

1

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
OF SUPREME COURT RULES
RELATING TO ATTORNEY
MISCONDUCT; SCRs 99-123.

ADKT 608

FILED

FEB 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
CHIEF DEPUTY CLERK

2

PETITION

3

The Board of Governors of the State Bar of Nevada (“State Bar”) hereby

4

petitions this Court to amend the Supreme Court Rules related to attorney

5

misconduct.

6

DISCUSSION

7

The Office of Bar Counsel solicited input from the current Chairs and

8

Vice Chairs of the Northern and Southern Disciplinary Boards regarding

9

proposed amendments to the Supreme Court Rules (“SCRs”) governing

10

attorney misconduct. The Chairs and Vice Chairs of the Northern and

11

Southern Disciplinary Boards support these proposed amendments.

12

On January 19, 2023, the Board of Governors voted to petition the

13

Court to consider amendments to SCRs 99-123. The Board believes the SCR

14

amendments will: (i) improve disciplinary procedure and (ii) promote

15

consistency.

1 **Admonition**

2 Nevada's current structure for attorney discipline echoes mostly the
3 Model Rules for Lawyer Disciplinary Enforcement adopted by the American
4 Bar Association ("ABA").

5 The ABA Model Rules recommend four tiers of discipline: disbarment,
6 suspension, reprimand, and admonition. Nevada adopted the top three tiers
7 as recommended by the ABA with a slight variation. Disbarment is
8 irrevocable in Nevada. *See* SCR 102(1). Nevada did not adopt admonition as
9 a form of discipline.

10 Disbarment, suspension, and reprimand are all public discipline.
11 Disciplinary panels and the Court articulate their reasons for sanctions. The
12 State Bar publishes the panels' reprimands and the Court's written opinions
13 to educate members of the profession about ethical behavior and to provide
14 precedent for subsequent cases. The State Bar publishes the discipline in its
15 Nevada Lawyer magazine and on its website.

16 Admonitions are private discipline. Instead of admonitions, Nevada
17 has a Letter of Reprimand and a Letter of Caution. A Letter of Reprimand is
18 public and indistinguishable from a public reprimand. A Letter of Caution is
19 a dismissal and concealed from the public.

1 The State Bar asks the Court to replace the Letter of Reprimand with
2 the Admonition. Admonitions would protect the public. They would also
3 promote efficiency and consistency.

4 Admonitions would protect the public. Admonitions would constitute
5 the only private discipline in Nevada. A private admonition would inform the
6 lawyer that their conduct is unethical without stigmatizing the lawyer. Only
7 screening panels would issue private admonitions in cases of isolated, minor
8 misconduct. This means there is little or no injury to a client, the public, the
9 legal system, or the profession, and the lawyer is unlikely to repeat the
10 misconduct. The State Bar would publish a report describing the misconduct
11 but would omit the disciplined lawyer's name. Admonitions remain both a
12 specific and a general deterrence. Bar counsel could use an admonition in
13 subsequent proceedings as evidence of prior misconduct. Members of the bar
14 would learn from the misconduct.

15 Admonitions would promote efficiency by disposing of minor
16 misconduct without a full hearing. A screening panel would issue an
17 admonition in writing based on full understanding of the relevant facts. But
18 the admonition would require the respondent's consent. If the respondent
19 refuses to accept the admonition, then respondent's rejection would vacate
20 the admonition. Bar counsel would file a complaint. The matter would

1 become public. A formal hearing panel would hear the evidence and
2 recommend a sanction, if necessary. However, the formal hearing panel
3 could not issue another admonition. Only, a screening panel could impose a
4 private admonition because once bar counsel files formal charges the matter
5 becomes public.

6 Admonitions will also promote consistency. This Court has adopted a
7 framework recommended by the ABA.¹ This framework guides the
8 disciplinary boards and Court in imposing sanctions. While the ABA
9 framework is not rigid like criminal determinate sentences, it guides the
10 disciplinary boards and Court in reaching appropriate sanctions with
11 consistency. This framework addresses sanctions of disbarment, suspension,
12 reprimand, and admonition. Nevada has disbarment, suspension, public
13 reprimand, letter of reprimand, and letter of caution. The last three create
14 confusion and inconsistency when applied to the ABA framework.

15 For example, there is no significant difference between a public
16 reprimand and a letter of reprimand. Both are public and incur the same
17 costs and fines. The ABA Standards promote progressive discipline to
18 promote behavioral change, promote consistency and fairness, allow

¹ *In re Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008); SCR 102.5.

1 mentoring and guidance, and protect the public. But the current sanctions of
2 public reprimand, letter of reprimand, and letter of caution stymie
3 progressive discipline. When an attorney commits minor misconduct
4 repeatedly, it is difficult to determine if an attorney should receive a letter of
5 caution, a letter of reprimand, or a reprimand. Defense counsel often ask for
6 letters of caution for minor misconduct although a letter of caution “is a
7 dismissal but cautions the attorney...”² Then, if the attorney repeats the
8 misconduct, bar counsel cannot use the letter of caution “as an aggravating
9 factor in any subsequent disciplinary proceeding.” This creates an endless
10 loop of dismissals with caution for repeated minor misconduct.

11 Disciplinary Boards have struggled to determine the appropriate
12 sanction when the respondent commits isolated, minor misconduct. The
13 ABA recommends a private admonition, but Nevada rules require the
14 disciplinary boards to choose between a Letter of Reprimand and a dismissal
15 with a Letter of Caution. For example, in 2022 the Northern and Southern
16 Disciplinary Boards found 60 instances of minor misconduct. In 49 cases
17 (81%), panels dismissed the matter with a Letter of Caution. In 11 cases
18 (19%), panels issued a public Letter of Reprimand. Of the 49 dismissals with

² SCR 102(8).

1 Letters of Caution, 10 cases (20%) involved 5 respondents who received two
2 Letters of Caution in the same year. Another 17 cases (34%) involved
3 respondents who received a Letter of Caution or public discipline within the
4 last 3 years. Over half of the Letters of Caution went to repeat offenders.
5 Nevada rules conceal this repeat misconduct from the public.

6 The public prefers transparency. But lawyers unlikely to reoffend face
7 unnecessary stigma. The Board proposes to balance these interests with
8 strict limitations. For example, the Board proposes following the ABA
9 guidelines by prohibiting admonitions to respondents if they have received
10 an admonition for similar misconduct within the last 5 years or an
11 admonition or public discipline for any misconduct within the last 3 years.
12 The Board proposes other limitations too. Screening panels would not issue
13 admonitions for misappropriation of client property, misconduct causing
14 serious injury, or misconduct involving dishonesty, deceit, fraud, or
15 misrepresentation. These limitations would protect the public while
16 balancing transparency and leniency. Repeat or serious offenders would face
17 mandatory public exposure. And lawyers unlikely to reoffend would avoid
18 unnecessary stigma.

19 Limited admonitions would benefit lawyers and the public.

1 **Confidentiality.**

2 The Board proposes changes to SCR 121 regarding confidentiality. The
3 Board proposes a clarification that bar counsel may share information with
4 other state and federal agencies. Bar counsel often runs investigations
5 parallel to state and federal agencies. It is helpful to cooperate and share
6 information.

7 Also, the Board proposes allowing either party to move for “protective
8 orders” to make otherwise public information confidential. For example, a
9 respondent can protect the identity of a client if disclosure would cause the
10 client embarrassment or other harm. Bar counsel could do likewise.

11 **Non-Reinstatement Suspensions.**

12 The Board proposes changes to reinstatement under SCR 116. For
13 reinstatement of an attorney suspended less than 6 months, the Board
14 proposes that the attorney file an affidavit of compliance with bar counsel.
15 Bar counsel would not have authority to block the reinstatement but may file
16 additional charges if the affidavit is false.

17 **Conditional Guilty Pleas.**

18 The Board proposes changes to SCR 113. This amendment would
19 clarify that conditional guilty pleas require bar counsel approval. A
20 respondent could not negotiate a plea deal directly with the panel.

1 Respondents have abused the vague language of SCR 113 to negotiate pleas
2 directly with the panel in the past.

3 **Bar Counsel Duties and Authority.**

4 The Board proposes changes to SCR 104. The Board recommends
5 minor additions to bar counsel's authority and limitations. Most are
6 uncontroversial. The Board's proposed amendments follow the ABA
7 recommendation by prohibiting bar counsel from issuing opinions. Bar
8 counsel avoids opinions, but bar counsel also answers ethics calls. Attorneys
9 often push bar counsel for formal opinions. This leads bar counsel to court
10 and complicates related investigations and prosecutions. So, this will help
11 bar counsel avoid issuing formal opinions during ethics calls. Lawyers may
12 seek formal opinions from the Standing Committee on Ethics and
13 Professionalism.

14 Also, the Board recommends a one-year cooling off period for bar
15 counsel prosecutors that leave the office. They could not represent
16 respondents for one year.

17 **Probation.**

18 The Board proposes changes to SCR 105 and 105.5. The Board
19 proposes codifying probation like diversion and mentoring programs.
20 Currently, disciplinary boards and the Court stay suspensions and place

1 attorneys on probation with the State Bar. But Supreme Court Rules do not
2 address probation. The Board proposes similar limitations to those for
3 admonitions.

4 **Procedural Conflicts.**

5 The Board proposes changes to SCR 105. The Board proposes
6 improvements to scheduling issues such as panel assignment, prehearing
7 conference, and hearing dates. These amendments should not change much
8 in practice. They resolve conflicting language and improve efficiency in
9 disciplinary matters.

10 **Lerner Factors.**

11 Finally, the Board proposes changes to SCR 102.5. The Board proposes
12 codifying the factors from *In re Lerner*³ into SCR 102.5. The American Bar
13 Association Standards for Imposing Lawyer Sanctions suggest that
14 disciplinary panels consider four factors when determining an appropriate
15 disciplinary sanction: (1) the duty violated, (2) the lawyer's mental state, (3)
16 the potential or actual injury caused by the lawyer's misconduct, and (4) the
17 existence of aggravating or mitigating factors.

³ 124 Nev. at 1246, 197 P.3d at 1077.

1 If approved by the Court, the State Bar respectfully requests the
2 amended Rules be effective 30 days after receipt of the Court Order.

3 Respectfully submitted this 6th day of February 2023,

4 STATE BAR OF NEVADA
5 BOARD OF GOVERNORS

6 *Paola Armeni*

7 Paola Armeni, President
8 Nevada Bar No. 8357
9 State Bar of Nevada
10 3100 West Charleston Boulevard
11 Las Vegas, NV 89102
12 (702) 383-200

EXHIBIT A

D. MISCONDUCT

Rule 99. Jurisdiction.

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 100. Disciplinary districts. Disciplinary jurisdiction in this state shall be divided into a southern district and a northern district. The southern district shall consist of the counties of Clark, Esmeralda, Lincoln, Nye, and White Pine. The northern district shall consist of the counties of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, and Washoe.

[Added; effective February 15, 1979.]

Rule 101. Grounds for discipline—~~Conviction of, it shall be a crime or acts or omissions by ground for discipline for an attorney, including contempt of a hearing panel, individually or in concert with another person, which to:~~

1. violate or attempt to violate the rules of the supreme court or the Nevada Rules of Professional Conduct are misconduct and constitute grounds for discipline, or any other rules of this jurisdiction regarding professional conduct of attorneys;

2. engage in conduct violating applicable rules of professional conduct of another jurisdiction;

3. intentionally violate a valid order of the court or the disciplinary panel imposing discipline, intentionally fail to appear before a hearing panel pursuant to these Rules, intentionally fail to comply with a subpoena validly issued under these Rules, or knowingly fail to respond to a lawful demand from bar counsel, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.

___ [Added; effective February 15, 1979; amended effective March 1, 2007.]

— Rule 102. Types of discipline. — Misconduct is grounds for:

Rule 102. Decisions regarding a grievance. The filing of a grievance may result in:

1. Issuance of any of the following sanctions:

1-(a) Irrevocable disbarment by the supreme court.

2- (b) Suspension by the supreme court for a fixed period generally not less than 6 months nor greater than three years. A suspension of 6 months or less shall not require proof of rehabilitation; a suspension of more than 6 months shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding under Rule-SCR 116. A suspension, or portion thereof, may be stayed for not

longer than two years pending compliance with probationary terms. Probation procedures shall be consistent with SCR 105.5.

3.— (c) Temporary restraining order regarding funds.

~~(a)~~— (1) On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant which shows that an attorney appears to be causing great harm by misappropriating funds to his or her own use, a district court of this state in the county where the attorney resides, where he or she maintains an office, or where the alleged acts occurred, may issue an order, in the same manner and under the same provisions of the Nevada Rules of Civil Procedure, not inconsistent with this rule, as a temporary restraining order is issued, which restricts the attorney in the handling of funds entrusted to him or her or over which the attorney has the power of disposition.

~~(b)~~— (2) An order entered pursuant to the preceding paragraph may also prescribe the manner in which fees or other funds received from or on behalf of clients are to be handled during the existence of the order. When served on either the attorney or a depository in which the attorney maintains an account, the order is also an injunction against withdrawals from the account except in accordance with the terms of the order. In preparing such an order, due consideration shall be given to whether the account(s) affected by it are maintained by the attorney alone or whether there are other people whose right to withdraw funds may be affected.

~~(c)~~— (3) Unless it is deemed necessary by the district court, a bond shall not be required for an order under this rule. The duration of the order and proceedings to dissolve it are governed by ~~Rule 65~~ Rule 65 of the Nevada Rules of Civil Procedure, unless the order is superseded by an order of the supreme court pursuant to the next paragraph of this rule.

