasonable expenses associated with a petition for reinstatement.

Rule 20. Incompetency; Incapacity

- (a) **Burden.** The Committee has the burden of showing incapacity or incompetency by a preponderance of the evidence.

(b) Process.

- (1) **Judicial Declaration or Involuntary Commitment.** After receiving notice from the Committee or another reliable source, the Supreme Court may immediately and indefinitely suspend an attorney who has been: (1) judicially declared incompetent or incapacitated; or (2) involuntarily committed for treatment of a medical, emotional, or alcohol/drug dependent condition.
- (2) **Committee Petition.** If an attorney is not the subject of a disciplinary proceeding then the Committee may petition the Supreme Court to determine whether the attorney is incapacitated or incompetent. After receiving such a petition and concluding the petition presents a reasonable basis for its conclusion, the Court must refer the matter to the Superior Court for proceedings consistent with Rule 13. The sole purpose of the proceedings initiated by Rule 19(b)(2) is to determine whether the attorney is incapacitated or incompetent. During the proceedings before the Superior Court, the Committee (or its designee) acts in place of prosecuting counsel and the only discipline that may be imposed is an indefinite-suspension order.
- (3) **Court Initiated.** If an attorney is the subject of a disciplinary proceeding and the court concludes there is a reasonable basis to question the respondent's capacity or competency to present a defense or appeal, the court may stay the proceedings but must conduct a hearing consistent with Rule 13 to determine whether the respondent is incapacitated or incompetent. During this hearing, the Committee (or its designee) acts in place of prosecuting counsel and the only discipline that may be imposed is an indefinite-suspension order. If the question of incompetency or incapacity arises during an appeal, the Supreme Court may remand the case for the appropriate hearing in the Superior Court.

(c) Reinstatement. An attorney suspended under Rule 20(b) may file a petition for reinstatement.

- (1) **Timeline.** The petition may be filed immediately after the suspension order is entered.
- (2) **Contents of Petition.** The petition must provide the original suspension order as well as evidence indicating why the suspension should be lifted.
- (3) **Process.** The petition must be filed with the Supreme Court. The Supreme Court can act on it or instruct the Superior Court to act on the petition. After receiving a petition for reinstatement, the court may deny the petition without a hearing if the attorney has failed to make a substantiated showing of competency or capacity. If the attorney has made such a showing, the court must set the matter for a hearing. At

the hearing, the petitioner has the burden of demonstrating competency or capacity by clear and convincing evidence.

Rule 21. Costs.

The Judiciary and the Bar Association, in equal shares, will pay prosecuting counsel and the investigator according to the rules governing pay for indigent representation of felony cases. Independent of that payment, the Judiciary and the Bar Association in equal shares will reimburse reasonable expenses incurred while investigating an allegation or prosecuting the complaint. Prosecuting counsel and the investigator are responsible for maintaining detailed records and submitting that information to the Supreme Court Clerk of Court no later than 30 days after their duty is completed.

Rule 22. Suspending Rules

On its own or on a party's motion, the Supreme Court may—to expedite a decision or for other good cause—suspend any provision of these rules in a particular matter and order proceedings as it directs. But the Supreme Court cannot suspend any rule that would terminate the proceeding for failure to meet a deadline.