

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court, and considering the recommendations of the Louisiana Attorney Disciplinary Board for changes to the Rules for Lawyer Disciplinary Enforcement, as well as recommendations for amendments to the procedural rules of the lawyer disciplinary agency,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

PART I. Louisiana Supreme Court Rule XIX, Section 10.1C be and is hereby amended to read as follows:

Section 10.1. Reimbursement of Costs and Expenses.

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C. Expenses. “Expenses” for the purposes of this rule shall mean a reasonable charge for attorney fees and administrative and staff expenses incurred by the attorney disciplinary board. The following amounts shall conclusively be presumed to be reasonable expenses:

(1) For an admonition, \$250;

(2) For a matter which results in a final order of discipline by consent which is concluded prior to the commencement of a hearing before a hearing committee, \$1,000;

(3) For a matter which results in a public reprimand, \$1,000;

(4) For a matter which results in any public sanction other than a reprimand, an order of discipline by consent which is concluded prior to a hearing before a hearing committee, or disbarment, \$1,500;

(5) For a matter which results in a disbarment or permanent disbarment, \$2,000;

(6) For a matter which results in permanent resignation from the practice of law in lieu of discipline, \$1,000.

PART II. Louisiana Supreme Court Rule XIX, Section 11E(3), **fourth sentence**, be and is hereby amended to read as follows:

. . . The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C.

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PART III. Louisiana Supreme Court Rule XIX, Section 14E be and is hereby amended to read as follows:

E. Quashing Subpoenas. Any attack on the validity of a subpoena shall be heard and determined by the chair of a hearing committee or by the court wherein enforcement of the subpoena is being sought. An appeal of the action of the

chairperson may be taken to the chair of another hearing committee designated by the board, who shall approve or reject the action of the first hearing committee chair. The decision of the second hearing committee chair shall be final within the agency. Any resulting order is not appealable prior to entry of a final order in the proceeding.

PART IV. Louisiana Supreme Court Rule XIX, Section 18G be and is hereby amended to read as follows:

G. Related Pending Litigation. Upon a showing of good cause to the board or to the hearing committee chair assigned to the matter after formal charges have been filed and prior to the hearing on the formal charges, the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.

PART V. Louisiana Supreme Court Rule XIX, Section 24A be and is hereby amended to read as follows:

Section 24. Reinstatement and Readmission

A. Generally. A disbarred lawyer or a suspended lawyer who has served a suspension period of more than one year, exclusive of any waivers or periods of deferral, shall be reinstated or readmitted only upon order of the court. No lawyer may petition for reinstatement until six months before the period of suspension has expired. No lawyer may petition for readmission until five years after the effective date of disbarment. A lawyer who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the time of the effective date of the interim suspension. In matters where a lawyer who has been placed on

interim suspension and is then suspended for the same misconduct that was the ground for the interim suspension, at the court's discretion, the lawyer's term of suspension may be applied retroactively to the effective date of the interim suspension. The court retains the discretion, in accordance with Section 10A of this rule, to permanently disbar a lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law.

PART VI. Louisiana Supreme Court Rule XIX, Section 24B - D, be and are hereby amended to read as follows:

B. Petition and Application. A petition for reinstatement or readmission must be under oath or affirmation under penalty of perjury and shall specify with particularity the manner in which the lawyer meets each of the criteria specified in paragraph E or, if not, why there is good and sufficient reason for reinstatement or readmission. The petition for reinstatement or admission is public record. An application for reinstatement or readmission, also drafted under oath or affirmation under penalty of perjury, shall also be submitted by the lawyer. Part I of the application, containing general personal, employment and legal information about the lawyer, is public record, while Part II of the application, containing financial, federal and state tax and medical information about the lawyer, shall remain confidential and placed under seal by the board administrator.

Unless abated under Section 25 the petition and application must be accompanied by an advance cost deposit in the amount set from time to time by the board to cover anticipated costs of the proceeding.

C. Service of Petition and Application. The lawyer shall file the petition and application with the disciplinary board and shall serve a copy of the petition and application (Parts I and II) on disciplinary counsel. Disciplinary counsel shall serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment.