4.— (d) Temporary suspension by the supreme court.

~~(a)~~— (1) Following a hearing and upon entry of a hearing panel's recommendation for disbarment pursuant to ~~SCR 105~~ SCR 105(2)(e) and served upon the attorney in accordance with ~~SCR 105~~ SCR 105(3)(a), bar counsel may file a petition with the supreme court requesting the immediate temporary suspension of the attorney. The decision of the hearing panel shall accompany the petition.

~~(b)~~— (2) On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice. If a petition is filed under subsection 31(c) of this rule, a separate petition under this subsection must be filed with the supreme court as soon thereafter as possible.

~~(c)~~— (3) A temporary order may restrict an attorney in the handling of funds entrusted to the attorney or over which the attorney has the power of disposition, or, if appropriate, direct the attorney to establish a trust account in accordance with conditions prescribed in the order. When served on either the attorney or a depository in which the attorney maintains an account, the order is also an injunction against withdrawals from the account except in accordance with the terms of the order. An order of the supreme court that restricts the handling of funds by an attorney supersedes an order entered by the district court pursuant to subsection 31(c) of this rule.

~~—(d)—~~ (4) An order of temporary suspension precludes the attorney from accepting new cases but does not preclude the attorney from continuing to represent existing clients during the first 15 days after service of the order unless the court orders otherwise. Fees and other funds received from or on behalf of clients during this 15-day period shall be deposited in a trust account from which withdrawals may be made only in accordance with the conditions imposed by the order.

~~—(e)—~~ (5) The attorney may request dissolution or amendment of the temporary order of suspension by petition filed with the supreme court, a copy of which shall be served on bar counsel. The petition may be set for immediate hearing before a hearing panel, to hear the petition and submit its report and recommendation to the court within 7 days of the conclusion of the hearing. Upon receipt of the report and recommendation, the court may modify its order, if appropriate, and continue such provisions of it as may be appropriate until the final disposition of all pending disciplinary charges against the attorney.

~~—5. Public reprimand or letter of reprimand~~ (e) Reprimand, with or without conditions, including but not limited to restitution, a fine, or both a reprimand and a fine as referenced below, imposed by the supreme court.

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

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

~~—8. Letter of caution imposed by a hearing or screening panel of the disciplinary board and issued by bar counsel, or imposed by the supreme court, which is a dismissal but cautions the attorney regarding specific conduct and/or disciplinary rules. A letter of caution~~

(f) Admonition imposed by a screening panel pursuant to SCR 105(1) with the consent of the respondent. A respondent cannot receive an admonition after bar counsel has filed a complaint. The screening panel chair shall issue the admonition in writing and bar counsel shall serve it upon the respondent. Admonitions are private discipline because the screening panel imposes them before bar counsel files formal charges. A screening panel may impose an admonition only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood the respondent will repeat the misconduct. Bar counsel shall publish all admonitions in the bar publication for the education of the profession but shall not identify the respondent therein. Bar counsel may use an admonition in subsequent proceedings as an aggravating factor after the disciplinary panel has found the respondent guilty of misconduct or as otherwise permitted by the rules of evidence. A screening panel may impose an admonition with or without conditions, as set forth below.

A screening panel may not issue an admonition if the respondent:

1. misappropriated client funds;
2. caused substantial injury;
3. received an admonition for similar misconduct within the last 5 years;

4. received an admonition or any public discipline within the last 3 years;
5. engaged in dishonesty, deceit, fraud, or misrepresentation; or
6. committed a "serious crime" as defined in SCR 111.

2. In addition to any of the aforementioned sanctions except disbarment, upon order of the supreme court or a panel of the disciplinary board, or upon stipulation, an attorney can be required to pay restitution to persons financially injured, disgorge all or part of the attorney's or law firm's fee, reimburse the client security fund, pay a fine of up to \$1,000, and/or comply with additional conditions intended to create protection of the public or increase confidence in the integrity of the profession.

3. A dismissal, with or without cautionary language, by a screening panel, hearing panel, or the Supreme court. Cautionary language may not be used as an aggravating factor in any subsequent disciplinary proceeding but does serve as notice to the attorney regarding specific conduct.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 102.5—Aggravation and mitigation—Aggravating and. Factors to be Considered in Imposing Sanctions.

1. In imposing a sanction after a finding of attorney misconduct, the disciplinary panel or supreme court shall consider the following factors:

- (a) whether the attorney has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (b) whether the attorney acted intentionally, knowingly, or negligently;
- (c) the amount of the actual or potential injury caused by the attorney's misconduct; and
- (d) the existence of any aggravating or mitigating circumstances may be considered in deciding what sanction to impose and may be admitted into evidence at factors.

2. Using the first three factors in SCR 102.5(1)(a)-(c), the disciplinary hearing panel or supreme court shall determine a baseline or presumptive sanction. The disciplinary panel or supreme court may then consider any aggravating or mitigating factors to increase or decrease the sanction.

~~1.~~ 3. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. The following list of examples is illustrative and is not exclusive:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders;

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

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

(h) vulnerability of victim;

(i) substantial experience in the practice of law;

(j) indifference to making restitution;

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

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

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems;

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

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

(f) inexperience in the practice of law;

(g) character or reputation;

(h) physical disability;

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

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

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

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

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

(j) delay in disciplinary proceedings;

(k) interim rehabilitation;

(l) imposition of other penalties or sanctions;

(m) remorse;

(n) remoteness of prior offenses.

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

- (a) forced or compelled restitution;
- (b) agreeing to a client's demand for improper behavior;
- (c) withdrawal of grievance against the lawyer;
- (d) resignation prior to completion of disciplinary proceedings;
- (e) grievant's recommendation as to sanction;
- (f) failure of injured client to complain.

[Added; effective March 1, 2007.]

Rule 103. Disciplinary boards and ~~hearing~~disciplinary panels.

1. The board of governors shall appoint two disciplinary boards of at least 47 members each, one to serve the northern district and one to serve the southern district, as constituted in ~~Rule~~SCR 100. Each disciplinary board shall consist of at least 35 members of the bar of Nevada, other than persons holding judicial office or membership on the board of governors, and at least 12 non-lawyersattorneys. Each member shall reside in the district served by the board. The board of governors may appoint any additional members to serve on either disciplinary board as it deems necessary.

2. Members of the disciplinary boards shall serve at the pleasure of the board of governors, or for a term of three years, subject to reappointment for three additional terms. No member may serve on the disciplinary boards for more than a lifetime total of twelve years.

3. The board of governors shall appoint one attorney member as chair of each disciplinary board and another attorney member as vice chair to act in the absence or direction of the chair. The chair and vice chair shall serve for a term of one year, subject to reappointment for such additional terms as the board of governors may deem appropriate.

4. Disciplinary board members shall not receive compensation for their services, but the State Bar may be reimbursedreimburse board members for their travel and other expenses incidental to the performance of their duties.

5. The chair of each disciplinary board shall preside over all motions or other requests relating to pending proceedings until such time as a hearing panel chair is designated to preside over the proceeding, as provided in ~~Rule~~SCR 103(6).

6. The chair or vice chair of each disciplinary board shall designate hearing and screening panels of three members, consisting of two lawyersattorneys and one non-lawyerattorney. The chair or vice chair shall assign hearing cases to hearing panels and designate a lawyeran attorney as chair of each. The designated hearing panel chair shall preside over ~~any and all~~ motions or other requests. A hearing panel shall:

(a) Conduct hearings pursuant to ~~S.C.R. 105.5~~(SCR 105.5(6) to determine if there is a breach of a probation, diversion, or mentoring agreement.

(b) Conduct hearings on formal complaints of misconduct and matters arising under ~~S.C.R. 116~~SCR 116 and ~~117-117~~.

(c) File its findings and recommendations with bar counsel's office.

7. Hearing panel members shall not participate in any proceeding in which a judge similarly situated would be required to abstain. Any member whose term expires while the member's panel is considering a complaint shall remain a member until its disposition.

8. The chairs of the hearing panels and screening panels shall deliver reprimands and sign all documents on behalf of the panel to carry out the provisions of RulesSCR 102(6), SCR 102(7), and SCR 103(6).

9. A grievance received against a member of a disciplinary board and processed in accordance with RuleSCR 105(1) shall be referred to the other disciplinary board.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 104. State bar counsel.

1. State bar counsel shall:

~~— (a) Investigate perform~~ all matters involving possible attorney misconduct or incapacity ~~called to bar counsel's attention, whether by grievance or otherwise~~ prosecutorial functions and have the following powers and duties:

~~— (b) Subject to Rule 105(1), dispose of all~~

~~- (a) To investigate all information coming to the attention of the agency which, if true, would be grounds for discipline or transfer to disability inactive status and investigate all facts pertaining to petitions for reinstatement;~~

~~— (b) To dismiss grievances that do not assert a violation of the Nevada Rules of Professional Conduct and to dismiss matters involving alleged misconduct by dismissal of with the allegation(s) approval of a screening panel or by the filing chair of a written complaint formal hearing panel;~~

~~(c) Prosecute) To prosecute~~ all proceedings under these rules before all forums in the name of the State Bar of Nevada;

~~(d) File) To file petitions with the supreme court petitions~~ with certified copies of proof of conviction demonstrating that attorneys have been convicted of serious crimes, as defined in RuleSCR 111;

~~— (e) Maintain) (e) To notify promptly the grievant and the respondent of the status and the disposition of each matter, including but not limited to providing to the grievant:~~

~~(1) a copy of any written communication from the respondent to the bar counsel relating to the matter except information that is subject to the privilege of one other than the complainant;~~

~~(2) a concise written statement of the facts and reasons a matter has been dismissed prior to a hearing and a copy of the written guidelines for dismissal, provided that the grievant shall be given a reasonable opportunity to rebut statements of the respondent before the grievance is dismissed; and~~

~~(3) a notice of the date, time, and location of the hearing;~~

(f) To maintain permanent records of all matters investigated under these rules except as otherwise required under Rule SCR 121, and

—(g) To employ and supervise staff needed for the performance of the aforementioned duties.

2. Bar counsel may meet with an attorney against whom a grievance has been received to informally resolve a matter that does not involve the commission of a serious crime involving minor misconduct, as defined in these rules, SCR 105.5(1)(d), including directing the attorney to participate in fee dispute arbitration, substance abuse counseling, obtain Continuing Legal Education credit(s), and/or other appropriate remedial measures.

3. Bar counsel shall not render advisory opinions, either orally or in writing, although bar counsel may provide informal guidance on the Nevada Rules of Professional Conduct to callers through the ethics hotline.

4. In addition to complying with the Rules of Professional Conduct regarding successive government and private employment (Nevada Rule of Professional Conduct 1.11), a former bar counsel shall not personally represent a respondent in any proceeding governed by these rules for a period of one year following completion of the bar counsel's service.

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

[Added; effective January 2, 1996; amended effective October 5, 2015.]

Rule 105. Procedure on receipt of complaint.

1. Investigation.

(a) Investigation and screening panel review. Investigations shall be initiated and conducted by bar counsel or bar counsel's staff or other investigative personnel at bar counsel's direction prior or pursuant to the opening of a grievance file. At the conclusion of an investigation of a grievance file, bar counsel shall recommend in writing dismissal with or without prejudice, referral to probation, diversion, or mentoring pursuant to Rule SCR 105.5, a letter of caution, a letter of reprimand, and admonition, or the filing of a written complaint for formal proceedings. The recommendation shall be promptly reviewed by a screening panel. A screening panel shall consist of three members of the disciplinary board, appointed by the chair or vice chair in accordance with Rule SCR 103(6). Two of the three reviewers must be members of the bar. By majority vote they shall approve, reject, or modify the recommendation, or continue the matter for review by another screening panel.

(b) Notice and election. The attorney respondent shall be notified by bar counsel in writing of a decision by a screening panel to issue a letter of reprimand and admonition and shall be served with the notification and letter of reprimand and admonition in the manner prescribed by Rule SCR 109(1). The attorney respondent shall have 14 days after receipt of the notice within which to serve on bar counsel written objections to the issuance of the letter of reprimand and admonition along with the basis of the objections.

(c) Hearing. Upon receipt by bar counsel of written objections to the issuance of a ~~letter of reprimand and admonition~~ within the time prescribed, ~~the matter~~ bar counsel shall be set for a hearing ~~file a complaint and commence formal proceedings~~ in accordance with Rule SCR 105(2). The issuance of a ~~letter of reprimand and admonition~~ not objected to by the attorney respondent within 14 days of notice shall be final and shall not be appealable. A screening panel member who has reviewed bar counsel's recommendation on a grievance shall not be appointed to a hearing panel for any subsequent and related proceedings. Except in matters requiring dismissal because the grievance is frivolous or clearly unfounded on its face, ~~or falls outside the disciplinary board's jurisdiction, or is resolved informally pursuant to Rule SCR 104(2)~~, a panel shall not make a finding of misconduct until the attorney respondent has been given an opportunity to respond to the allegations against the attorney respondent. The formal hearing panel may not issue an admonition because the hearing records become public when bar counsel files the formal complaint.

