

North Dakota Supreme Court  
*Joint Committee on Attorney Standards*  
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20160082

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

MAR 01 2016

STATE OF NORTH DAKOTA

Hon. Dann E. Greenwood, Chair  
51 Third St. E, Suite 202  
Dickinson, ND 58601  
Phone: (701) 227-3150

March 1, 2016

Honorable Gerald W. Vandewalle  
Chief Justice  
North Dakota Supreme Court  
600 E. Boulevard  
Bismarck, ND 58505-0530

Re: ABA Report on Lawyer Discipline System - Committee Report and Proposed Rule Amendments

Dear Chief Justice Vandewalle:

Following a referral from the Supreme Court, the Joint Committee on Attorney Standards reviewed a report submitted by an ABA Lawyer Discipline System Consultation Team regarding the structure, operations, and procedures of North Dakota's lawyer discipline system (ABA Report). The Team was assembled by the ABA Standing Committee on Professional Discipline at the request of the Supreme Court for purposes of reviewing the operation of our discipline system. To assist in evaluation of the ABA Report, the Committee's regular membership was supplemented by additional, temporary members. These members included a representative of the State Bar Association's Board of Governors, Zachary Pelham; Chair of the Discipline System's Operations Committee, David Maring; a representative of the Disciplinary Board, Patricia Monson; a lawyer versed in inquiry committee operations, Brenda Blazer; Disciplinary Counsel, then Brent Edison and currently Kara Johnson; and a lawyer involved in representing respondent lawyers in discipline proceedings, Tom Dickson.

The results of the expanded Joint Committee's review of the ABA Report are summarized in the attached Summary of Recommendations. The Summary is accompanied by various rule amendments proposed by the Joint Committee in response to the Report and in response to other issues presented during the Committee's review.

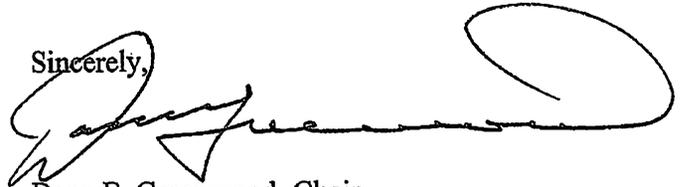
Under Administrative Rule 38, Section 3B, the Committee is required to submit its recommendations to the SBAND Board of Governors for review and comment. The Board has reviewed the proposed amendments and by a letter dated January 29, 2016, from Joe Wetch, SBAND President, indicated support for the proposed amendments,

with one exception. A copy of the letter is included immediately preceding the Summary and proposed rule amendments.

The Board of Governors does not support a portion of the proposed amendments to Rule 6.3, which generally governs the notice of status of a respondent lawyer who is disbarred, suspended, transferred to disability inactive or incapacitated status, or placed on interim suspension. Specifically, the Board does not support language in proposed Section D which would require that the respondent cause to be removed "any indicia of . . . legal assistant, law clerk, or similar title". The Board is concerned that the proposed language would prevent a respondent lawyer from using the lawyer's law degree for otherwise legitimate purposes, e.g., acting as a law clerk or paralegal/legal assistant in a law office. There is also concern that the prohibition may constitute an illegal restraint of trade or an unlawful restriction on the use of an academic degree. The Joint Committee reviewed the Board's concerns at its February 26 meeting. The proposed language is a result of the Committee's action in response to Recommendation 12 in the ABA Report, which recommended including the language in Rule 6.3. The language is included in Model Rule 27G of the ABA Model Rules for Lawyer Disciplinary Enforcement. The Committee concluded that there is a serious risk of confusion regarding status and authority if, for example, a suspended lawyer is allowed to identify as a legal assistant or law clerk. The Committee was also informed that several jurisdictions have adopted the model rule language and there have been no apparent challenges to the prohibition. After consideration of the Board's concerns, the Joint Committee concluded that the proposed language should be submitted as initially recommended.

I am pleased to submit the Joint Committee's proposed amendments to the Supreme Court for its consideration. I extend my thanks to Committee members for the commitment of their time and effort to this project.

