

RULES OF PROCEDURE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF RHODE ISLAND

SECTION 1. SCREENING OF COMPLAINTS

1.1 Purpose. In order to provide for the screening of complaints and results of investigation as authorized by Article III, Rule 6(a) of the Supreme Court, the Board Chair shall appoint and designate one or more screening panels as required.

1.2 Appointment of screening panels.

(a) Each screening panel shall consist of two attorney members and one non-attorney member of the Board.

(b) The Board Chair shall designate the members of each panel and appoint the most senior panel member to serve as its chair.

1.3. Procedure.

(a) The screening panel shall review the recommendations for disposition submitted by Counsel.

(b) The screening panel may

(1) dismiss the complaint.

(2) dismiss the complaint with an admonition.

(3) recommend the issuance of a letter of reprimand pursuant to Section 2 of these rules.

(4) order further proceedings in accordance with Article III, Rule 6(b) of the Supreme Court Rules and Section 3 of these Rules.

(5) delay disposition for a period not to exceed thirty-six months on condition that a respondent-attorney undergo a physical and/or psychiatric examination by an examiner to be approved by the Board or Disciplinary Counsel.

(6) may attach conditions to a dismissal with admonition or a recommendation of a letter of reprimand. Such conditions may include psychiatric or substance abuse counseling, case monitoring, periodic testing and evaluation, restitution, public service, or other appropriate condition.

In the event that a respondent-attorney rejects those conditions, or, having accepted the conditions, fails to comply with said condition, the screening panel may withdraw its conditional dismissal or letter of reprimand and made such other disposition as shall be in accord with these Rules.

(c) For disposition of a complaint, the decision of the screening panel shall be unanimous.

(d) In the event the screening panel cannot reach a unanimous decision for disposition, the matter shall be referred to the full Board for disposition.

(e) Counsel shall have the right to appeal to the full Board any adverse decision of the screening panel.

(f) No member of the screening panel shall sit as a member of the hearing panel on the same matter.

(g) The members of the screening panel may participate with the full Board in reviewing the findings and recommendations of the hearing panel on those matters on which the members sat as a member of the screening panel.

(h) In the event one or more members of the screening panel recuses himself/herself because of a conflict of interest, that matter shall be referred by the panel chair to the Board Chair for assignment to a different screening panel.

(i) If the screening panel determines there is probable cause to believe the respondent-attorney is guilty of misconduct, further proceedings shall be brought in accordance with Article III, Rule 6(b) of the Supreme Court Rules and Section 3 of these Rules. The screening panel may designate appropriate matters for hearing by a single attorney Board member or a retired judge in accordance with Article III, Rule 4(c) of the Supreme Court Rules. (As amended by the Court September 15, 1995.)

SECTION 2. LETTERS OF REPRIMAND

2.1. Purpose. In accordance with Article III, Rule 4(d)(7), the Board may issue letters of reprimand to Respondent-attorneys who have been found to have violated the Rules of Professional Conduct.

2.2. Screening.

(a) A Screening Panel of the Board may by unanimous vote recommend to the Full Board that the Board consider issuance of a letter of reprimand.

(b) The screening Panel Chair shall transmit to the Board a letter delineating the Rule(s) Respondent-attorney is alleged to have violated and a summary of the conduct that forms the basis for such allegation(s).

2.3. Board action.

(a) Upon receipt of the Panel letter [Sec. 2.2(b)], the Board Chair shall place the Panel's recommendation to issue a letter of reprimand on the agenda for the next

meeting of the Disciplinary Board.

(b) After review of the Screening Panel's recommendation, the Board shall vote to dismiss the complaint, dismiss the complaint with admonition, accept the recommendation of the Screening Panel to issue a letter of reprimand or to authorize a petition for formal disciplinary action in accordance with Section 3 of these rules.

(c) If a majority of the Board members present vote to support the recommendation of the Screening Panel to issue a letter of reprimand, the Board Chair shall schedule an informal hearing before the Full Board and the Board Chair shall cause a copy of the letter to be served on the Respondent-attorney by certified mail, return receipt requested, at least fifteen (15) days before the scheduled date of hearing. Said letter shall set forth the date, time and place of the informal show cause hearing and shall advise the attorney of his/her right to be heard prior to the Board's rendering its decision.