(d) Appeal of a screening panel's dismissal of a grievance. Bar counsel may appeal a decision to dismiss a grievance to a hearing panel appointed by the chair or vice chair of the respective northern or southern disciplinary board. The chair of the respective board shall be one of the members on the panel and shall serve as chair of the panel. The panel shall determine whether the decision is supported by the record and is in the best interests of justice. Such an appeal must be filed with bar counsel's office and served upon the chair of the appropriate disciplinary board within 20 days of receipt of the decision by filing and serving a petition, together with the record of the matter being appealed. The petition shall contain the name and address of the appropriate northern or southern disciplinary board chair and identify the chair as the person to whom the petition must be sent. The chair shall issue an order advising the attorney respondent or bar counsel of when any answering or other brief is due. The panel shall decide the matter on the record without oral argument or appearance and shall issue a written decision.

2. Commencement of formal proceedings. Formal disciplinary proceedings are commenced by bar counsel filing a written complaint in the name of the state bar. The complaint shall be sufficiently clear and specific to inform the attorney respondent of the charges against ~~him or her~~ them and the underlying conduct supporting the charges. A copy of the complaint shall be served on the attorney respondent, and it shall direct that a verified response or answer be served on bar counsel within ~~20~~ 21 days of service; the original shall be filed with bar counsel's office. The time to respond may be extended once by the chair for not more than ~~20~~ 21 days for good cause or upon stipulation of the parties. In the event the attorney respondent fails to plead, bar counsel shall enter a default and the charges shall be deemed admitted; provided, however, that ~~an attorney a respondent~~ an attorney respondent who fails to respond within the time provided may thereafter move to set aside the default with the appropriate chair ~~to do so~~, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.

(a) Challenges to and ad hoc appointments of panel members. The complaint shall be served with the list of members of the appropriate disciplinary board. The attorney respondent, or each if more than one, and bar counsel may exercise five peremptory challenges each to the people on the list by ~~delivering~~ filing such in writing ~~to bar counsel~~ on or before the date a response to the complaint is due. Peremptory challenges will not be part of the public record.

Challenges to any member for cause under Rule SCR 103(7) shall be made as soon as possible after receiving either actual or constructive notice of the grounds for disqualification, and shall be made by

motion to the chair in accordance with these rules. In no event will a motion seeking the disqualification of a member be timely if the member has already heard, considered, or ruled upon any contested matter, except as to grounds based on fraud or ~~like~~ similar illegal conduct, of which the challenging party had no notice until after the contested matter was considered. Any challenge that is not raised in a timely manner shall be deemed waived.

The chair or vice chair may make ad hoc appointments to replace designated panel members in the event of challenges or disqualification. Ad hoc appointees shall be subject to disqualification under ~~Rule~~ SCR 103(7) and any timely remaining peremptory challenges unexercised by either the attorney respondent(s) or bar counsel. A hearing panel as finally constituted shall include a non-lawyer.

(b) Assignment for hearing panel and chair. Within 30 days, following service of a responsive pleading, or ~~upon failure if the respondent failed to plead, the matter shall be assigned by file a responsive pleading,~~ the chair or vice chair of the disciplinary board shall assign the matter to a hearing panel chair, who shall preside over ~~any and all~~ motions or other requests as provided by ~~SCR 103~~ SCR 103(6) and the subsequent hearing. Thereafter, ~~the remaining hearing panel members shall be assigned by the chair or vice chair of the disciplinary board shall assign the remaining hearing panel members.~~

(c) Venue. Venue shall be the county in which the attorney respondent resides or maintains ~~his or her~~ their principal office for the practice of law, where the alleged offense was committed, or where the parties have stipulated. If the attorney respondent neither resides nor maintains ~~his or her~~ a principal office in Nevada, or has left the state to avoid proceedings under these rules, the hearing may be conducted in any county designated by the chair of the disciplinary board.

(d) Time to conduct hearing; notice of hearing; ~~discovery of evidence against attorney.~~ ~~The~~ Within 14 days of appointment, the panel chair shall hold an initial case conference with the parties for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. During the conference, the panel chair shall set a time and a place for a hearing panel shall conduct a, which hearing shall be within 45 days of assignment ~~and the initial case conference. If the respondent fails to attend the initial case conference, then the panel chair shall give the attorney respondent at least 30 days' written notice of its of the hearing's time and place. The notice shall be served in the same manner as the complaint, and shall inform the attorney respondent that he or she is they are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice shall be accompanied by a summary prepared by bar counsel of the evidence against the attorney, and the names of the witnesses bar counsel intends to call for other than impeachment, together with a brief statement of the facts to which each will testify, all of which may be inspected up to 3 days prior to the hearing. Witnesses or evidence, other than for impeachment, which became known to bar counsel thereafter, and which bar counsel intends to use at the hearing, shall be promptly disclosed to the attorney.~~ For good cause shown, the chair may allow additional time, not to exceed 90 days, to conduct the hearing. ~~Hearings may be conducted remotely by stipulation of the parties or when ordered by the panel chair, for good cause shown.~~

(e) Quorum; time for decision of panel; votes required to impose discipline.— ~~Any~~ All three, if members of a three member panel, or five, if a five member panel, shall must be present to constitute a quorum. The hearing panel shall render a written decision within 30 days of the conclusion of the hearing, unless post-hearing briefs are requested by either bar counsel or the attorney respondent and allowed by the panel or requested by the chair, in which event the decision shall be rendered within 60

days of the conclusion of the hearing. The decision shall be served pursuant to ~~Rule~~SCR 109(1), accompanied by the panel's findings and recommendation, all of which shall be filed with bar counsel's office. A decision to impose or recommend discipline requires the concurrence of any two members of a three member panel or three members of a five member~~the disciplinary~~ panel.

(f) Rules of evidence; support of panel's decision. The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel. Evidentiary rulings shall be made by the chair of the panel, if one has been designated, or by the chair of the appropriate disciplinary board prior to such a designation. The findings of the panel must be supported by clear and convincing evidence.

(g) Court reporter. All hearings shall be reported by a certified court reporter, which cost may be assessed against the ~~attorney~~respondent pursuant to ~~Rule~~SCR 120. Any party desiring to have any other disciplinary proceedings reported must arrange in advance for a certified court reporter at the party's own expense.

3. Review by supreme court.

(a) Time and manner of appeal. A decision of a hearing panel shall be served on the ~~attorney~~respondent, and service shall be deemed Notice of Entry of Decision for appeal purposes. Except as provided in ~~Rule~~SCR 105(3)(b), a decision is final and effective 30 days from service, unless an appeal is taken within that time. To the extent not inconsistent with these rules, an appeal from a decision of a hearing panel shall be treated as would an appeal from a civil judgment of a district court and is governed by the Nevada Rules of Appellate Procedure, (NRAP).

(b) Review of public discipline. Except for disbarments by consent pursuant to ~~Rule~~SCR 112 or a public reprimand agreed to in writing by the ~~attorney~~respondent pursuant to ~~Rule~~SCR 113, a decision recommending a ~~public reprimand, suspension or disbarment~~ shall be automatically reviewed by the supreme court. Although the supreme court's review of the conclusions of law and the recommended discipline is de novo, the court shall employ a deferential standard of review with respect to findings of fact. Review under this paragraph shall be commenced by bar counsel forwarding the record of the hearing panel proceedings to the court within 30 days of entry of the decision. Receipt of the record in such cases shall be acknowledged in writing by the clerk of the supreme court.

The ~~attorney~~respondent and bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court of any intent to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with ~~NRAP 31(a)~~NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the disciplinary proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

4.—Rules. Disciplinary rules of procedure; discovery of evidence. The chairs, after consulting with their respective disciplinary boards, may adopt disciplinary rules of procedure, subject to approval by the board of governors. The disciplinary rules of procedure shall require bar counsel to provide a summary of the evidence against the respondent, and the names of the witnesses bar counsel intends

to call unless for impeachment, and a brief statement of the facts to which each will testify. A respondent may inspect bar counsel's evidence up to 3 days prior to the hearing. Witnesses or evidence, other than for impeachment, which became known to bar counsel thereafter, and which bar counsel intends to use at the hearing, shall be promptly disclosed to the respondent.

[As amended; effective December 7, 2015.]

Rule 105.5.—~~Diversion.~~ Probation, diversion, and mentoring programs.

1. Participation in probation, diversion, or mentoring program. As an alternative to or in conjunction with disciplinary sanctions, ~~an attorney~~ a respondent deemed eligible by the appropriate disciplinary board panel may participate in an approved probation, diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct. Participation in a probation, diversion, or mentoring program may be offered by bar counsel or ordered by a panel only in cases where there is little likelihood that the ~~attorney~~ respondent will harm the public during the period of participation and where the conditions of the program can be reasonably supervised.

~~—(a) Mentors.~~ Mentors in diversion ~~(a) Conditions.~~ Conditions of a probation, diversion, or mentoring program may include participation in programs through the Nevada Lawyers Assistance Program, monitoring by a mentor, random substance testing, continuing legal education, ethics education, limitations on practice, restitution, fee arbitration, trust account audits, or any other program authorized by the court.

(b) Mentors. Mentors in probation, diversion, or mentoring programs shall be approved or selected by bar counsel and shall serve on a voluntary basis. Only attorneys in good standing with no pending disciplinary matters may serve as mentors. Any mentor who has no personal interest in the ~~attorney's~~ respondent's participation, and did not represent the ~~attorney~~ respondent in underlying proceedings, may be eligible to receive educational credits for services provided under this rule, after (i) the ~~attorney's~~ respondent's successful completion of such a program, and (ii) the mentor's application to the board of continuing legal education.

~~—(b) —~~ (c) Confidentiality. All services provided by a mentor under this rule and any related documents and/or communications shall remain confidential, as provided for in ~~Rule~~ SCR 121. A mentor shall observe the duties of confidentiality in Nevada Rule of Professional Conduct (RPC) 1.6. Any related information provided to a mentor, and subsequently provided to bar counsel, will be used solely to assess ~~an attorney's~~ a respondent's compliance and progress, and may be provided to a hearing panel for that purpose, but will not be released to any other person(s). Further, such limited access to this information pursuant to a probation, diversion, or mentoring program shall not constitute a breach of confidentiality under ~~RPC 1.6,~~ RPC 1.6, based upon the supervisory nature of a mentor's services and bar counsel's duty to monitor such matters.

~~—2. —~~ Diversion contract ~~(d)~~ A panel or mentoring bar counsel may not offer probation, diversion, or a mentoring program if the respondent:

(1) misappropriated client funds;

(2) caused substantial injury;

- (3) participated in probation, diversion, or a mentoring program for similar misconduct within the last 5 years;
- (4) received an admonition or any public discipline within the last 3 years;
- (5) engaged in dishonesty, deceit, fraud, or misrepresentation; or
- (6) committed a "serious crime" as defined in SCR 111.

2. Written agreement. The terms of probation, diversion, or mentoring shall be stated in a written diversion contract or mentoring agreement between bar counsel, the attorney, his or her respondent, respondent's counsel, if any, the mentor, if any, and any other person(s) a party thereto. The contract or agreement will specify the person(s) responsible for supervising the attorney's respondent's compliance with the terms and conditions of the contract or agreement. The supervision period shall not exceed two years; provided, however, that the disciplinary panel may renew the supervision period for an additional two years with the respondent's consent or after a breach hearing. The existence, but not the terms, of a diversion contract or mentoring agreement under this rule is subject to the provisions of Rule SCR 121.

3. Rejection of. Order for a probation, diversion, or mentoring program.—An attorney by a screening panel. A screening panel may reject a panel's order for diversion or mentoring as an alternative a respondent to a probation, diversion, or mentoring program as an alternative to, or in conjunction with, disciplinary sanctions:

—(a) If an attorney rejects or fails to respond within 14 days, subject to a panel's order directing participation in a diversion or mentoring program, the matter shall be presented to the next available screening panel with bar counsel's recommendation.

—(b) If an attorney rejects or fails to respond within 14 days of notice of a panel's order offering participation in a diversion or mentoring program as an alternative to disciplinary sanctions or proceedings, the alternative the respondent's consent. The screening panel shall be imposed. Thereafter, bar provide an alternative sanction if the respondent does not consent to participate in the proposed program. Bar counsel shall promptly process the matter in accordance with Rule 105 immediately notify the respondent of the screening panel's order.

—(c) If an attorney fails to cooperate fully in the development and/or execution of a diversion contract or mentoring agreement, that failure shall be deemed (a rejection in accordance with Rule 105.5(3)).

4. Acceptance of a diversion or mentoring program.— Within 14 days of the attorney's respondent's receipt of a panel's order under this rule, the attorney respondent must provide bar counsel with a written notice of his or her their agreement to participate. Upon receipt of that notice, bar counsel shall promptly notify any grievant(s) in writing that the attorney respondent has agreed to participate in a probation, diversion, or mentoring program. When applicable, such notice shall further advise the grievant(s) of the confidentiality provisions of Rule SCR 121.

5. Time for filing; extensions.—The written (b) Rejection, failure to respond, or failure to cooperate. If a respondent rejects or fails to respond within 14 days to a screening panel's order directing participation in a probation, diversion, or mentoring program or fails to cooperate fully in the

development or execution of a diversion contract or mentoring agreement, then bar counsel shall promptly proceed with the alternative sanction provided in the screening panel's order.

(c) Time for filing; extensions. Bar counsel and the respondent must be fully executed execute a written agreement within 30 days of acceptance by the attorneyrespondent. This requirement shall only be extended by written agreement between bar counsel and the attorneyrespondent due to extraordinary circumstances. The party requesting the extension shall prepare the written agreement.