Sincerely,



Dann E. Greenwood, Chair  
Joint Committee on Attorney Standards

DEG/

cc: Penny Miller, Clerk of the Supreme Court  
Jim Ganje



# State Bar Association of North Dakota

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Tony J. Weiler • *Executive Director*

January 29, 2016

Hon. Dann E. Greenwood  
Judge of the District Court  
51 Third St. E., Ste. 202  
Dickinson, ND 58601

via e-mail

Dear Judge Greenwood,

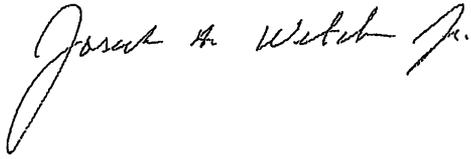
The Board does not have any comments to any of the proposals with the exception of the proposals to change Rule 6.3, Notice of Status. In particular, the Board was concerned with the proposal that a respondent subject to an order of disbarment, suspension, or transfer to disability inactive or incapacitated status must take all necessary action to remove any indicia of lawyer, counselor at law, legal assistant, law clerk or similar title.

While the Board does not disagree that a respondent lawyer should remove all references to Lawyer or counselor at law, the Board feels that the proposed rule goes too far in terms of making a respondent lawyer remove titles of legal assistant, law clerk or similar titles. The Board reads this requirement as prohibiting a respondent lawyer from using his or her degree for legitimate purposes such as acting as a law clerk or paralegal in a law office. The Board observed that on occasion there have been reported decisions in disciplinary matters (e.g., Aakre v. Disciplinary Board, 2008 ND 209) where a respondent lawyer has acted as a legal assistant under the supervision of a licensed attorney and later became reinstated to practice law.

The Board questioned whether the proposed rule change would pass a challenge based on an illegal restraint of trade claim or otherwise unlawfully restrict the use of an academic degree (as opposed to restrictions on a license issued by the state). Under these circumstances the Board cannot support these proposed changes to Rule 6.3 and would ask that the Committee reevaluate the purpose and scope of the rule keeping in mind the concerns raised by the Board.

I thank you in advance for your consideration. If there are any questions concerning this please do contact me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Wetch Jr." The signature is written in dark ink and is positioned above the typed name.

Joseph Wetch  
SBAND President

cc: Jim Ganje

## *LAWYER DISCIPLINE SYSTEM REVIEW*

### *SUMMARY OF RECOMMENDATIONS*

At the request of the North Dakota Supreme Court, the ABA Standing Committee on Professional Discipline sent a Lawyer Discipline System Consultation Team to examine the structure, operations, and procedures of North Dakota's lawyer discipline system. The Team conducted on-sight consultations with a wide variety of individuals involved in the discipline system, including members of the Disciplinary Board, Inquiry Committees, Hearing Panels, and the Operations Committee. The Team also interviewed Supreme Court staff, Disciplinary Counsel, complainants, respondents, and lawyers who represent complainants and respondent lawyers in the discipline process. The Team also reviewed background information including rules, caseload information, case files, web-based information, and administrative and financial reports.

Following consultations and review of relevant information, a report ("ABA Report" or "Report") was issued detailing recommendations for modifications and improvements in the structure and operation of the discipline system. The Report makes recommendations in essentially two broad categories: recommendations related generally to system infrastructure and resources, and recommendations for amendments to particular rules governing lawyer discipline.

The Report was referred to the Joint Committee on Attorney Standards for review. To assist in evaluation of the Report, the Committee's regular membership was supplemented by additional, temporary members. These members included a representative of the State Bar Association's Board of Governors, Zachary Pelham; Chair of the Discipline System's Operations Committee, David Maring; a representative of the Disciplinary Board, Patricia Monson; a lawyer versed in inquiry committee operations, Brenda Blazer; Disciplinary Counsel, then Brent Edison and currently Kara Johnson; and a lawyer involved in representing respondent lawyers in discipline proceedings, Tom Dickson.