(d) Procedure.

(1) Disciplinary Counsel shall set forth the evidence available to support a finding by the Board that Respondent-attorney has violated the rule(s) as alleged in the Panel letter.

(2) Respondent-attorney shall have an opportunity to respond to the charges and/or speak in mitigation; Respondent-attorney shall be placed under oath by a stenographer authorized by law to administer oaths who shall also transcribe the proceedings.

(3) No other witnesses shall be called.

(4) In the Board's discretion, hearsay evidence may be admitted and considered.

(5) At the conclusion of the presentation by Counsel and Respondent-attorney, or if the Respondent-attorney declines to participate in the informal show cause hearing, the Board shall take a vote to dismiss the complaint, dismiss the complaint with admonition, to issue the letter of reprimand, or to authorize formal disciplinary action in accordance with Section 3 of these rules. The Board may attach reasonable conditions to its dismissal of the complaint with admonition or issuance of a letter of reprimand. Such conditions may include psychiatric or substance abuse counseling, case monitoring, periodic testing and evaluation, restitution, public service, or other appropriate condition.

(6) The Board Chair shall cause notice of the Board's decision to be served on Counsel and Respondent-attorney within twenty (20) days of the hearing.

(7) A copy of the letter of reprimand shall be entered in the file and a notation thereof shall be made in Respondent-attorney's disciplinary record. (As amended by the court on September 15, 1995; November 22, 1995.)

2.4. Appeal.

(a) A Respondent-attorney aggrieved by issuance of a letter of reprimand may demand a hearing pursuant to Article III, Rule 6(b).

(b) Any such hearing shall be conducted by a retired judge or justice pursuant to Article III, Rule 4(c).

SECTION 3. FORMAL PROCEEDINGS

3.1. Construction. These rules are promulgated for the purpose of assisting Disciplinary Counsel, the respondent-attorney and the Board to develop the facts relating to, and to reach a just and proper determination of, grievances formally brought to the attention of the Board.

3.2. Procedure to apply. Formal proceedings before the Board are civil administrative proceedings. The proceedings shall conform generally to these rules and to such other rules of procedure as may be adopted by the Board, as authorized by Article III, Rule 4(d)(4) of the Supreme Court Rules.

3.3. Timely filing required.

(a) Pleadings or other documents in formal proceedings required or permitted to be filed with the Board under these rules must be received for filing at the place designated by the Board within the time limits, if any, for such filing. The date of receipt by the Board, and not the date of deposit in the mail is determinative.

(b) The Board hereby designates the office of the Clerk of the Supreme Court as the place for filing all documents addressed to the Board.

3.4. Representation of respondent.

(a) Appearance pro se. When a respondent-attorney appears in his/her own behalf in a formal proceeding, he/she shall file with the Board, with proof of service of a copy on Disciplinary Counsel, an address at which any notice or other written communication required to be served on him/her may be sent.

(b) Representation of respondent-attorney by counsel. When a respondent-attorney is represented or is to be represented before the Board by counsel in a formal proceeding, counsel shall file with the Board, with proof of service of a copy upon Disciplinary Counsel, a written notice of such appearance, which shall state his/her name, address, and telephone number, the name and address of the respondent on whose behalf he/she appears, and the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on

or furnished to a respondent may be sent to the counsel of record of such respondent at the stated address of the counsel in lieu of transmission to the respondent. In any proceeding where counsel has filed a notice of appearance pursuant to this subsection, any notice or other written communication required to be served upon or furnished to the respondent shall also be served upon or furnished to his/her counsel (or one of such counsel if the respondent is represented by more than one counsel) in the same manner as prescribed for the respondent, notwithstanding the fact that such communication may be furnished directly to the respondent.