D. Publication of Notice of Petition and Application. At the same time that a lawyer files a petition and application for reinstatement or readmission, the lawyer shall also publish a notice of the petition and application in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law when the lawyer was suspended or disbarred. The notice shall inform members of the bar and the public about the petition and application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the board within thirty days. In addition, the lawyer shall notify the complainant(s) in the disciplinary proceeding that led to the lawyer's suspension or disbarment that the lawyer is applying for reinstatement or readmission, and shall inform each complainant that he or she has thirty days to raise objections to or to support the lawyer's petition and application.

PART VII. Louisiana Supreme Court Rule XIX, Section 24E, **opening paragraph**, be and is hereby amended to read as follows:

E. Criteria for Reinstatement and Readmission. A lawyer may be reinstated or readmitted only if the lawyer meets each of the following criteria, and executes and files with the petition for reinstatement or readmission an application for reinstatement or readmission, a copy of which can be obtained from the board

administrator, or, if not, presents good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted:

* * *

PART VIII. Louisiana Supreme Court Rule XIX, Section 24F, be and is hereby amended to read as follows:

F. Response of Disciplinary Counsel. Within sixty days after receiving a lawyer's petition and application for reinstatement or readmission, disciplinary counsel shall either: (1) advise the lawyer and the board that disciplinary counsel will concur in the lawyer's reinstatement or readmission, or (2) advise the lawyer and the board that disciplinary counsel opposes reinstatement or readmission and request the board to set a hearing, or (3) advise the lawyer and the board that disciplinary counsel takes no position in the lawyer's reinstatement or readmission in which case the board shall set a hearing. A concurrence in reinstatement or readmission must be signed by the lawyer and disciplinary counsel and filed with the board within thirty days of disciplinary counsel's advising that he or she will concur.

PART IX. Louisiana Supreme Court Rule XIX, Section 24I, **last sentence**, be and is hereby amended to read as follows:

I. Decision as to Reinstatement or Readmission. . . . Generally, no lawyer will be permitted to reapply for reinstatement or readmission within one year following an adverse judgment upon a petition and application for reinstatement or readmission.

PART X. Approval be and is hereby granted to amend Rule 3 of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 3. Advance Deposit Requirement for Readmission Petitions

The conditions set forth in Supreme Court Rule XIX, Section 24(B) require that all petitions for reinstatement or readmission must be accompanied by an Advance Cost of Hearing Deposit to cover the anticipated costs of the proceedings unless abated under Section 25. The amount of Five-hundred dollars (\$500.00) shall be deposited by petitioner with the board administrator at the time of filing the petition for reinstatement and service of a copy upon disciplinary counsel. The amount includes a Fifty-dollar (\$50.00) nonrefundable docket fee. The balance of the fee shall be applied to the hearing costs, if any. The petitioner shall be responsible for any costs in excess of the initial deposit. Any monies in excess of the deposited amounts shall be refunded to the petitioner after all expenditures are tabulated.

PART XI. Approval be and is hereby granted to amend Rule 4, Subparts A and D of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 4. Excuse From Payment of Periodic Assessment

A. A lawyer requesting to be excused from payment of the periodic fee assessed by Supreme Court Rule XIX, Section 8, on grounds of financial hardship shall file such request with the board by June 1 of the year preceding the fiscal year (July 1 to June 30) for which the fee is assessed. The request shall be signed by the lawyer seeking to be excused and shall set forth in detail the reasons for the request. Each request shall include a statement of the lawyer's assets at the time submitted and

his or her gross and net income from all sources for the year during which the request is made and the calendar year preceding the year during which the request is made.

* * *

D. Neither a request for excuse from payment of the assessment nor an appeal from a panel denial shall suspend the obligation to pay the assessment in accordance with Supreme Court Rule XIX, Section 8(A). A lawyer may submit a copy of a notice of panel approval of a requested excuse in lieu of the assessment with the registration statement required by Supreme Court Rule XIX, Section 8(C). No action by any lawyer or board panel pursuant to this Disciplinary Board rule shall in any way modify the obligation of the lawyer to file the registration statement required by Supreme Court Rule XIX, Section 8(C).