Over the course of six meetings, the expanded Joint Committee on Attorney Standards reviewed the ABA Report and associated background material. The recommendations and the Joint Committee's considerations and conclusions regarding specific recommendations are summarized below.

#### System Infrastructure and Resource Recommendations

The ABA Report recommended a larger work space for disciplinary counsel and staff, along with better signage to facilitate location of the office and enhanced public accessibility.

The Joint Committee endorses this recommendation.

The ABA Report recommended a more open and transparent process for nominations to fill vacancies on the Disciplinary Board, including announcement of vacancies on the Supreme Court's website. The Report recommended the possibility of establishing a nominating committee to review

applications for appointment to the Board and make recommendations to the Supreme Court.

The Joint Committee endorses the recommendation for a more transparent and open nomination process, including posting vacancies on the Supreme Court's website. The Joint Committee, however, does not view the establishment of a nominating committee as necessary to ensure openness and transparency and does not support the recommendation.

The ABA Report recommended development of a stand-alone website for the office of disciplinary counsel to increase public awareness and outreach. The website would include links to applicable rules, a library of the Supreme Court's disciplinary opinions, and other information related to lawyer discipline. In concert with development of a website, the Report recommended development of a uniform complaint form that would be available on the website.

The Joint Committee endorses the concept of developing a stand-alone website as recommended. The Committee endorses the development of a uniform complaint form provided that the form is not available in a fillable format and must be printed, completed, signed, and submitted by mail.

The ABA Report recommended development of a case management system, streamlining of the complaint filing process, and general improvement of technology-based operations.

The Joint Committee was informed of ongoing efforts regarding development of a case management system and the increased use of technology resources.

The ABA Report recommended formal training for professional disciplinary staff and volunteers, including the development of a training program and training manual.

The Joint Committee endorses this recommendation and is aware that Disciplinary Counsel provides educational programs for Disciplinary Board, Hearing Panel, and Inquiry Committee members.

The ABA Report recommended provided fiscal resources to enable Disciplinary Counsel to obtain investigative services to assist in considering complaints.

The Joint Committee endorses this recommendation. The Committee was informed that funding had been requested and included in the 2015-2017 biennial appropriation to enable obtaining investigative services in the second year of the biennium.

The ABA Report recommended expanding benefits for members of the State Bar Association to include law office practice management programs, mediation programs, an ethics and trust accounting school, and a mentorship program. The Report also recommended expanding availability and access to the Lawyer Assistance Program and expanding the kinds of programs available for diversion beyond the assistance program. These recommendations will be presented by the Committee's Board of Governor's representative to the Board for consideration within the resources available to the Association.

Perhaps most significantly, the ABA Report recommended a fundamental transformation in the inquiry committee structure. The Report recommended replacing the current district-based inquiry committee structure with a statewide committee comprised of hearing panels. While recognizing the primary impetus for the recommendation, i.e., more expeditious disposition of complaints and lessening the burden on individual committee members, the Joint Committee declined to accept the recommendation. The Report also recommended transfer of substantial authority to disciplinary counsel, e.g., receiving and screening complaints, investigation of complaints, summary dismissal and dismissal of complaints, and referral to diversion. These recommendations reflect the approach under the ABA Model Rules for Lawyer Disciplinary Enforcement. The Joint Committee declined to pursue some of these recommendations. However, as summarized in the portion of this Summary related to rule amendments, the Joint Committee does recommend that investigative responsibility be transferred to disciplinary counsel, that a summary dismissal process similar to that used in the judicial discipline process be adopted, and that disciplinary counsel have greater involvement in the diversion process. The Joint Committee concluded that these changes would lessen the burden on volunteer inquiry committee members and would assist in expediting consideration and disposition of complaints.

### Proposed Rule Amendments

The ABA Report set out various recommendations regarding amendments to the North Dakota Rules for Lawyer Discipline. The Joint Committee's consideration of the recommendations and proposed rule amendments are summarized below.

#### Rule 2.2. Operations Committee

The ABA Report recommended amendments to Rule 2.2 to enhance the administrative oversight and supervisory responsibilities of the Operations Committee. Particularly, the Report recommended adding provisions related to general oversight of caseload management efforts, reviewing regular caseload reports from disciplinary counsel, and conducting performance evaluations of disciplinary counsel.