3.5. Format of pleadings and documents.

(a) Typewritten. Pleadings or other documents filed in formal proceedings, if not printed, shall be typewritten on paper of letter size, 8 1/2 inches wide by 11 inches long. The impression shall be on only one side of the paper and shall be double spaced except that quotations in excess of a few lines shall be single spaced and indented. Mimeographed, photostated or otherwise reproduced copies will be accepted as typewritten provided all copies are clearly legible.

(b) Binding. Pleadings and other documents, other than correspondence, shall be bound by staples, or otherwise, which shall be placed at the top of the pages, not at the side.

(c) Identification. Pleadings or other documents filed in a formal proceeding shall set forth:

(1) The caption and docket number of the proceeding.

(2) A brief descriptive title of the pleading or document.

(d) Copies. Except as otherwise provided by these rules in the case of briefs or other documents requested by the Board, at the time pleadings, or other documents, other than correspondence are filed in a formal proceeding, there shall be furnished to the Board an original and ten (10) conformed copies of such papers, including all exhibits, if any.

3.6. Execution.

(a) Signature. Except as may be otherwise ordered or requested by the Board, the original of each pleading or other document shall be signed in ink by the party in interest, or by his/her or its counsel, and shall show the post office address and telephone number of such party or counsel. All copies filed shall be fully conformed thereto.

(b) Effect. The signature of the person subscribing any document filed in the formal proceeding constitutes a certificate by such individual that he/she has read the document being subscribed and filed, and knows the contents thereof; that if

executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matter and things, he/she believes them to be true.

3.7. Continuances.

(a) Avoidance of delay. All formal proceedings under these rules shall be as expeditious as possible and all time limits shall be mandatory and not discretionary. No more than two (2) continuances will be granted to either party.

(b) Continuances. The Chairperson, the Vice-Chairperson, or an Acting Chairperson of the Board may grant extension of time in a formal proceeding which extension is not inconsistent with Article III, Rule 6 of the Supreme Court. The Chairperson of any division of the Board assigned to conduct a hearing shall be deemed an Acting Chairperson of the Board.

3.8. Service by the Board. Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be signed by the Chairperson or Vice-Chairperson and served by the Board by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at his/hers or its address of record.

3.9. Service to participant. All pleadings, briefs and other documents, filed in formal proceedings, when filed or tendered to the Board for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed, with postage prepaid.

3.10. Effect of service upon counsel. When any participant has appeared by counsel, service upon such counsel shall be deemed service upon the participant as provided in Section 3.4(b) of these Rules (relating to representation by counsel) and separate service upon the party may be omitted as provided in such subsection.

3.11. Date of service. The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be; except as to pleadings or other documents required or permitted to be filed with the Board as provided in section 3.3 of these Rules. A postmark shall be determinative

of the day of deposit in the United States Mail.

3.12. Proof of service. There shall accompany and be attached to the original of each pleading or other document filed with the Board, when service is required to be made by the parties, a certificate of service substantially in the form prescribed by Section 3.13 of these Rules (relating to certificate of service). All other copies filed shall be fully conformed thereto.

3.13. Certificate of service. I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.

Dated this _____ day of _____, 20_____.

Signature

3.14. Amendment of pleadings. An amendment of any petition for discipline or other pleading may be made only on leave granted by the Chairperson, the Vice-Chairperson, or Acting Chairperson of the Board.

3.15. Grounds for institution of formal proceedings. Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under Section 3.16 of these Rules (relating to petition for discipline) in either of the following cases:

(a) Pursuant to a referral by the Supreme Court following the conviction of the respondent of a crime.

(b) Pursuant to a determination to institute formal proceedings made under Article III, Rule 6 of the Supreme Court Rules.

3.16. Petition for discipline.

(a) Caption. A petition for discipline shall be captioned as follows:

**BEFORE THE DISCIPLINARY BOARD OF THE SUPREME
COURT OF RHODE ISLAND**

In the Matter of _____ : DSC No. _____

(b) Contents. Formal disciplinary proceedings before the Board shall be instituted by Disciplinary Counsel filing a petition with the Board setting forth specific charges of alleged misconduct. (Article III, Rule 6(b) of the Supreme Court Rules)

(c) The petition shall also set forth the specific section of the Code of Professional Responsibility, and Disciplinary Rules and/or Rules of Professional Conduct regulating the practice of law alleged to have been violated by the respondent-attorney.