6. Breach of a diversion ~~contract~~ or mentoring agreement, ~~Bar counsel shall monitor compliance and may establish protocols for monitoring. If bar counsel determines that an attorneya respondent has breached a contract or term of the agreement executed under this rule, and unless the contract or agreement dictates otherwise, bar counsel shall notify the attorneyrespondent of the alleged breach and, after receipt of such notice, provide the attorneyrespondent with 14 days to submit a written response. Bar counsel may withdraw the notice of alleged breach based upon the written response and related communications.~~

(a) Hearing. If the notice is not withdrawn, bar counsel shall request the chair or vice chair of the appropriate disciplinary board to assign a hearing panel to hear that imposed the probation, diversion, or mentoring program reconvene to determine if the matter and issue an order. respondent has breached the terms of the agreement. Bar counsel shall notify the attorneyrespondent of such request by serving the notice of hearing on the attorneyrespondent. The hearing panel shall convene within 30 days of the request. In proceedings brought under this rule, bar counsel shall have the burden by a preponderance of the evidence to establish any breach of the contract or agreement, and an attorneya respondent shall have the burden by a preponderance of the evidence to establish justification for any such breach. Where there is an alleged breach of a contract or an agreement executed pursuant to an order of the supreme court, bar counsel may move the court directly for any relief deemed appropriate.

(b) If a hearing panel finds a breach to be material and without justification, the panel shall terminate the contract or agreement and reactivate any underlying grievance(s) to be processed through any course deemed appropriate under RuleSCR 105. If the contractrespondent received a stayed sanction or agreement was effectuated as an alternative to disciplinary sanctions, sanction, then the panel shall terminate the contract or agreement and impose the applicable stayed sanction or alternative sanctionsanction.

(c) If the hearing panel finds that no breach occurred, or that the breach was immaterial or with justification, the panel may modify the existing contract or agreement or direct the parties to proceed in accordance with it.

7. Costs. The attorneyrespondent shall pay any costs associated with participation in a diversion or mentoring program, including but not limited to laboratory testing, professional accounting or evaluation, treatment, and the costs of any hearing under this rule. The attorneyrespondent shall not be assessed any fees or costs for a mentor's or bar counsel's services.

8. Completion and expungement. After the term of a contract or an agreement for diversion or mentoring under this rule has concluded, bar counsel shall notify the attorneyrespondent of such completion and, when applicable, any underlying grievance(s) and related records shall be dismissed and processed in accordance with RuleSCR 121. After a grievance file has been dismissed under this rule,

bar counsel shall respond to any related inquiries by stating that there is no record of such a matter, unless otherwise directed by the attorney respondent. Likewise, the attorney respondent may respond to such an inquiry by stating that any allegations or complaints that may have been filed with bar counsel's office were dismissed. However, this rule does not supersede the provisions of Rule SCR 121 and does not apply to successful completion of a program ordered in conjunction with disciplinary sanctions or ordered in lieu of more severe disciplinary sanctions, unless otherwise noted in the ~~contract or agreement~~agreement. Probation is a disciplinary sanction and not subject to expungement.

[Added; effective February 25, 1997; amended effective October 5, 2015.]

Rule 106. Privilege and limitation.

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

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

[Added; effective February 15, 1979; amended effective September 1, 2007.]

Rule 106.5. ~~Lawyer wellness programs.~~ Lawyers Concerned for Lawyers program: privilege and limitation.

~~1. Purpose.~~ Definition. The Lawyers Concerned for Lawyers program is a voluntary program created by the board of governors may establish lawyer wellness programs to assist lawyers who are suffering from a psychological disorder or impairment, or a drug, alcohol, gambling, or other addictive or compulsive disorder, or issues related to mental health.

~~2. Definitions.~~

~~(a) The Lawyers Concerned for Lawyers (LCL) program provides confidential peer to peer support. A lawyer's participation in LCL is voluntary.~~

~~(b) The Nevada Lawyer Assistance Program (NLAP) provides clinical assessment, treatment, or therapy services. Services provided through NLAP may be sought on a voluntary basis or may be ordered on condition of a diversion agreement under SCR 105.5 or may be court ordered.~~

~~3. Privilege.~~ Privilege. Individuals who make a good faith report to LCL or NLAP, the Lawyers Concerned for Lawyers program, the board of governors and its members, bar counsel, and staff, and the coordinator, agents, or employees of the LCL or NLAP Lawyers Concerned for Lawyers program, shall be absolutely immune from civil liability for any activities related to the LCL or NLAP Lawyers Concerned for

Lawyers program, including, but not limited to, making referrals to a counselor, therapist, medical, psychological, or behavior health care provider. No action may be predicated upon the filing of a good faith report with the ~~LCL or NLAP~~ Lawyers Concerned for Lawyers program or any action taken in connection with such a filing by the coordinator, agents, or employees of the ~~LCL or NLAP~~ Lawyers Concerned for Lawyers program.

~~—4.—~~ 3. Limited use policy. All information obtained by the ~~LCL~~ Lawyers Concerned for Lawyers program ~~or as a result of voluntary services sought from NLAP~~, including the initial report and any subsequent information provided to the program thereafter, shall be confidential and shall not be admissible in any state bar disciplinary, admission, administrative, ~~or other state bar proceeding or other state bar proceeding~~. This rule is not meant to preclude the state bar from using evidence or information which is independently discovered from a source separate from the Lawyers Concerned for Lawyers program.

~~—(a) This rule is not meant to preclude the state bar from using evidence or information that is independently discovered from a source separate from the LCL or NLAP program.~~

~~—(b) This rule is not meant to preclude the state bar from requiring participation in NLAP as part of a diversion program under SCR 105.5, in which case, the attorney is subject to the rules under SCR 105.5.~~

— [Added; effective April 8, 2002; amended effective April 22, 2019.]

Rule 107. Refusal of grievant or complainant to proceed, compromise, etc. Neither unwillingness nor neglect of a grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement or compromise between the grievant or complainant and the attorney respondent, nor restitution by the attorney respondent, shall require abatement of the processing of any grievance or complaint. Such factors may be considered in determining whether to abate.

[Added; effective February 15, 1979; amended effective January 2, 1996.]

Rule 108. Matters involving related pending civil or criminal litigation. Before or after a grievance file has been opened, processing of a grievance or complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized, for good cause, by a three-member screening panel appointed pursuant to Rule SCR 105(1).

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 109. Service.

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

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

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

3. Attachment of person for failure to obey subpoena or produce documents. Whenever any person subpoenaed to appear and give testimony or to produce books, papers, or other documents as required by subpoena, or requested to provide documents pursuant to Rule SCR 78.5(1)(b), refuses to appear or testify before a hearing panel, or to answer any pertinent or proper questions, or to provide the requested documents, that person shall be deemed in contempt of the disciplinary board, and the chair of the disciplinary board shall report the fact to a district judge of the county in which the hearing is being held or the investigation conducted. The district court shall promptly issue an attachment in the form usual in the court, directed to the sheriff of the county, commanding the sheriff to attach such person and bring such person forthwith before the court. On the return of the attachment, and the production of the person attached, the district court shall have jurisdiction of the matter; and the person charged may purge himself or herself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a district court of the State of Nevada.

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 111. Attorneys convicted of crimes.

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

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

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

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

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

6. Definition of "serious crime." The term "serious crime" means (1) a felony and (2) any crime less than a felony that adversely reflects on the attorney's fitness to practice law, or involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

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

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

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

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

11. Conviction of attorney who is prohibited from practicing. If an attorney convicted of a crime is at that time prohibited from practicing due to a disciplinary suspension or transfer to disability inactive status under Rule SCR 117, then the petition filed under subsection 7 or 9 of this rule shall state that the attorney is prohibited from practicing and under what provision. If the attorney has been suspended as discipline, then the petition shall indicate the suspension's length and whether the attorney must file a reinstatement petition under Rule SCR 116 to regain active status. The supreme court shall then enter an appropriate order directing how the conviction shall be addressed.

[Added; effective February 15, 1979; amended effective January 10, 2018.]

Rule 112. Disbarment by consent.

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 113. Discipline by consent.

1. ~~Conditional plea.~~ ~~An attorney~~ Admission. A respondent against whom bar counsel has filed a grievance or complaint has been made may tender to bar counsel a conditional guilty plea admission to the charge(s) complaint or to a particular count therein in exchange for a stated form of discipline. ~~The~~ if accepted by bar counsel, the tendered plea admission shall be filed with bar counsel's office and approved, modified, or rejected by a hearing panel. The tendered plea admission is subject to final approval or rejection by the supreme court if the stated form of discipline includes disbarment or suspension. If the panel or the supreme court rejects the stated form of discipline, then the admission shall be withdrawn and cannot be used against the respondent in any subsequent proceedings.

2. Continuance and abatement of proceedings. A continuance in a proceeding on the basis of a tendered ~~plea~~ admission shall be granted only with the concurrence of bar counsel. Approval of a tendered ~~plea~~ admission by a panel, and, if required, by the court shall abate the proceedings, and the panel's decision shall be predicated on the charge(s) made against the attorney and the tendered ~~plea~~ respondent and the tendered admission. If a formal hearing panel or the supreme court rejects the stated form of discipline, then the admission shall be withdrawn and the Board shall appoint a new panel, which shall proceed to formal hearing pursuant to SCR 105(2)(d).

3. Review by court. If the stated form of discipline includes disbarment or suspension, bar counsel shall forward the record of the proceedings before it to the supreme court within 30 days of entry of the decision. The record filed with the supreme court shall indicate on its title page that the matter concerns a proceeding under this rule. The matter shall be submitted for review on the record without briefing or oral argument unless otherwise ordered by the court.

~~4. Public reprimand.~~ 4. Consent to Reprimand. If the stated form of discipline includes neither a suspension nor disbarment, the matter shall not be submitted to the supreme court for approval. The state bar shall issue the public reprimand and publish the public reprimand in accordance with Rule SCR 121.1.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 114. Reciprocal discipline and disability inactive status.

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

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

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

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

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

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

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

3. Duty to notify clients and forums involved in proceedings. An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under Rule SCR 98 or Rule SCR 212, transfer to disability inactive status, or resignation, shall immediately notify, by registered or certified mail, return receipt requested, (1) each of the attorney's clients who is involved in pending litigation, administrative proceedings, arbitration, mediation or other similar proceedings, (2) the attorney(s) for each adverse party in such matters, and (3) the court, agency, arbitrator, mediator or other presider over such proceeding of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The notice to the client shall state the desirability of prompt substitution of another attorney of the client's own choice and shall list any upcoming appearances and deadlines. The notice given to the attorney for an adverse party shall provide the last known address of the client.

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

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

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

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

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

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

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

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

~~6. Failure to comply.~~ 6. Return of Client Property. The attorney shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

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

~~7.~~ 8. Effective date. Orders imposing suspension or disbarment or approving resignation shall be effective immediately. After entry of the order, the attorney shall not accept any new retainer or act as attorney for another in any new case or legal matter of any nature. However, for 15 days from the entry date of the order, the attorney may wind up and complete, on behalf of any client, all matters pending on the entry date.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 116. Reinstatement.

~~1. Order of supreme court required.~~ An attorney suspended as discipline for more than 6 months may not resume practice unless reinstated by order of the supreme court.

~~2. Procedure for reinstatement.~~ Petitions for reinstatement by a suspended attorney shall be filed with bar counsel's office, which

1. An attorney who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with bar counsel an affidavit stating that they have fully complied with the requirements of the suspension order and has paid any required fees and costs.

2. An attorney suspended for more than six months shall be reinstated only upon order of the court. No attorney may petition for reinstatement until the period of suspension has expired. An attorney shall receive credit for the time they were on interim suspension.

3. Petition. An attorney must submit a petition for reinstatement under oath or affirmation under penalty of perjury and shall specify with particularity how the attorney meets each of the criteria specified in paragraph 5 or, if not, why there is good and sufficient reason for reinstatement.

4. Service of Petition. The attorney shall file a copy of the petition with bar counsel and bar counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment. Bar counsel shall promptly refer the petition to the chair of the appropriate disciplinary board. The chair or vice chair shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, conduct a hearing.

5. Criteria for Reinstatement. An attorney may be reinstated or readmitted only if the attorney demonstrates by clear and convincing evidence the following criteria, or if not, presents good and sufficient reason why the attorney should nevertheless be reinstated or readmitted:

(a) Full compliance with the terms and conditions of all prior disciplinary orders;

(b) The attorney has neither engaged in nor attempted to engage in the unauthorized practice of law during the period of suspension;

(c) Any physical or mental disability or infirmity existing at the time of suspension has been removed; if alcohol or other drug abuse was a causative factor in the attorney's misconduct, the attorney has pursued appropriate treatment, has abstained from the use of alcohol or other drugs for a stated period of time, generally not less than one year, and is likely to continue to abstain from alcohol or other drugs;

(d) The attorney recognizes the wrongfulness and seriousness of the misconduct resulting in the suspension;

(e) The attorney has not engaged in any other professional misconduct since suspension;

(f) Notwithstanding the conduct for which the attorney was disciplined, the attorney has the requisite honesty and integrity to practice law; and

(g) The attorney has kept informed about recent developments in the law and is competent to practice.

6. Hearing; Decision as to Reinstatement. The hearing panel shall file its findings and recommendations within 30 days after the hearing concludes. Within 60 days after the hearing concludes, bar counsel shall file the record of the proceedings, together with the panel's findings and recommendation, with the supreme court. Receipt of the record shall be acknowledged in writing by the supreme court clerk.