The Joint Committee recommends amendments to Rule 2.2E to include as additional responsibilities of the Operations Committee general oversight of caseload management efforts and conducting annual performance evaluations of disciplinary counsel. The responsibility for reviewing regular caseload reports was considered to be part of the general oversight of caseload management and, therefore, did not require specific rule language.

The ABA Report also recommended amendments to clarify the composition of the Operations Committee and to specifically include lay membership. The Joint Committee concluded the amendments were unnecessary.

#### Rule 2.3. Hearing Panels

The ABA Report recommended amendments to Rule 2.3 to reflect that the chair of the

disciplinary board appoints a lawyer member of a hearing panel as chair of the panel. Since the recommendation reflects current practice, the Joint Committee recommends amendments to Rule 2.3A to incorporate the Report recommendation.

The Joint Committee also recommends an amendment to Rule 2.3A to remove current language providing that a “hearing panel” may be a hearing officer designated from among district or surrogate judges. While not recommended in the ABA Report, the Joint Committee concluded the language was no longer necessary.

#### Rule 2.4. Inquiry Committees

The ABA Report recommended substantial changes to the inquiry committee structure and process. Most notably, the Report recommended replacing the current three district-based inquiry committees with a single state-wide committee comprised of hearing panels. The rationale for the recommended change was to enhance the expeditious handling and disposition of complaints and to guard against the perception that local interests and allegiances affected inquiry committee review of complaints. The Report also recommended limiting inquiry committee responsibility to probable cause determinations regarding rule violations and eliminating inquiry committee authority to dismiss or admonish. These particular recommendations were linked to the Report’s recommendations to substantially expand the authority and responsibilities of disciplinary counsel, which would more closely align the role of disciplinary counsel to that set out in the ABA Model Rules. The Report also recommended eliminating appointment of inquiry committee members by the president of the State Bar Association.

After lengthy discussion, the Joint Committee concluded the expansive changes regarding the inquiry committee structure recommended in the ABA Report were unnecessary to effect the principal goal of timely disposition of complaints. Related specifically to Rule 2.4, the Joint Committee did agree that the transfer of responsibility to conduct investigations to disciplinary counsel would be a beneficial operational change and would have the most notable impact in disposition of complaints.

The Joint Committee recommends amendments to Rule 2.4B to remove language related to the appointment of special members to conduct investigations of complaints. This is a rarely used rule provision and would be unnecessary with the transfer of investigative responsibility.

The Joint Committee recommends amendments to Rule 2.4E to remove current paragraph (1), which describes inquiry committee responsibility for investigations.

The Joint Committee recommends an amendment to Rule 2.4E(3), renumbered as Rule 2.4E(2), to link dismissal authority to the process set out in Rule 3.1C, which is the subject of additional amendments recommended by the Joint Committee.

The Joint Committee also recommends amendments to remove current Section F, which describes consequences related to failure to complete investigations. Particularly, the section describes reassignment of investigation responsibility if the assigned investigator fails to complete

the investigation. The current language would be unnecessary in light of transfer of investigation responsibility to disciplinary counsel. The last sentence of Section F providing that failure to timely complete an investigation does not prejudice the complaint would be relocated to Rule 3.1D(1).

### Rule 2.5. Disciplinary Counsel

The ABA Report recommended amendments to transfer responsibility for receiving, screening, and investigating complaints to disciplinary counsel. The Joint Committee agrees with these recommended changes. The ABA Report also recommended that the authority to dismiss a complaint be transferred to disciplinary counsel. The Joint Committee reviewed various rule amendment configurations that contemplated different degrees of disciplinary counsel authority to dismiss complaints. The Joint Committee concluded, however, that the full dismissal authority set out in the ABA Model Rules, and contemplated in the ABA Report, was an unnecessary change to the North Dakota process. Rather, the Joint Committee concluded a summary dismissal process similar to that used in the judicial discipline process would be a helpful addition to the lawyer discipline rules.