* * *

PART XII. Approval be and is hereby granted to amend Rule 7 of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 7. Recovery of Costs

In order to implement Supreme Court Rule XIX, Section 10.1, the administrator and disciplinary counsel shall identify and record for each matter filed on the board docket all costs incurred during the investigation of and proceedings in the matter. Recoverable costs shall include the following:

a) Investigative costs including costs incurred in serving investigatory subpoenas, direct charges for copies, photocopies and certification of documents and

records, direct costs of travel for investigation (at board standard rates), and fees for transcripts of statements;

b) A fee of \$10 for each service of notice issued for the imposition of probation pursuant to Section 11(C), the imposition of an admonition pursuant to Section 11(D) (including any notice to the complainant or other interested party), and the issuance of formal charges pursuant to Section 11(E) plus the direct costs incurred if served by the sheriff or other process server;

c) Deposition costs;

d) Witness fees, travel, and lodging necessary for the witnesses' appearance at the hearing;

e) Fees for the hearing transcript;

f) Fees for expert witnesses, if determined by the hearing committee chair to be appropriate and necessary for the matter after affording the respondent an opportunity to be heard.

g) Fees assessed by the Clerk of the Supreme Court;

h) Direct costs incurred (at board standard rates) in transmitting and publishing notices pursuant to Section 17;

i) Computerized legal research costs associated with legal research performed by the administrator's and disciplinary counsel's staff.

Within ten (10) days of the submission of the report of the hearing committee, and if the committee has found that the respondent has violated any Rule of

Professional Conduct as charged, the board administrator shall file in the board record and shall serve on the respondent a first itemized statement of all costs then incurred in the matter. Respondent shall have fifteen (15) days following service of the cost statement to file in the record and to serve on disciplinary counsel any objection to the cost statement. If any objection is filed, the administrator shall refer the cost statement and the objection to the chair of the committee which conducted the hearing, for a ruling on the objection.

In its deliberations the board shall consider the cost statement and the objections of the respondent and the ruling of the committee chair, if any. If the board determines to impose discipline, it shall include in its order the declaration of the costs taxed against the respondent. If the board determines to report the matter to the Court with a recommendation for discipline, it shall include a recommendation of an amount to be taxed by the Court in any decision or order by the Court which imposes discipline on the respondent.

In any matter concluded by a final order of the board or by any decision or order of the Court which imposes discipline on the respondent, the board administrator shall file in the board record and shall serve on the respondent a supplemental itemized statement of costs incurred in the matter subsequent to the filing and serving of the first itemized statement and any prior supplemental itemized statements. Respondent shall have fifteen (15) days following service of the supplemental cost statement to file in the record and to serve on disciplinary counsel any objection to that cost statement. If any objection is filed, the administrator shall refer the cost statement and the objection to the board for a ruling on the objection.

The board may authorize and direct disciplinary counsel to apply to the Court for a judgment against the respondent for costs imposed.

PART XIII. Approval be and is hereby granted to amend Rule 8 of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 8. Complainants' Appeals

Upon receipt of an appeal from a complainant pursuant to Supreme Court Rule XIX, Section 30(A), the administrator shall open a record on the board's confidential docket and shall serve a copy of the appeal on disciplinary counsel. Within seven days following service of the appeal by the administrator, disciplinary counsel shall file in the record the following materials from the investigative file:

- a) Notices issued in accordance with Section 4(B)(6);
- b) All written requests for review of a dismissal pursuant to Section 11(B)(3);
- c) All documents submitting any such appeal to a hearing committee;
- d) All documents constituting a response or a ruling by the hearing committee on the appeal; and
- e) All notices to the complainant of the disposition by the hearing committee.

Upon receipt of the materials filed by disciplinary counsel, the administrator shall refer the appeal to the board panel then acting. The panel may require the parties to submit additional information necessary to consider the appeal. The panel may

approve, modify or disapprove the disposition, or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing a complaint.

The determination of the board is subject to the provisions of Supreme Court Rule XIX, Section 30(C), regarding the right to petition for leave to appeal to the Louisiana Supreme Court.

