

# 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 need to amend Rule XIX of the Rules of this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I. Louisiana Supreme Court Rule XIX, §11, be and is hereby amended to read as follows:

**Section 11. Procedure for Disciplinary Proceedings.**

**A. Screening.** The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity. If the lawyer is not subject to the jurisdiction of the court, the matter shall be referred to the appropriate entity in any jurisdiction in which the lawyer is admitted. If the information, if true, would not constitute misconduct or incapacity, the matter shall be dismissed. The disciplinary counsel may conduct a pre-screening investigative inquiry to determine if a complaint merits investigation, dismissal or referral to the Practice Assistance and Improvement Program administered by the Louisiana State Bar Association and approved by the Supreme Court. Objections to screening decisions shall be reviewable by the Chief Disciplinary Counsel, but are within counsel's discretion and not otherwise subject to appellate review.

\* \* \* \* \*

II. Louisiana Supreme Court Rule XIX, §24, be and is hereby amended to read as follows:

**Section 24. Reinstatement and Readmission.**

\* \* \* \* \*

**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 submitted to the chair of the adjudicative committee of the board within thirty days of disciplinary counsel's advising that he or she will concur.

**G. Hearing; Report.** Upon receipt of the disciplinary counsel's request for a hearing, or if the chair of the adjudicative committee, acting pursuant to paragraph H below, determines that a hearing is necessary, the board shall promptly refer the matter to a hearing committee. Within sixty days of the request, the hearing committee shall conduct a hearing at which the lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met each of the criteria in paragraph E or, if not, that there is good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted. The hearing committee shall file its report

with the board containing its findings of fact and recommendations. If no objection to the hearing committee report is filed by the disciplinary counsel or the respondent, the record in the matter shall be submitted directly to the court for review and determination.

#### **H. Board Review; Report.**

(1) A concurrence in reinstatement or readmission shall be promptly reviewed by the chair of the adjudicative committee of the board. If approved and a recommendation that the petition be granted is made, the matter shall be submitted to the court for review and determination. If disapproved, the matter shall be set for a hearing before a hearing committee in accordance with paragraph G above.

(2) In matters where an objection to the hearing committee's report is filed by the disciplinary counsel or by the respondent, the board shall promptly review the record and report of the hearing committee and shall, within ninety days after receiving the record and the hearing committee report, file the record and its own report with the court.

**I. Decision as to Reinstatement or Readmission.** The court shall review the record, the report filed by the hearing committee or the board, if any, and any concurrence by the lawyer and disciplinary counsel. If the court finds that the lawyer has complied with each of the criteria of paragraph E, or has presented good and sufficient reason for failure to comply, the court shall reinstate or readmit the lawyer and may issue written reasons. If the court denies reinstatement or readmission, the court may issue written reasons and shall identify the period after which the lawyer may reapply. 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.

\* \* \* \* \*

III. Louisiana Supreme Court Rule XIX, §28, be and is hereby amended to read as follows:

**Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.**

**A. Clearly Identified Trust Accounts in Financial Institutions Required.**

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts,” and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

**B. Access to Lawyers' Financial Account Records.** Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be

conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and the overdraft reporting requirements mandated by this rule.

**C. Request for Production of Records.** A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

**D. Overdraft Notification Agreement Required.** A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

The rule changes set forth in Sections I and II of this Order shall become effective upon signing, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court. The rule change set forth in Section III of this Order shall become effective on January 1, 2012 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 August, 2011.

FOR THE COURT:

---

Catherine D. Kimball, Chief Justice