The Joint Committee recommends amendments to Rule 2.5B to create a new paragraph (1) describing disciplinary counsel authority to receive and screen all complaints to determine whether summary dismissal is appropriate. The Joint Committee recommends new paragraph (3), which identifies disciplinary counsel's dismissal authority under Rule 3.1C, which would reflect a summary dismissal process.

The ABA Report recommended rule amendments to remove the responsibility of disciplinary counsel under current Rule 2.5B(2) to "advise" the disciplinary board, hearing panels, and inquiry committees on legal issues related to discipline and disability. The Report emphasized the potential for conflicts of interest arising when disciplinary counsel is responsible for prosecuting complaints and also advising entities involved in considering complaints. However, the Joint Committee was concerned that a wholesale removal of the rule provision may compromise the valuable role of disciplinary counsel in educating members of the board, hearing panels, and inquiry committees about important legal issues.

The Joint Committee recommends an amendment to Rule 2.5(2), renumbered as Rule 2.4(4) to provide that disciplinary counsel would "provide training and education", rather than "advise", on legal issues related to lawyer discipline and disability.

The Joint Committee recommends new paragraph (10) to place with disciplinary counsel responsibility for maintaining permanent records pertaining to informal matters. This amendment reflects the shift to disciplinary counsel of responsibility for receiving and screening complaints.

In response to information submitted to it by Brent Edison, then disciplinary counsel and temporary Committee member, the Joint Committee considered the efficacy of issuing advisory letters to lawyers who are the subjects of complaints but whose conduct is not deemed a violation or may be a violation but does not warrant sanction. Several jurisdictions permit the issuance of advisory or "caution" letters, which are viewed as tools to inform a lawyer of conduct that, if

unaddressed, may become grounds for discipline. The Joint Committee concluded that disciplinary counsel authority to issue an advisory letter would be a beneficial addition to the discipline process.

The Joint Committee recommends amendments to create new Rule 2.5( C) to authorize disciplinary counsel to issue an advisory letter when certain conditions are satisfied: the conduct constitutes a violation but does not warrant an admonition or sanction, or the conduct is not a violation, but a caution is considered appropriate. The amendments clarify that the letter is not a sanction or disciplinary action and further provide that the letter may not be introduced as evidence in any subsequent disciplinary proceeding.

The ABA Report recommended amendments to address and prohibit ex parte communications between disciplinary counsel and members of an inquiry committee, the disciplinary board, or the Supreme Court about a pending or impending investigation or disciplinary matter. The Report emphasized the risks associated with possible conflicts of interest if ex parte communications are allowed to occur.

The Joint Committee recommends new Rule 2.5(D), which would generally prohibit ex parte communications between disciplinary counsel and members of an inquiry committee, the disciplinary board, or the Supreme Court. Exceptions are provided if the communication is authorized by law or for procedural, scheduling, or administrative purposes or emergencies. The exceptions are subject to requirements that no party gain an advantage as a result of the communication and that notice of the communication is promptly provided.

### Rule 3.1. Generally.

As previously noted, The ABA Report recommended that responsibility for receiving and investigating complaints should be transferred from inquiry committees to disciplinary counsel. The Joint Committee recommends several amendments to Rule 3.1 which reflect this transfer of responsibility. The Joint Committee also recommends amendments to establish a summary dismissal process.

The Joint Committee recommends amendments to Rule 3.1A which would require that complaints must be filed with disciplinary counsel. Complaints would be assigned to the appropriate inquiry committee for future action, which would replace the rule's current direction that the secretary of the disciplinary board could assign a new complaint to a different inquiry committee based on caseload considerations.

The Joint Committee recommends amendments to Rule 3.1B to further reflect responsibility of disciplinary counsel to evaluate complaints and refer the matter to another jurisdiction if appropriate.