The attorney or bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court if he or she ~~intends~~ they intend to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with ~~NRAP 31(a)~~ NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the reinstatement proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

3. If the court finds that the attorney has complied with each of the criteria of paragraph 5 or has presented good and sufficient reason for failure to comply, the court shall reinstate the attorney. If

the court reinstates the attorney, the court shall issue a written opinion setting forth the grounds for its decision; if the court denies reinstatement, the court shall issue a written opinion setting forth the grounds for its decision.

~~7.~~ 7. Bar counsel to appear. In proceedings for reinstatement, bar counsel shall represent the state bar ~~and~~, submit any evidence, and produce any witnesses relevant to the petition. Prior to the hearing, bar counsel may make a lawful request for information consistent with the requirements for admission under S.C.R. 51-SCR 51.

~~4.~~ 8. Tender of costs in advance. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit of ~~\$1,000~~ \$2,500 to cover anticipated costs of the reinstatement proceeding.

~~5.~~ 9. Decision on reinstatement; conditions. If the attorney does not meet the burden of proof to justify reinstatement, the petition shall be dismissed by the hearing panel. If the attorney meets the burden of proof, the hearing panel's recommendation for reinstatement shall be entered. Reinstatement shall be conditioned upon the attorney's payment of the costs of the proceeding, restitution to parties injured by the petitioner's misconduct, including the Clients' Security Fund, any further conditions deemed appropriate by the panel, and such proof of competency as may be required by the supreme court, which proof may include certification by the bar examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. If an attorney has been continuously suspended for 5 years or more at the time a petition for reinstatement is filed, irrespective of the term of suspension initially imposed, successful completion of the examination for admission to practice shall be a mandatory condition of reinstatement.

~~6.~~ 10. Successive petitions. A petition for reinstatement under this rule shall not be filed within 1 year following an adverse judgment on a petition for reinstatement filed by the same attorney, unless otherwise ordered by the court.

[Added; effective February 15, 1979; amended effective January 10, 2018.]

E. DISABILITY

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

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

2. Petition to determine competency; notice. Whenever a disciplinary board or a hearing panel believes that an attorney is incapable of continuing the practice of law because of mental infirmity, illness, or addiction, it may file a petition with the supreme court seeking a determination of the attorney's competency. Such a petition may also be filed by joint stipulation of the parties. A petition to determine an attorney's competency should be filed separately from any discipline matter that may be pending and should be marked confidential in accordance with Rule SCR 121. Upon the filing of such a

petition, the court may take or direct such action as it deems necessary to determine whether the attorney is incapacitated, including referral of the matter to the appropriate disciplinary board for hearing and recommendation by a hearing panel or the examination of the attorney by qualified medical experts. If, upon due consideration, the court concludes that the attorney is incapacitated for the purpose of practicing law, it shall enter an order transferring him or her to disability inactive status. Any pending disciplinary proceeding or investigation against the attorney shall be suspended.

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

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

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

4. Resumption of practice by disabled attorney. An attorney transferred to disability inactive status under the provisions of this rule may not resume active status until reinstated by order of the supreme court. An attorney transferred to disability inactive status under the provisions of this rule shall be entitled to petition for reinstatement to active status ~~once a year, or at such shorter intervals as the court may direct in the order transferring the attorney to disability inactive status, no sooner than one year following the transfer to disability inactive or after an unsuccessful petition for reinstatement filed by the same attorney, unless otherwise ordered by the court.~~ The petition shall be filed with bar counsel's office and shall be set for hearing before a hearing panel, which shall consider whether the attorney has demonstrated by clear and convincing evidence that the attorney's disability has been removed and that ~~he or she is~~ they are fit to resume the practice of law. The panel may direct that the attorney establish competence and learning in law, including certification by the bar examiners that the attorney successfully completed an examination for admission to practice ~~subsequent to~~ after being transferred to disability inactive status. Reinstatement shall be conditioned upon the attorney's repayment to the Clients' Security Fund of clients who were reimbursed on the attorney's behalf. The panel shall ~~render~~ file findings of fact, conclusions of law, and a written decision ~~recommendation on reinstatement~~ within 30 days of the hearing's conclusion, which shall be filed with bar counsel's office and served pursuant to Rule SCR 109(1).

Bar counsel shall forward the record of the hearing panel proceeding to the supreme court within 30 days of the decision's entry. Receipt of the record shall be acknowledged in writing by the supreme court clerk. The parties shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file any objection to the panel's recommendation. If none is filed, then the matter shall be submitted for decision. If the supreme court concludes that the attorney's disability has been removed and that the attorney is fit to practice law, then the supreme court may reinstate the attorney to active status, with any conditions that may be appropriate to protect the attorney's clients

or the public. If any disciplinary proceeding against the attorney was suspended by the attorney's transfer to disability inactive status, then the supreme court may direct the state bar to resume the disciplinary proceeding. If the supreme court is not satisfied that the attorney's disability has been removed, then it may take such action as it deems appropriate, including denying the petition.

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

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

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

7. Notice. An attorney who is transferred to inactive status must comply with Rule SCR 115, if ~~he or she is~~they are able to do so. If the attorney's disability precludes compliance with Rule SCR 115, or if the attorney fails to comply, then bar counsel shall proceed under Rule SCR 118. Bar counsel shall also comply with Rule SCR 121.1.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

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

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

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

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

[Added; effective February 15, 1979; amended effective May 6, 2011.]

F. MISCELLANEOUS PROVISIONS

Rule 119. Additional rules of procedure.

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

2. Failure to Answer. Failure to answer a filed complaint shall constitute an admission of the factual allegations.

3. Failure to Appear. If the respondent fails to appear when specifically so ordered by a disciplinary panel, then the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance or conceded to any motion or recommendations to be considered at such appearance. The disciplinary panel shall not, absent good cause, continue or delay proceedings due to the respondent's failure to appear.

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

~~3.~~ 5. Other rules of procedure. Except as otherwise provided in these rules, and the rules of disciplinary procedure established pursuant to SCR 105(4), the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure apply in disciplinary cases.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 120. Costs; bar counsel conflict or disqualification.

1. An attorney subjected to discipline or seeking reinstatement under these rules shall be assessed the costs, in full or in part, of the proceeding, including, but not limited to, reporter's fees, investigation fees, witness expenses, service costs, publication costs, and any other fees or costs deemed reasonable by the panel and allocable to the proceeding.

2. If, for any reason, bar counsel is disqualified or has a conflict of interest, the board of governors shall appoint an attorney, ad hoc, to act in the place of bar counsel.

3. In addition to any costs assessed as provided for herein, an attorney subjected to discipline shall be assessed administrative costs allocable to the proceeding, but in any case, shall not be less than the following amounts:

Admonition: \$750

Reprimand: \$1,500

Suspension: \$2,500

Disbarment: \$3,000

4. A final assessment for costs ~~and~~ fees, or restitution shall have the force and effect of a civil judgment against the ~~disciplined~~ respondent attorney and shall be subject to all legally available post-judgment enforcement remedies and procedure.

5. In addition, in any matter where any attorney is required to apply for reinstatement, administrative costs shall be assessed in any amount not less than \$2,500, and the attorney shall also be required to pay all costs previously assessed but not yet paid prior to the processing of the application for reinstatement.

[Added; effective February 15, 1979; amended effective June 5, 2017.]

Rule 121. Confidentiality.

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

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

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

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

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

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

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

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

9. Reinstatement. Reinstatement proceedings under ~~Rule~~SCR 116 shall be public.

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

11. What becomes public. Once a matter has become public pursuant to this rule, all records of the ~~lawyer~~attorney discipline agency shall become public except bar counsel's work product ~~and~~ the panel's deliberations, and all documents related to any diversion or mentoring agreements governed by SCR 105.5.

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

13. Cooperation with certain investigations. ~~This rule shall not deny access to. Bar counsel may share relevant nonpublic information to authorized with federal or state agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice, same or to law enforcement agencies investigating qualifications for government employment similar misconduct.~~

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

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

16. Exclusions. These rules shall not prohibit any complainant, the accused attorney, or any witnesses from discussing publicly the existence of the proceedings under these rules or the underlying facts related thereto. However, disclosures made under this subsection, in whatever form or by whatever means, outside the disciplinary process shall not be covered by the civil immunity afforded in ~~Rule~~SCR 106(1).

17. Protective Orders. In order to protect the interests of a complainant, witness, third party, or respondent attorney, the panel chair may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

1. Entity responsible. If the attorney's suspension was imposed under RuleSCR 98 for failure to pay state bar dues or under RuleSCR 214(1) for failure to timely complete TIP, then the state bar shall be responsible for issuing the notices required by RuleSCR 121.1(2) and (3). If the attorney's suspension was imposed under RuleSCR 212 for failure to comply with continuing legal education requirements, then the board of continuing legal education shall be responsible for issuing the notices required by RuleSCR 121.1(2) and (3). In all other cases of admonition, reprimand, disciplinary suspension, disbarment, reinstatement, and transfers to or from disability inactive status, bar counsel shall be responsible for issuing the notices required by RuleSCR 121.1(2) and (3) and (4).

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

~~The responsible entity shall also cause a notice of a public reprimand issued by the supreme court, or a letter of reprimand issued either by the supreme court or a disciplinary panel of the State Bar of Nevada, to be published in the state bar publication.~~

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

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

~~4. Disclosure to National Discipline Data Bank.~~ 4. Notice to other Disciplinary Agencies. Bar counsel shall notify the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline and the disciplinary enforcement agency of every other jurisdiction in which an attorney is admitted of all public discipline imposed by the supreme court on an attorney, transfers to or from disability inactive status, reinstatements to the practice of law, and resignations with discipline pending.

5. Publication of supreme court orders. The clerk of the supreme court shall cause any order issued by the supreme court that subjects an attorney to any form of public discipline including a ~~letter of reprimand, public reprimand,~~ suspension, or disbarment, that transfers an attorney to or from disability inactive status, that approves an attorney's resignation, or that reinstates an attorney to the

practice of law to be published in pamphlet form and disseminated to all subscribers of the advance sheets of the Nevada Reports and to all persons and agencies listed in ~~NRS 2.345~~ NRS 2.345.

6. Publication of ~~public reprimand~~ admonition issued by ~~state bar~~ screening panel. Bar counsel shall cause a ~~public reprimand~~ admonition issued by the ~~state bar~~ screening panel to be published in the ~~state bar publication~~. The published admonitions shall not disclose the identity of the attorney and shall not be associated with the attorney on the State Bar of Nevada website.

[Added; effective October 5, 2003; amended effective January 26, 2017.]

Rule 122. **Effective date.** These rules are effective on ~~March 1, 2007~~; [New Date]; any disciplinary proceeding or matter either previously concluded, or pending on that date in which bar counsel has filed a formal complaint ~~has been filed by bar counsel~~ shall be governed by ~~Rules~~ SCRs 99 et seq. of the Supreme Court Rules in effect prior to the effective date.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

EXHIBIT B

D. MISCONDUCT

Rule 99. Jurisdiction.

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 100. Disciplinary districts. Disciplinary jurisdiction in this state shall be divided into a southern district and a northern district. The southern district shall consist of the counties of Clark, Esmeralda, Lincoln, Nye, and White Pine. The northern district shall consist of the counties of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, and Washoe.

[Added; effective February 15, 1979.]

Rule 101. Grounds for discipline. It shall be a ground for discipline for an attorney to:

1. violate or attempt to violate the Nevada Rules of Professional Conduct, or any other rules of this jurisdiction regarding professional conduct of attorneys;

2. engage in conduct violating applicable rules of professional conduct of another jurisdiction;

3. intentionally violate a valid order of the court or the disciplinary panel imposing discipline, intentionally fail to appear before a hearing panel pursuant to these Rules, intentionally fail to comply with a subpoena validly issued under these Rules, or knowingly fail to respond to a lawful demand from bar counsel, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 102. Decisions regarding a grievance. The filing of a grievance may result in:

1. Issuance of any of the following sanctions:

(a) Irrevocable disbarment by the supreme court.

(b) Suspension by the supreme court for a fixed period generally not less than 6 months nor greater than three years. A suspension of 6 months or less shall not require proof of rehabilitation; a suspension of more than 6 months shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding under SCR 116. A suspension, or portion thereof, may be stayed for not longer than two years pending compliance with probationary terms. Probation procedures shall be consistent with SCR 105.5.

(c) Temporary restraining order regarding funds.

(1) On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant which shows that an attorney appears to be causing great harm by misappropriating funds to his or her own use, a district court of this state in the county where the attorney resides, where he or she maintains an office, or where the alleged acts occurred, may issue an order, in the same manner and under the same provisions of the Nevada Rules of Civil Procedure, not inconsistent with this rule, as a temporary restraining order is issued, which restricts the attorney in the handling of funds entrusted to him or her or over which the attorney has the power of disposition.

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

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

(d) Temporary suspension by the supreme court.

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

(2) On the petition of bar counsel, supported by an affidavit alleging facts personally known to the affiant, which shows that an attorney appears to be posing a substantial threat of serious harm to the public, the supreme court may order, with notice as the court may prescribe, the attorney's immediate temporary suspension or may impose other conditions upon the attorney's practice. If a petition is filed under subsection 1(c) of this rule, a separate petition under this subsection must be filed with the supreme court as soon thereafter as possible.

(3) A temporary order may restrict an attorney in the handling of funds entrusted to the attorney or over which the attorney has the power of disposition, or, if appropriate, direct the attorney to establish a trust account in accordance with conditions prescribed in the order. When served on either the attorney or a depository in which the attorney maintains an account, the order is also an injunction against withdrawals from the account except in accordance with the terms of the order. An order of the supreme court that restricts the handling of funds by an attorney supersedes an order entered by the district court pursuant to subsection 1(c) of this rule.