PART XIV. Approval be and is hereby granted to amend Rule 9 of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 9. Filing Pleadings and Other Matters with the Board

a) All pleadings, motions, briefs, and memoranda filed with the board shall be submitted in an original with three (3) additional copies.

b) All exhibits submitted at hearings before the hearing committees must consist of an original and one copy. The original shall be submitted to the court reporter with a copy of the exhibit submitted to the hearing committee chair.

c) The administrator will accept pleadings delivered to the board office between the hours of 8:30 a.m. and 4:30 p.m. on regular working days. The filing of such papers shall be deemed timely when the papers are mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they were timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service. Pleadings and papers forwarded by private delivery

or courier service shall be deemed timely filed only if received by the board on or before the last day of the delay for filing. Matters submitted by other means shall be filed effective as of the date received in the administrator's office.

d) Matters may be submitted by facsimile transmission and will be filed effective as of the date received; provided (1) the board will not accept responsibility for equipment malfunction or illegible transmissions, and (2) the filing party shall submit an original and copies as required by paragraph (a) above, promptly following the facsimile transmission.

e) All motions filed with the hearing committees and the board shall be accompanied by certificate of counsel for the moving party stating: (1) that counsel conferred in person or by telephone with the opposing party regarding the motion and (2) that opposing counsel either has no objection to said motion or does object to the motion. If the opposing party objects to the motion, a telephone conference will be arranged between the chair of the hearing committee or adjudicative board panel assigned to the case to hear both parties' arguments relative to the motion.

f) All pleadings, motions, briefs, and memoranda filed with the hearing committees and the board shall contain a certificate of service by the filing party stating that he or she has served the opposing party with the document and by what means the opposing party was served.

PART XV. Approval be and is hereby granted to add a Rule 10 of the Procedural Rules for the Disciplinary Board (Appendix A) to read as follows:

Rule 10. Completing deliberations

If for any reason a board panel member is unable to complete deliberations in a matter assigned to his/her panel after the oral arguments have taken place due to death, disability or suspension from the practice of law, the remaining members shall continue its deliberations in order to bring the matter to a conclusion.

PART XVI. Approval be and is hereby granted to amend the opening three paragraphs of the Procedural Rules for Hearing Committees (Appendix B) to read as follows:

The following definitions apply for the purposes of these rules:

“Circuits” are defined as the geographic areas designated for the various Courts of Appeal for the State of Louisiana; provided, however, that the geographic areas designated for the Courts of Appeal for the 4th and 5th Circuits shall be considered one circuit.

“Registration statement address” shall be the address supplied by a lawyer on the registration statement required by Supreme Court Rule XIX, Section 8C.

PART XVII. Approval be and is hereby granted to amend Rule 3 of the Procedural Rules for Hearing Committees (Appendix B) to read as follows:

Rule 3. Assignment of Hearing Committee Chairs for Additional Duties

The administrator shall designate the hearing committee chair who is to perform the duties required in Supreme Court Rule XIX, Sections 3(E), 14(E), 18(G) and 29(A). These duties shall not be performed by a chair whose registration statement

address is in the same circuit as the respondent's registration statement address. A hearing committee whose chair has performed functions in any matter pursuant to Sections 3(E), 14(E), 18(G) or 29(A) is disqualified from participating in any hearing in that matter following the filing of formal charges.

PART XVIII. Approval be and is hereby granted to amend Rule 6 of the Procedural Rules for Hearing Committees (Appendix B) to read as follows:

Rule 6. Assignment of Hearing Committees and Hearing Dates

At the time formal charges are filed by disciplinary counsel, the administrator shall assign the matter to a hearing committee and shall consult with the chair of that committee to schedule a hearing for the next date reasonably available on the schedule set by the board or on such alternate dates as the chair may designate.

The hearing shall be scheduled as early as practicable following the delay for answer and time for discovery allowed by Sections 11 and 15. Notice of the hearing date shall be served by the administrator on respondent(s) and/or counsel for respondent(s), and disciplinary counsel on a form approved by the board not later than 30 days following the filing of the answer to the formal charges.

These rule changes shall become effective on June 15, 2005 and shall remain in full force and effect thereafter, until amended or changed through future orders of this Court.

New Orleans, Louisiana, this _____ day of _____, 2005.

FOR THE COURT:

Pascal F. Calogero, Jr., Chief Justice