The Joint Committee recommends amendments to Rule 3.1C to establish a summary dismissal process similar to that set out in Rule 10A of the Rules of the Judicial Conduct Commission. The current rule places summary dismissal authority with the inquiry committee. At least every thirty days, disciplinary counsel would submit a list, with reasons, of complaints

considered subject to summary dismissal. A committee member may request further consideration of a particular complaint within fourteen days of receiving the list. If further consideration is requested, disciplinary counsel would be directed to conduct additional investigation. If there is no request for further consideration or if, after further investigation, summary dismissal is considered appropriate, disciplinary counsel would be authorized to issue a letter of summary dismissal.

The Joint Committee recommends additional amendments to Rule 3.1C to provide in instances not involving summary dismissal that if disciplinary counsel concludes after investigation that dismissal of the complaint is considered appropriate, the recommendation and report must be submitted to the inquiry committee for consideration.

The Joint Committee also recommends amendments to Rule 3.1C to require disciplinary counsel to provide reasons for the action when notifying the lawyer and complainant of a summary dismissal or dismissal of a complaint.

To further reflect the transfer of investigation responsibility to disciplinary counsel, the Joint Committee recommends several conforming amendments to Rule 3.1C(1), (2), (3), (4), (5), and (9).

The Joint Committee also recommends an additional amendment to Rule 3.1C(5) to require that disciplinary counsel must serve a copy of the written investigative report on the lawyer and the complainant at the time the investigative report is filed with the inquiry committee chair.

Separate from the ABA Report recommendations, two issues with respect to Rule 3.1C(8) were brought to the Joint Committee's attention: the standard of review regarding appeals of inquiry committee decisions to the disciplinary board, and the time within which a petition for leave to appeal a board determination must be filed. The Joint Committee was informed of current practices that had evolved based on caselaw and inferences from other rule provisions but which are not clearly stated in the rule.

The Joint Committee recommends an amendment to Rule 3.1C(8) to require that a person appealing an inquiry committee decision must show that the committee acted arbitrarily, capriciously, or unreasonably. The Joint Committee recommends an additional amendment to Rule 3.1C(8) to require that a petition for leave to appeal a board determination must be filed within thirty days of mailing the notice of the determination.

### Rule 3.5. Additional Procedure

The ABA Report recommended amendments to Rule 3.5E to require that at least one prehearing conference must be scheduled following a formal petition. The Report also recommended including in the rule substantial detail regarding the contents of an order setting a prehearing conference. The Joint Committee concluded further direction regarding a prehearing conference requirement would be beneficial but does not endorse the amount of detail recommended in the Report.

The Joint Committee recommends amendments to Rule 3.5E to require the hearing panel

chair to schedule at least one prehearing conference to be held as soon as practicable after the time for response has passed. The scheduling order must specify issues that should be considered and the conference should be arranged to ensure optimal use of resources.

#### Rule 4.1. Criminal Conduct

The ABA Report recommended amendments to Rule 4.1 to provide for immediate suspension if a lawyer is found guilty of a serious crime. The Report explained that a significant delay, attributable to several factors, may occur between a finding of guilt and entry of a judgment of conviction. The Report concluded that continued practice after a lawyer has been found guilty of a serious crime undermines public confidence in the profession. The Joint Committee agrees with these observations.

The Joint Committee recommends amendments to Rule 4.1D, E, and G to address immediate suspension if a lawyer has pled or been found guilty or convicted of a serious crime.

#### Rule 4.2. Discipline by Consent

The ABA Report recommended amendments to Rule 4.2 to expand disciplinary counsel responsibility with respect to conditional admissions to discipline and to provide more detail regarding a lawyer's admission. The Joint Committee considered, as an alternative, draft amendments to Rule 4.2 submitted by Brent Edison, then disciplinary counsel and a temporary Committee member. The draft amendments would establish a procedure for stipulations to discipline based on Washington rule provisions. Following review, the Joint Committee concluded the suggested amendments, as further revised by the Committee, would be a beneficial addition to Rule 4.2.