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

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

(e) Reprimand, with or without conditions, as referenced below, imposed by the supreme court or a hearing panel of the disciplinary board.

(f) Admonition imposed by a screening panel pursuant to SCR 105(1) with the consent of the respondent. A respondent cannot receive an admonition after bar counsel has filed a complaint. The screening panel chair shall issue the admonition in writing and bar counsel shall serve it upon the respondent. Admonitions are private discipline because the screening panel imposes them before bar counsel files formal charges. A screening panel may impose an admonition only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood the respondent will repeat the misconduct. Bar counsel shall publish all admonitions in the bar publication for the education of the profession but shall not identify the respondent therein. Bar counsel may use an admonition in subsequent proceedings as an aggravating factor after the disciplinary panel has found the respondent guilty of misconduct or as otherwise permitted by the rules of evidence. A screening panel may impose an admonition with or without conditions, as set forth below.

A screening panel may not issue an admonition if the respondent:

1. misappropriated client funds;
2. caused substantial injury;
3. received an admonition for similar misconduct within the last 5 years;
4. received an admonition or any public discipline within the last 3 years;
5. engaged in dishonesty, deceit, fraud, or misrepresentation; or
6. committed a "serious crime" as defined in SCR 111.

2. In addition to any of the aforementioned sanctions except disbarment, upon order of the supreme court or a panel of the disciplinary board, or upon stipulation, an attorney can be required to pay restitution to persons financially injured, disgorge all or part of the attorney's or law firm's fee, reimburse the client security fund, pay a fine of up to \$1,000, and/or comply with additional conditions intended to create protection of the public or increase confidence in the integrity of the profession.

3. A dismissal, with or without cautionary language, by a screening panel, hearing panel, or the Supreme court. Cautionary language may not be used as an aggravating factor in any subsequent disciplinary proceeding but does serve as notice to the attorney regarding specific conduct.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 102.5. Factors to be Considered in Imposing Sanctions.

1. In imposing a sanction after a finding of attorney misconduct, the disciplinary panel or supreme court shall consider the following factors:

- (a) whether the attorney has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (b) whether the attorney acted intentionally, knowingly, or negligently;
- (c) the amount of the actual or potential injury caused by the attorney's misconduct; and
- (d) the existence of any aggravating or mitigating factors.

2. Using the first three factors in SCR 102.5(1)(a)-(c), the disciplinary panel or supreme court shall determine a baseline or presumptive sanction. The disciplinary panel or supreme court may then consider any aggravating or mitigating factors to increase or decrease the sanction.

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

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary hearing;
- (g) refusal to acknowledge the wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

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

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary authority or cooperative attitude toward proceeding;

- (f) inexperience in the practice of law;
 - (g) character or reputation;
 - (h) physical disability;
 - (i) mental disability or chemical dependency including alcoholism or drug abuse when:
 - (1) there is medical evidence that the attorney is affected by chemical dependency or a mental disability;
 - (2) the chemical dependency or mental disability caused the misconduct;
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
 - (j) delay in disciplinary proceedings;
 - (k) interim rehabilitation;
 - (l) imposition of other penalties or sanctions;
 - (m) remorse;
 - (n) remoteness of prior offenses.
5. Factors which should not be considered as either aggravating or mitigating include:
- (a) forced or compelled restitution;
 - (b) agreeing to a client's demand for improper behavior;
 - (c) withdrawal of grievance against the lawyer;
 - (d) resignation prior to completion of disciplinary proceedings;
 - (e) grievant's recommendation as to sanction;
 - (f) failure of injured client to complain.

[Added; effective March 1, 2007.]

Rule 103. Disciplinary boards and disciplinary panels.

1. The board of governors shall appoint two disciplinary boards of at least 47 members each, one to serve the northern district and one to serve the southern district, as constituted in SCR 100. Each disciplinary board shall consist of at least 35 members of the bar of Nevada, other than persons holding judicial office or membership on the board of governors, and at least 12 non-attorneys. Each member shall reside in the district served by the board. The board of governors may appoint any additional members to serve on either disciplinary board as it deems necessary.

2. Members of the disciplinary boards shall serve at the pleasure of the board of governors, or for a term of three years, subject to reappointment for three additional terms. No member may serve on the disciplinary boards for more than a lifetime total of twelve years.

3. The board of governors shall appoint one attorney member as chair of each disciplinary board and another attorney member as vice chair to act in the absence or direction of the chair. The chair and vice chair shall serve for a term of one year, subject to reappointment for such additional terms as the board of governors may deem appropriate.

4. Disciplinary board members shall not receive compensation for their services, but the State Bar may reimburse board members for their travel and other expenses incidental to the performance of their duties.

5. The chair of each disciplinary board shall preside over all motions or other requests relating to pending proceedings until such time as a hearing panel chair is designated to preside over the proceeding, as provided in SCR 103(6).

6. The chair or vice chair of each disciplinary board shall designate hearing and screening panels of three members, consisting of two attorneys and one non-attorney. The chair or vice chair shall assign hearing cases to hearing panels and designate an attorney as chair of each. The designated hearing panel chair shall preside over all motions or other requests. A hearing panel shall:

(a) Conduct hearings pursuant to SCR 105.5(6) to determine if there is a breach of a probation, diversion, or mentoring agreement.

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

(c) File its findings and recommendations with bar counsel's office.

7. Hearing panel members shall not participate in any proceeding in which a judge similarly situated would be required to abstain. Any member whose term expires while the member's panel is considering a complaint shall remain a member until its disposition.

8. The chairs of the hearing panels and screening panels shall deliver reprimands and sign all documents on behalf of the panel to carry out the provisions of SCR 102(6), SCR 102(7), and SCR 103(6).

9. A grievance received against a member of a disciplinary board and processed in accordance with SCR 105(1) shall be referred to the other disciplinary board.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 104. State bar counsel.

1. State bar counsel shall perform all prosecutorial functions and have the following powers and duties:

(a) To investigate all information coming to the attention of the agency which, if true, would be grounds for discipline or transfer to disability inactive status and investigate all facts pertaining to petitions for reinstatement;

(b) To dismiss grievances that do not assert a violation of the Nevada Rules of Professional Conduct and to dismiss matters involving alleged misconduct with the approval of a screening panel or the chair of a formal hearing panel;

(c) To prosecute all proceedings under these rules before all forums in the name of the State Bar of Nevada;

(d) To file petitions with the supreme court with certified copies of proof of conviction demonstrating that attorneys have been convicted of serious crimes, as defined in SCR 111;

(e) To notify promptly the grievant and the respondent of the status and the disposition of each matter, including but not limited to providing to the grievant:

(1) a copy of any written communication from the respondent to the bar counsel relating to the matter except information that is subject to the privilege of one other than the complainant;

(2) a concise written statement of the facts and reasons a matter has been dismissed prior to a hearing and a copy of the written guidelines for dismissal, provided that the grievant shall be given a reasonable opportunity to rebut statements of the respondent before the grievance is dismissed; and

(3) a notice of the date, time, and location of the hearing;

(f) To maintain permanent records of all matters investigated under these rules except as otherwise required under SCR 121, and

(g) To employ and supervise staff needed for the performance of the aforementioned duties.

2. Bar counsel may meet with an attorney against whom a grievance has been received to informally resolve a matter involving minor misconduct, as defined in SCR 105.5(1)(d), including directing the attorney to participate in fee dispute arbitration, substance abuse counseling, obtain Continuing Legal Education credit(s), or other appropriate remedial measures.

3. Bar counsel shall not render advisory opinions, either orally or in writing, although bar counsel may provide informal guidance on the Nevada Rules of Professional Conduct to callers through the ethics hotline.

4. In addition to complying with the Rules of Professional Conduct regarding successive government and private employment (Nevada Rule of Professional Conduct 1.11), a former bar counsel shall not personally represent a respondent in any proceeding governed by these rules for a period of one year following completion of the bar counsel's service.

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

[Added; effective January 2, 1996; amended effective October 5, 2015.]

Rule 105. Procedure on receipt of complaint.

1. Investigation.

(a) Investigation and screening panel review. Investigations shall be initiated and conducted by bar counsel or bar counsel's staff or other investigative personnel at bar counsel's direction prior or pursuant to the opening of a grievance file. At the conclusion of an investigation of a grievance file, bar counsel shall recommend in writing dismissal with or without prejudice, referral to probation, diversion, or mentoring pursuant to SCR 105.5, an admonition, or the filing of a written complaint for formal proceedings. The recommendation shall be promptly reviewed by a screening panel. A screening panel shall consist of three members of the disciplinary board, appointed by the chair or vice chair in accordance with SCR 103(6). Two of the three reviewers must be members of the bar. By majority vote they shall approve, reject, or modify the recommendation, or continue the matter for review by another screening panel.

(b) Notice and election. The respondent shall be notified by bar counsel in writing of a decision by a screening panel to issue an admonition and shall be served with the notification and admonition in the manner prescribed by SCR 109(1). The respondent shall have 14 days after receipt of the notice within which to serve on bar counsel written objections to the issuance of the admonition along with the basis of the objections.

(c) Hearing. Upon receipt by bar counsel of written objections to the issuance of an admonition within the time prescribed, bar counsel shall file a complaint and commence formal proceedings in accordance with SCR 105(2). The issuance of an admonition not objected to by the respondent within 14 days of notice shall be final and shall not be appealable. A screening panel member who has reviewed bar counsel's recommendation on a grievance shall not be appointed to a hearing panel for any subsequent and related proceedings. Except in matters requiring dismissal because the grievance is frivolous or clearly unfounded on its face, falls outside the disciplinary board's jurisdiction, or is resolved informally pursuant to SCR 104(2), a panel shall not make a finding of misconduct until the respondent has been given an opportunity to respond to the allegations against the respondent. The formal hearing panel may not issue an admonition because the hearing records become public when bar counsel files the formal complaint.

(d) Appeal of a screening panel's dismissal of a grievance. Bar counsel may appeal a decision to dismiss a grievance to a hearing panel appointed by the chair or vice chair of the respective northern or southern disciplinary board. The chair of the respective board shall be one of the members on the panel and shall serve as chair of the panel. The panel shall determine whether the decision is supported by the record and is in the best interests of justice. Such an appeal must be filed with bar counsel's office and served upon the chair of the appropriate disciplinary board within 20 days of receipt of the decision by filing and serving a petition, together with the record of the matter being appealed. The petition shall contain the name and address of the appropriate northern or southern disciplinary board chair and identify the chair as the person to whom the petition must be sent. The chair shall issue an order advising the respondent or bar counsel of when any answering or other brief is due. The panel shall decide the matter on the record without oral argument or appearance and shall issue a written decision.

2. Commencement of formal proceedings. Formal disciplinary proceedings are commenced by bar counsel filing a written complaint in the name of the state bar. The complaint shall be sufficiently clear and specific to inform the respondent of the charges against them and the underlying conduct supporting the charges. A copy of the complaint shall be served on the respondent, and it shall direct that a verified response or answer be served on bar counsel within 21 days of service; the original shall

be filed with bar counsel's office. The time to respond may be extended once by the chair for not more than 21 days for good cause or upon stipulation of the parties. In the event the respondent fails to plead, bar counsel shall enter a default and the charges shall be deemed admitted; provided, however, that a respondent who fails to respond within the time provided may thereafter move to set aside the default with the appropriate chair, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.

(a) Challenges to and ad hoc appointments of panel members. The complaint shall be served with the list of members of the appropriate disciplinary board. The respondent, or each if more than one, and bar counsel may exercise five peremptory challenges each to the people on the list by filing such in writing on or before the date a response to the complaint is due. Peremptory challenges will not be part of the public record.

Challenges to any member for cause under SCR 103(7) shall be made as soon as possible after receiving either actual or constructive notice of the grounds for disqualification and shall be made by motion to the chair in accordance with these rules. In no event will a motion seeking the disqualification of a member be timely if the member has already heard, considered, or ruled upon any contested matter, except as to grounds based on fraud or similar illegal conduct, of which the challenging party had no notice until after the contested matter was considered. Any challenge that is not raised in a timely manner shall be deemed waived.

The chair or vice chair may make ad hoc appointments to replace designated panel members in the event of challenges or disqualification. Ad hoc appointees shall be subject to disqualification under SCR 103(7) and any timely remaining peremptory challenges unexercised by either the respondent(s) or bar counsel. A hearing panel as finally constituted shall include a non-lawyer.

(b) Assignment for hearing panel and chair. Within 30 days, following service of a responsive pleading, or if the respondent failed to file a responsive pleading, the chair or vice chair of the disciplinary board shall assign the matter to a hearing panel chair, who shall preside over all motions or other requests as provided by SCR 103(6) and the subsequent hearing. Thereafter, the chair or vice chair of the disciplinary board shall assign the remaining hearing panel members.

(c) Venue. Venue shall be the county in which the respondent resides or maintains their principal office for the practice of law, where the alleged offense was committed, or where the parties have stipulated. If the respondent neither resides nor maintains a principal office in Nevada or has left the state to avoid proceedings under these rules, the hearing may be conducted in any county designated by the chair of the disciplinary board.

(d) Time to conduct hearing; notice of hearing. Within 14 days of appointment, the panel chair shall hold an initial case conference with the parties for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. During the conference, the panel chair shall set a time and a place for a hearing, which hearing shall be within 45 days of the initial case conference. If the respondent fails to attend the initial case conference, then the panel chair shall give the respondent at least 30 days' written notice of the hearing's time and place. The notice shall be served in the same manner as the complaint and shall inform the respondent that they are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. For good cause shown, the chair may allow additional time, not to exceed 90 days, to conduct the hearing.