3.17. Service of petition on respondent. A copy of the petition shall be served upon the respondent, together with a notice from the Board setting a time for answer. (Article III, Rule 6(b) of the Supreme Court Rules) This service shall be made by Disciplinary Counsel.

3.18. Answer. (Article III, Rule 6(b) of the Supreme Court Rules)

(a) The respondent-attorney shall, within twenty (20) days after service of the petition upon him, file his answer with the Board and serve a copy thereof upon Disciplinary Counsel.

(b) Contents of answer. All answers shall be in writing, and drawn so as to advise fully and completely the participants and the Board as to the nature of the defense. They shall admit or deny specifically, and in reasonable detail, each material allegation of the petition and state clearly and concisely the facts and matters of law relied upon.

(c) Request to be heard in mitigation. The respondent-attorney may include in his answer a request that a hearing be held on the issue of mitigation.

(d) In the event that the respondent-attorney fails to file an answer, the charges shall be deemed ADMITTED.

3.19. No other pleadings. Pleadings shall be limited to a petition for discipline and answer thereto.

3.20. Assignment for hearing. (Article III, Rule 6(b) of the Supreme Court Rules)

If there are any issues of fact raised by the pleadings, or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned for hearing by the Board. In addition to those matters so designated by the screening panel in accordance with Section 1.3(i), of these Rules, the Board Chair or the full Board may designate appropriate matters for hearing by a single attorney Board member or a retired judge in accordance with Article III, Rule 4(c) of the Supreme Court Rules. Disciplinary Counsel shall serve notice upon the respondent-attorney,

or his/her counsel of record, indicating the date, time, and place of the hearing. Such notice shall be served upon the respondent-attorney, or his/her counsel, at least fifteen (15) days in advance of the hearing date, and shall advise the respondent-attorney that he/she is entitled to be represented by counsel, to summon and cross-examine witnesses, and to present evidence in his/her own behalf.

3.21. Confidentiality of proceedings. Proceedings before the Board shall be governed by Article III, Rule 21 of the Supreme Court Rules (relating to confidentiality).

3.22. Conferences to expedite proceedings. In order to provide opportunity for the submission and consideration of facts or arguments, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest may permit.

3.23. Appearances. The Board shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.

3.24. Order of procedure. In proceedings upon a petition for discipline, Disciplinary Counsel shall have the burden of proof, shall initiate the presentation of evidence and may present rebuttal evidence.

3.25. Presentation by the parties.

(a) General rule. Respondent-attorney and Disciplinary Counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(b) Objections. When objections to the admission or exclusion of evidence or other procedural objections are made, the grounds relied upon shall be stated briefly, if so requested by the Board, and may be stated briefly is [if] no such request is made. Formal exceptions are unnecessary and shall not be taken to procedural rulings.

3.26. Limiting number of witnesses. The Board may limit appropriately the number of witnesses who may be heard upon any issue, to eliminate unduly repetitious or cumulative evidence without prejudice to the substantive rights of any party.

3.27. Additional evidence. At the hearing, the Board may, if deemed advisable, and subject to the appropriate order to protect the substantive rights of any party, authorize any participant to file specific documentary evidence as a part of the record within a fixed time, expiring not less than ten (10) days before the date fixed for filing and serving briefs.

3.28. Transcript. Hearings shall be reported by a reporter designated by the Board. A transcript of such report shall be a part of the record and the sole official transcript of the proceedings. Such transcript shall include a verbatim report of the hearings and nothing shall be omitted therefrom. After closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in Section 2.27 of these Rules (relating to additional evidence) or changes in the transcript as provided in Section 3.29 of these Rules (relating to transcript corrections).