(e) Quorum; time for decision of panel; votes required to impose discipline. All three members of a panel must be present to constitute a quorum. The hearing panel shall render a written decision within 30 days of the conclusion of the hearing, unless post-hearing briefs are requested by either bar counsel or the respondent and allowed by the panel or requested by the chair, in which event the decision shall be rendered within 60 days of the conclusion of the hearing. The decision shall be served pursuant to SCR 109(1), accompanied by the panel's findings and recommendation, all of which shall be filed with bar counsel's office. A decision to impose or recommend discipline requires the concurrence of any two members of the disciplinary panel.

(f) Rules of evidence; support of panel's decision. The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel. Evidentiary rulings shall be made by the chair of the panel, if one has been designated, or by the chair of the appropriate disciplinary board prior to such a designation. The findings of the panel must be supported by clear and convincing evidence.

(g) Court reporter. All hearings shall be reported by a certified court reporter, which cost may be assessed against the respondent pursuant to SCR 120. Any party desiring to have any other disciplinary proceedings reported must arrange in advance for a certified court reporter at the party's own expense.

3. Review by supreme court.

(a) Time and manner of appeal. A decision of a hearing panel shall be served on the respondent, and service shall be deemed Notice of Entry of Decision for appeal purposes. Except as provided in SCR 105(3)(b), a decision is final and effective 30 days from service, unless an appeal is taken within that time. To the extent not inconsistent with these rules, an appeal from a decision of a hearing panel shall be treated as would an appeal from a civil judgment of a district court and is governed by the Nevada Rules of Appellate Procedure (NRAP).

(b) Review of public discipline. Except for disbarments by consent pursuant to SCR 112 or a reprimand agreed to in writing by the respondent pursuant to SCR 113, a decision recommending a reprimand, suspension or disbarment shall be automatically reviewed by the supreme court. Although the supreme court's review of the conclusions of law and the recommended discipline is *de novo*, the court shall employ a deferential standard of review with respect to findings of fact. Review under this paragraph shall be commenced by bar counsel forwarding the record of the hearing panel proceedings to the court within 30 days of entry of the decision. Receipt of the record in such cases shall be acknowledged in writing by the clerk of the supreme court.

The respondent and bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court of any intent to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the disciplinary proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

4. Disciplinary rules of procedure; discovery of evidence. The chairs, after consulting with their respective disciplinary boards, may adopt disciplinary rules of procedure, subject to approval by the

board of governors. The disciplinary rules of procedure shall require bar counsel to provide a summary of the evidence against the respondent, and the names of the witnesses bar counsel intends to call unless for impeachment, and a brief statement of the facts to which each will testify. A respondent may inspect bar counsel's evidence up to 3 days prior to the hearing. Witnesses or evidence, other than for impeachment, which became known to bar counsel thereafter, and which bar counsel intends to use at the hearing, shall be promptly disclosed to the respondent.

[As amended; effective December 7, 2015.]

Rule 105.5. Probation, diversion, and mentoring programs.

1. Participation in probation, diversion, or mentoring program. As an alternative to or in conjunction with disciplinary sanctions, a respondent deemed eligible by the appropriate disciplinary board panel may participate in an approved probation, diversion, or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct. Participation in a probation, diversion, or mentoring program may be offered by bar counsel or ordered by a panel only in cases where there is little likelihood that the respondent will harm the public during the period of participation and where the conditions of the program can be reasonably supervised.

(a) Conditions. Conditions of a probation, diversion, or mentoring program may include participation in programs through the Nevada Lawyers Assistance Program, monitoring by a mentor, random substance testing, continuing legal education, ethics education, limitations on practice, restitution, fee arbitration, trust account audits, or any other program authorized by the court.

(b) Mentors. Mentors in probation, diversion, or mentoring programs shall be approved or selected by bar counsel and shall serve on a voluntary basis. Only attorneys in good standing with no pending disciplinary matters may serve as mentors. Any mentor who has no personal interest in the respondent's participation, and did not represent the respondent in underlying proceedings, may be eligible to receive educational credits for services provided under this rule, after (i) the respondent's successful completion of such a program, and (ii) the mentor's application to the board of continuing legal education.

(c) Confidentiality. All services provided by a mentor under this rule and any related documents or communications shall remain confidential, as provided for in SCR 121. A mentor shall observe the duties of confidentiality in Nevada Rule of Professional Conduct (RPC) 1.6. Any related information provided to a mentor, and subsequently provided to bar counsel, will be used solely to assess a respondent's compliance and progress, and may be provided to a hearing panel for that purpose, but will not be released to any other person(s). Further, such limited access to this information pursuant to a probation, diversion, or mentoring program shall not constitute a breach of confidentiality under RPC 1.6, based upon the supervisory nature of a mentor's services and bar counsel's duty to monitor such matters.

(d) A panel or bar counsel may not offer probation, diversion, or a mentoring program if the respondent:

- (1) misappropriated client funds;
- (2) caused substantial injury;

- (3) participated in probation, diversion, or a mentoring program for similar misconduct within the last 5 years;
- (4) received an admonition or any public discipline within the last 3 years;
- (5) engaged in dishonesty, deceit, fraud, or misrepresentation; or
- (6) committed a "serious crime" as defined in SCR 111.

2. **Written agreement.** The terms of probation, diversion, or mentoring shall be stated in a written agreement between bar counsel, the respondent, respondent's counsel, if any, the mentor, if any, and any other person(s) a party thereto. The agreement will specify the person(s) responsible for supervising the respondent's compliance with the terms and conditions of the agreement. The supervision period shall not exceed two years; provided, however, that the disciplinary panel may renew the supervision period for an additional two years with the respondent's consent or after a breach hearing. The existence, but not the terms, of a diversion or mentoring agreement under this rule is subject to the provisions of SCR 121.

3. **Order for a probation, diversion, or mentoring program by a screening panel.** A screening panel may order a respondent to a probation, diversion, or mentoring program as an alternative to, or in conjunction with, disciplinary sanctions, subject to the respondent's consent. The screening panel shall provide an alternative sanction if the respondent does not consent to participate in the proposed program. Bar counsel shall immediately notify the respondent of the screening panel's order.

(a) **Acceptance.** Within 14 days of the respondent's receipt of a panel's order under this rule, the respondent must provide bar counsel with a written notice of their agreement to participate. Upon receipt of that notice, bar counsel shall promptly notify any grievant(s) in writing that the respondent has agreed to participate in a probation, diversion, or mentoring program. When applicable, such notice shall further advise the grievant(s) of the confidentiality provisions of SCR 121.

(b) **Rejection, failure to respond, or failure to cooperate.** If a respondent rejects or fails to respond within 14 days to a screening panel's order directing participation in a probation, diversion, or mentoring program or fails to cooperate fully in the development or execution of a diversion contract or mentoring agreement, then bar counsel shall promptly proceed with the alternative sanction provided in the screening panel's order.

(c) **Time for filing; extensions.** Bar counsel and the respondent must execute a written agreement within 30 days of acceptance by the respondent. This requirement shall only be extended by written agreement between bar counsel and the respondent due to extraordinary circumstances. The party requesting the extension shall prepare the written agreement.

6. **Breach of a diversion or mentoring agreement.** Bar counsel shall monitor compliance and may establish protocols for monitoring. If bar counsel determines that a respondent has breached a term of the agreement executed under this rule, and unless the agreement dictates otherwise, bar counsel shall notify the respondent of the alleged breach and, after receipt of such notice, provide the respondent with 14 days to submit a written response. Bar counsel may withdraw the notice of alleged breach based upon the written response and related communications.

(a) **Hearing.** If the notice is not withdrawn, bar counsel shall request the hearing panel that imposed the probation, diversion, or mentoring program reconvene to determine if the respondent has breached the terms of the agreement. Bar counsel shall notify the respondent of such request by serving the notice of hearing on the respondent. The hearing panel shall convene within 30 days of the request. In proceedings brought under this rule, bar counsel shall have the burden by a preponderance of the evidence to establish any breach of the agreement, and a respondent shall have the burden by a preponderance of the evidence to establish justification for any such breach. Where there is an alleged breach of an agreement executed pursuant to an order of the supreme court, bar counsel may move the court directly for any relief deemed appropriate.

(b) If a hearing panel finds a breach to be material and without justification, the panel shall terminate the agreement and reactivate any underlying grievance(s) to be processed through any course deemed appropriate under SCR 105. If the respondent received a stayed sanction or an alternative sanction, then the panel shall terminate the agreement and impose the stayed sanction or alternative sanction.

(c) If the hearing panel finds that no breach occurred, or that the breach was immaterial or with justification, the panel may modify the existing agreement or direct the parties to proceed in accordance with it.

7. **Costs.** The respondent shall pay any costs associated with participation in a diversion or mentoring program, including but not limited to laboratory testing, professional accounting or evaluation, treatment, and the costs of any hearing under this rule. The respondent shall not be assessed any fees or costs for a mentor's or bar counsel's services.

8. **Completion and expungement.** After the term of an agreement for diversion or mentoring under this rule has concluded, bar counsel shall notify the respondent of such completion and, when applicable, any underlying grievance(s) and related records shall be dismissed and processed in accordance with SCR 121. After a grievance file has been dismissed under this rule, bar counsel shall respond to any related inquiries by stating that there is no record of such a matter, unless otherwise directed by the respondent. Likewise, the respondent may respond to such an inquiry by stating that any allegations or complaints that may have been filed with bar counsel's office were dismissed. However, this rule does not supersede the provisions of SCR 121 and does not apply to successful completion of a program ordered in conjunction with disciplinary sanctions or ordered in lieu of more severe disciplinary sanctions, unless otherwise noted in the agreement. Probation is a disciplinary sanction and not subject to expungement.

[Added; effective February 25, 1997; amended effective October 5, 2015.]

Rule 106. Privilege and limitation.

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

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

[Added; effective February 15, 1979; amended effective September 1, 2007.]

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

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

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

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

[Added; effective April 8, 2002; amended effective December 10, 2009.]

Rule 107. **Refusal of grievant or complainant to proceed, compromise, etc.** Neither unwillingness nor neglect of a grievant or complainant to sign a grievance or complaint or to prosecute a charge, nor settlement or compromise between the grievant or complainant and the respondent, nor restitution by the respondent, shall require abatement of the processing of any grievance or complaint. Such factors may be considered in determining whether to abate.

[Added; effective February 15, 1979; amended effective January 2, 1996.]

Rule 108. **Matters involving related pending civil or criminal litigation.** Before or after a grievance file has been opened, processing of a grievance or complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized, for good cause, by a three-member screening panel appointed pursuant to SCR 105(1).

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 109. Service.

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

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

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

3. Attachment of person for failure to obey subpoena or produce documents. Whenever any person subpoenaed to appear and give testimony or to produce books, papers, or other documents as required by subpoena, or requested to provide documents pursuant to SCR 78.5(1)(b), refuses to appear or testify before a hearing panel, or to answer any pertinent or proper questions, or to provide the requested documents, that person shall be deemed in contempt of the disciplinary board, and the chair of the disciplinary board shall report the fact to a district judge of the county in which the hearing is being held or the investigation conducted. The district court shall promptly issue an attachment in the form usual in the court, directed to the sheriff of the county, commanding the sheriff to attach such person and bring such person forthwith before the court. On the return of the attachment, and the production of the person attached, the district court shall have jurisdiction of the matter; and the person charged may purge himself or herself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a district court of the State of Nevada.

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

5. Restriction on discovery. Discovery by the respondent, other than under SCR 105(2)(d), is not permitted prior to hearing, except by the order of the chair for good cause upon motion under SCR 103(5) or SCR 103(6).

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

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

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

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

[Added; effective February 15, 1979; amended effective October 5, 2015.]

Rule 111. Attorneys convicted of crimes.

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

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

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

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

appropriate disciplinary action, if any, to be imposed under these or any other rules of the supreme court that pertain to the conduct of attorneys.

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

6. **Definition of "serious crime."** The term "serious crime" means (1) a felony and (2) any crime less than a felony that adversely reflects on the attorney's fitness to practice law, or involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective January 10, 2018.]

Rule 112. Disbarment by consent.

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 113. Discipline by consent.

1. **Conditional Admission.** A respondent against whom bar counsel has filed a complaint may tender to bar counsel a conditional admission to the complaint or to a particular count therein in exchange for a stated form of discipline. If accepted by bar counsel, the tendered admission shall be approved, modified, or rejected by a hearing panel. The tendered admission is subject to final approval or rejection by the supreme court if the stated form of discipline includes disbarment or suspension. If the panel or the supreme court rejects the stated form of discipline, then the admission shall be withdrawn and cannot be used against the respondent in any subsequent proceedings.

2. **Continuance and abatement of proceedings.** A continuance in a proceeding on the basis of a tendered admission shall be granted only with the concurrence of bar counsel. Approval of a tendered admission by a panel, and, if required, by the court shall abate the proceedings, and the panel's decision shall be predicated on the charge(s) made against the respondent and the tendered admission. If a formal hearing panel or the supreme court rejects the stated form of discipline, then the admission shall be withdrawn and the Board shall appoint a new panel, which shall proceed to formal hearing pursuant to SCR 105(2)(d).