3.29. Transcript corrections. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. No corrections or physical changes shall be made in or upon the official transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record, if and when approved by the Board, at any time during the hearing, or after the close of the hearing, as may be permitted by the Board, but not less than ten (10) days in advance of the time fixed for filing briefs. The Board may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

3.30. Copies of transcripts. The Board will cause to be made a stenographic record of all hearings and such copies of the transcript thereof as it requires for its own purposes. A respondent-attorney desiring a copy of such transcript may obtain it from Disciplinary Counsel without charge. Any witness may obtain from the official reporter at his/her own expense a copy of the transcript, or any part thereof, relating to his/her own testimony.

3.31. Oral examination. Witnesses shall be examined orally unless the testimony is taken by deposition authorized by the Board, as provided by Article III, Rule 11 of the Supreme Court (relating to depositions) or the facts are [as] stipulated in the

manner provided by Section 3.33 of these Rules (relating to presentation and effect of stipulations). Witnesses before the Board shall be examined under oath or affirmation.

3.32. Fees of witnesses. Witnesses subpoenaed by Disciplinary Counsel shall be paid the same fees and mileage as are paid for like services in the court of this State. Witnesses subpoenaed at the instance of a respondent shall be paid the same fees by the respondent at whose instance the witness is subpoenaed.

3.33. Presentation and effect of stipulations. Independently of the orders or rulings issued as provided by Section 3.22 of these Rules (relating to conferences to expedite hearings) the participants may stipulate as to any relevant matter of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received, shall be binding on the participants with respect to the matters therein stipulated.

3.34. Admissibility of evidence.

(a) General rule. In any proceeding under this section, the admissibility of evidence shall be governed by the Rhode Island Rules of Evidence.

(b) Pleadings. The petition for discipline and answer thereto, and similar formal documents upon which a hearing is fixed shall, without further action, be considered as parts of the record, but in no event shall pleadings, or any part thereof, be considered as evidence of any fact other than that of the filing thereof unless offered and received in evidence in accordance with these rules.

3.35. Reception and ruling on evidence. The Board shall rule on the admissibility of all evidence. The number of witnesses to be heard on any issue may be limited appropriately as provided in Section 3.26 of these Rules (relating to limiting number of witnesses).

3.36. Copies to participants. Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the participants present at the hearing, and one copy, in addition to the original, shall be furnished for the use of the Board.

3.37. Oral argument. At the close of the taking of testimony in each proceeding, the Board may hear oral argument on the issues in the proceeding.

3.38. Time for filing of briefs. Unless otherwise directed by the Board, briefs shall be filed with the Board and served pursuant to Section 3.9 of these Rules (relating to service by a participant) at such time as may be fixed by the Board.

3.39. Content and form of briefs.

(a) Briefs shall contain:

(1) A concise statement of the questions presented.

(2) Proposed findings and conclusions, with specific references to the evidence relied upon for such findings and conclusions.

(3) Argument in support or [of] participant's position.

(b) Exhibits. Exhibits need not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief.

3.40. Filing and service of briefs. Briefs not filed and served on or before the dates fixed theretofore shall not be accepted for filing, except by special permission of the Board. Except where filing of a different number is permitted or directed by the Board, an original and ten (10) copies of each brief shall be furnished for the use of the Board.

3.41. Reopening of record on application of party.

(a) Petition to reopen. At any time after the conclusion of a hearing in a proceeding, any participant in the proceeding may file with the Board a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) Responses. Within ten (10) days following the service of such petition, any other participant may file with the Board, his answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition.

(c) Action on petition. As soon as practicable after the filing of responses to such petition or default thereof, as the case may be, the Board will grant or deny such petition. There shall be no right of oral hearing of such petition unless the Board shall so direct.

3.42. Reopening by board action. At any time prior to the issuance by the Board of its decision in a proceeding, the Board, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the Board has reason to believe that conditions of fact or law have so changed as to require, or

that the public interest requires, the reopening of such proceeding.

3.43. Filing of report. The Board shall submit a report to the Supreme Court within sixty (60) days after the conclusion of the hearing and submission of briefs, if any, containing its findings and recommendations together with a record of the proceedings before it. (Article III, Rule 6(b) of the Supreme Court Rules)

3.44. Service of report. The Board shall serve copies of its report upon the respondent-attorney and Disciplinary Counsel.