3. Review by court. If the stated form of discipline includes disbarment or suspension, bar counsel shall forward the record of the proceedings before it to the supreme court within 30 days of entry of the decision. The record filed with the supreme court shall indicate on its title page that the matter concerns a proceeding under this rule. The matter shall be submitted for review on the record without briefing or oral argument unless otherwise ordered by the court.

4. Consent to Reprimand. If the stated form of discipline includes neither a suspension nor disbarment, the matter shall not be submitted to the supreme court for approval. The state bar shall issue the reprimand and publish the reprimand in accordance with SCR 121.1.

{Added; effective February 15, 1979; amended effective October 5, 2015.}

Rule 114. Reciprocal discipline and disability inactive status.

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

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

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

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

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

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

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

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

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

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

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

3. Duty to notify clients and forums involved in proceedings. An attorney barred from the active practice of law, whether by disbarment, suspension, including suspension under SCR 98 or SCR 212, transfer to disability inactive status, or resignation, shall immediately notify, by registered or certified mail, return receipt requested, (1) each of the attorney's clients who is involved in pending litigation, administrative proceedings, arbitration, mediation or other similar proceedings, (2) the attorney(s) for each adverse party in such matters, and (3) the court, agency, arbitrator, mediator or other presider over such proceeding of his or her disbarment, suspension, transfer to disability inactive status, or resignation and consequent inability to act as an attorney. The notice to the client shall state the desirability of prompt substitution of another attorney of the client's own choice and shall list any upcoming appearances and deadlines. The notice given to the attorney for an adverse party shall provide the last known address of the client.

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

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

- (a) That the attorney has fully complied with the provisions of the order and with these rules;
- (b) All other state, federal, and administrative jurisdictions to which the attorney is admitted or specially admitted to practice;
- (c) That the attorney has served a copy of his or her affidavit on bar counsel;
- (d) The address and telephone number of the attorney and that of a contact person, if any, designated for client files; and
- (e) The status of any client or third-party funds being held.

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

6. Return of Client Property. The attorney shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

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

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

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 116. Reinstatement.

1. An attorney who has been suspended for six months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with bar counsel an affidavit stating that they have fully complied with the requirements of the suspension order and has paid any required fees and costs.

2. An attorney suspended for more than six months shall be reinstated only upon order of the court. No attorney may petition for reinstatement until the period of suspension has expired. An attorney shall receive credit for the time they were on interim suspension.

3. **Petition.** An attorney must submit a petition for reinstatement under oath or affirmation under penalty of perjury and shall specify with particularity how the attorney meets each of the criteria specified in paragraph 5 or, if not, why there is good and sufficient reason for reinstatement.

4. **Service of Petition.** The attorney shall file a copy of the petition with bar counsel and bar counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment. Bar counsel shall promptly refer the petition to the chair of the appropriate disciplinary board. The chair or vice chair shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, conduct a hearing.

5. **Criteria for Reinstatement.** An attorney may be reinstated only if the attorney demonstrates by clear and convincing evidence the following criteria, or if not, presents good and sufficient reason the attorney should nevertheless be reinstated:

(a) Full compliance with the terms and conditions of all prior disciplinary orders;

(b) The attorney has neither engaged in nor attempted to engage in the unauthorized practice of law during the period of suspension;

(c) Any physical or mental disability or infirmity existing at the time of suspension has been removed; if alcohol or other drug abuse was a causative factor in the attorney's misconduct, the attorney has pursued appropriate treatment, has abstained from the use of alcohol or other drugs for a stated period of time, generally not less than one year, and is likely to continue to abstain from alcohol or other drugs;

(d) The attorney recognizes the wrongfulness and seriousness of the misconduct resulting in the suspension;

(e) The attorney has not engaged in any other professional misconduct since suspension;

(f) Notwithstanding the conduct for which the attorney was disciplined, the attorney has the requisite honesty and integrity to practice law; and

(g) The attorney has kept informed about recent developments in the law and is competent to practice.

6. **Hearing; Decision as to Reinstatement.** The hearing panel shall file its findings and recommendations within 30 days after the hearing concludes. Within 60 days after the hearing concludes, bar counsel shall file the record of the proceedings, together with the panel's findings and recommendation, with the supreme court. Receipt of the record shall be acknowledged in writing by the supreme court clerk.

The attorney or bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court if they intend to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but shall cite to the record of the reinstatement proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

If the court finds that the attorney has complied with each of the criteria of paragraph 5 or has presented good and sufficient reason for failure to comply, the court shall reinstate the attorney. If the court reinstates the attorney, the court shall issue a written opinion setting forth the grounds for its decision; if the court denies reinstatement, the court shall issue a written opinion setting forth the grounds for its decision.

7. Bar counsel to appear. In proceedings for reinstatement, bar counsel shall represent the state bar, submit any evidence, and produce any witnesses relevant to the petition. Prior to the hearing, bar counsel may make a lawful request for information consistent with the requirements for admission under SCR 51.

8. Tender of costs in advance. Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit of \$2,500 to cover anticipated costs of the reinstatement proceeding.

9. Decision on reinstatement; conditions. If the attorney does not meet the burden of proof to justify reinstatement, the petition shall be dismissed by the hearing panel. If the attorney meets the burden of proof, the hearing panel's recommendation for reinstatement shall be entered. Reinstatement shall be conditioned upon the attorney's payment of the costs of the proceeding, restitution to parties injured by the petitioner's misconduct, including the Clients' Security Fund, any further conditions deemed appropriate by the panel, and such proof of competency as may be required by the supreme court, which proof may include certification by the bar examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. If an attorney has been continuously suspended for 5 years or more at the time a petition for reinstatement is filed, irrespective of the term of suspension initially imposed, successful completion of the examination for admission to practice shall be a mandatory condition of reinstatement.

10. Successive petitions. A petition for reinstatement under this rule shall not be filed within 1 year following an adverse judgment on a petition for reinstatement filed by the same attorney, unless otherwise ordered by the court.

[Added; effective February 15, 1979; amended effective January 10, 2018.]

E. DISABILITY

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

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

2. Petition to determine competency; notice. Whenever a disciplinary board or a hearing panel believes that an attorney is incapable of continuing the practice of law because of mental infirmity, illness, or addiction, it may file a petition with the supreme court seeking a determination of the attorney's competency. Such a petition may also be filed by joint stipulation of the parties. A petition to determine an attorney's competency should be filed separately from any discipline matter that may be

pending and should be marked confidential in accordance with SCR 121. Upon the filing of such a petition, the court may take or direct such action as it deems necessary to determine whether the attorney is incapacitated, including referral of the matter to the appropriate disciplinary board for hearing and recommendation by a hearing panel or the examination of the attorney by qualified medical experts. If, upon due consideration, the court concludes that the attorney is incapacitated for the purpose of practicing law, it shall enter an order transferring him or her to disability inactive status. Any pending disciplinary proceeding or investigation against the attorney shall be suspended.

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

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

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

4. Resumption of practice by disabled attorney. An attorney transferred to disability inactive status under the provisions of this rule may not resume active status until reinstated by order of the supreme court. An attorney transferred to disability inactive status under the provisions of this rule shall be entitled to petition for reinstatement to active status no sooner than one year following the issuance of an adverse judgment on a petition for reinstatement filed by the same attorney, unless otherwise ordered by the court. The petition shall be filed with bar counsel's office and shall be set for hearing before a hearing panel, which shall consider whether the attorney has demonstrated by clear and convincing evidence that the attorney's disability has been removed and that they are fit to resume the practice of law. The panel may direct that the attorney establish competence and learning in law, including certification by the bar examiners that the attorney successfully completed an examination for admission to practice after being transferred to disability inactive status. Reinstatement shall be conditioned upon the attorney's repayment to the Clients' Security Fund of clients who were reimbursed on the attorney's behalf. The panel shall file findings of fact, conclusions of law, and a recommendation on reinstatement within 30 days of the hearing's conclusion, which shall be filed with bar counsel's office and served pursuant to SCR 109(1).

Bar counsel shall forward the record of the hearing panel proceeding to the supreme court within 30 days of the decision's entry. Receipt of the record shall be acknowledged in writing by the supreme court clerk. The parties shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file any objection to the panel's recommendation. If none is filed, then the matter shall be submitted for decision. If the supreme court concludes that the attorney's disability has been removed and that the attorney is fit to practice law, then the supreme court may reinstate the attorney to active status, with any conditions that may be appropriate to protect the attorney's clients or the public. If any disciplinary proceeding against the attorney was suspended by the attorney's

transfer to disability inactive status, then the supreme court may direct the state bar to resume the disciplinary proceeding. If the supreme court is not satisfied that the attorney's disability has been removed, then it may take such action as it deems appropriate, including denying the petition.

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

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

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

7. Notice. An attorney who is transferred to inactive status must comply with SCR 115, if they are able to do so. If the attorney's disability precludes compliance with SCR 115, or if the attorney fails to comply, then bar counsel shall proceed under SCR 118. Bar counsel shall also comply with SCR 121.1.

[Added; effective February 15, 1979; amended effective October 5, 2015.]

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

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

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

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

[Added; effective February 15, 1979; amended effective May 6, 2011.]

F. MISCELLANEOUS PROVISIONS

Rule 119. Additional rules of procedure.

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

2. Failure to Answer. Failure to answer a filed complaint shall constitute an admission of the factual allegations.

3. Failure to Appear. If the respondent fails to appear when specifically so ordered by a disciplinary panel, then the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance or conceded to any motion or recommendations to be considered at such appearance. The disciplinary panel shall not, absent good cause, continue or delay proceedings due to the respondent's failure to appear.

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

5. Other rules of procedure. Except as otherwise provided in these rules and the rules of disciplinary procedure established pursuant to SCR 105(4), the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure apply in disciplinary cases.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

Rule 120. Costs; bar counsel conflict or disqualification.

1. An attorney subjected to discipline or seeking reinstatement under these rules shall be assessed the costs, in full or in part, of the proceeding, including, but not limited to, reporter's fees, investigation fees, witness expenses, service costs, publication costs, and any other fees or costs deemed reasonable by the panel and allocable to the proceeding.

2. If, for any reason, bar counsel is disqualified or has a conflict of interest, the board of governors shall appoint an attorney, ad hoc, to act in the place of bar counsel.

3. In addition to any costs assessed as provided for herein, an attorney subjected to discipline shall be assessed administrative costs allocable to the proceeding, but in any case, shall not be less than the following amounts:

Admonition: \$750

Reprimand: \$1,500

Suspension: \$2,500

Disbarment: \$3,000

4. A final assessment for costs, fees, or restitution shall have the force and effect of a civil judgment against the respondent attorney and shall be subject to all legally available post-judgment enforcement remedies and procedure.

5. In addition, in any matter where any attorney is required to apply for reinstatement, administrative costs shall be assessed in any amount not less than \$2,500, and the attorney shall also be required to pay all costs previously assessed but not yet paid prior to the processing of the application for reinstatement.

[Added; effective February 15, 1979; amended effective June 5, 2017.]

Rule 121. Confidentiality.

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

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

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

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

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

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

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

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

9. Reinstatement. Reinstatement proceedings under SCR 116 shall be public.

10. Disbarment by consent. Disbarments by consent under SCR 112 shall be public.

11. What becomes public. Once a matter has become public pursuant to this rule, all records of the attorney discipline agency shall become public except bar counsel's work product, the panel's deliberations, and all documents related to any diversion or mentoring agreements governed by SCR 105.5.

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

13. Cooperation with certain investigations. Bar counsel may share relevant nonpublic information with federal or state agencies investigating the same or similar misconduct.

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

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

16. Exclusions. These rules shall not prohibit any complainant, the accused attorney, or any witnesses from discussing publicly the existence of the proceedings under these rules or the underlying facts related thereto. However, disclosures made under this subsection, in whatever form or by whatever means, outside the disciplinary process shall not be covered by the civil immunity afforded in SCR 106(1).

17. Protective Orders. In order to protect the interests of a complainant, witness, third party, or respondent attorney, the panel chair may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

[Added; effective February 15, 1979; amended effective March 1, 2007.]

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

1. Entity responsible. If the attorney's suspension was imposed under SCR 98 for failure to pay state bar dues or under SCR 214(1) for failure to timely complete TIP, then the state bar shall be

responsible for issuing the notices required by SCR 121.1(2) and (3). If the attorney's suspension was imposed under SCR 212 for failure to comply with continuing legal education requirements, then the board of continuing legal education shall be responsible for issuing the notices required by SCR 121.1(2) and (3). In cases of admonition, reprimand, disciplinary suspension, disbarment, reinstatement, and transfers to or from disability inactive status, bar counsel shall be responsible for issuing the notices required by SCR 121.1(2) (3) and (4).

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

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

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

4. Notice to other Disciplinary Agencies. Bar counsel shall notify the National Discipline Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline and the disciplinary enforcement agency of every other jurisdiction in which an attorney is admitted of all public discipline imposed on an attorney, transfers to or from disability inactive status, reinstatements to the practice of law, and resignations with discipline pending.

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

6. Publication of admonition issued by screening panel. Bar counsel shall cause an admonition issued by a screening panel to be published in the state bar publication. The published admonitions shall not disclose the identity of the attorney and shall not be associated with the attorney on the State Bar of Nevada website.

[Added; effective October 5, 2003; amended effective January 26, 2017.]

Rule 122. Effective date. These rules are effective on [New Date]; any disciplinary proceeding or matter either previously concluded or pending on that date in which bar counsel has filed a formal

complaint shall be governed by SCRs 99 et seq. of the Supreme Court Rules in effect prior to the effective date.

[Added; effective February 15, 1979; amended effective March 1, 2007.]