The Joint Committee recommends amendments to Rule 4.2 to establish a procedure for stipulations to discipline which provides: 1) that a complaint may be resolved by stipulation at any time after investigation and an opportunity for the complainant to have been heard; 2) the stipulation must set out the form of discipline, the terms and conditions of probation, and any other appropriate provisions; 3) a disclosure that the lawyer waives certain procedural rights that may be available in the absence of a stipulation; 4) a description of the form and contents of the stipulation; 5) a process by which the stipulation may be approved or rejected by the inquiry committee or disciplinary board, with an expedited review by a three-member panel if the proposed sanction is a reprimand, suspension, or disbarment; 6) a process addressing rejection of the stipulation; and 7) a provision governing failure to comply with the stipulation.

#### Rule 4.3. Probation

The ABA Report recommended amendments to Rule 4.3 to extensively address imposition of probation and the monitoring and revocation of probation. The Joint Committee concluded the extensive detail recommended in the Report was unnecessary, but that monitoring of a lawyer's compliance with probation conditions would be an important addition to the discipline process.

The Joint Committee recommends amendments creating new Rule 4.3C governing the monitoring of probation conditions. Disciplinary counsel would be responsible for determining the means of monitoring compliance and for monitoring compliance. The recommended amendments enable disciplinary counsel to seek the assistance of a probation monitor who must report the lawyer's progress and inform disciplinary counsel of the lawyer's compliance, or non-compliance, with probation conditions. In the event of non-compliance, disciplinary counsel would be required to notify the entity that imposed probation.

#### Rule 6.1. Records

The Joint Committee recommends a minor, conforming amendment to Rule 6.1C relating to expunction of records to reflect disciplinary counsel's responsibility to maintain, and therefore expunge if appropriate, records related to informal matters.

#### Rule 6.3. Notice of Status

The ABA Report recommended amendments to Rule 6.3 to clearly prohibit a disbarred or suspended lawyer or lawyer on disability inactive or incapacitated status from maintaining a presence in or occupying an office where the practice of law is conducted. The Report also recommended removal of any indicia of association with the lawyer title. The Joint Committee concluded the recommended amendments were appropriate.

The Joint Committee recommends amendments to create new Rule 6.3D to provide that a respondent subject to an order of disbarment, suspension, or transfer to disability inactive or incapacitated status must not undertake any new legal matters between service of the order and the effective date of discipline, may not maintain a presence in or occupy an office in this jurisdiction where the practice of law is conducted, and must take all necessary action to remove any indicia of lawyer, counselor at law, legal assistant, law clerk, or similar title.

The ABA Report also recommended rule amendments to explicitly provide that a disbarred or otherwise limited lawyer's engaging in a violation of the order could result in contempt proceedings. The Joint Committee concluded the proposal, to be incorporated in Rule 6.3, would be appropriate.

The Joint Committee recommends amendments to create new Rule 6.3H to provide that disciplinary counsel may petition the Supreme Court to hold a disbarred or suspended lawyer in contempt for failing to comply with any of the limitations set out in Rule 6.3A - G or set out in the disciplinary order.

#### Rule 6.4. Professional Trusteeships

Separate from the ABA Report, an issue related to the disposition of funds held by a professional trustee under Rule 6.4 was presented to the Joint Committee. The Committee was informed that there have been instances in which there are funds in an interest bearing trust account which cannot be traced to a particular client. There is a lack of guidance in the rule regarding

disposition of the funds by the professional trustee.

The Joint Committee recommends amendments to Rule 6.4F to provide that if there are funds in an interest bearing trust account that cannot be traced to a particular client, the funds may be applied to client claims, creditors, and the approved fees and costs of the trustee. Any remaining amount would be deposited in the client protection fund.

#### Rule 6.6. Diversion from Discipline

The ABA Report recommended several modifications to Rule 6.6 governing diversion from discipline. Principal among these were recommendations that only disciplinary counsel could refer a lawyer to diversion, clearly indicating that diversion is not discipline, providing the respondent lawyer an opportunity to decline referral to diversion, clarifying the components of an individualized assistance plan, requiring a contract with the respondent lawyer, and providing notice to the complainant of the decision to refer the respondent lawyer to diversion.

The Joint Committee received and reviewed background information regarding the operation of the Lawyer Assistance Program and the program's application in diversion situations. The Joint Committee also reviewed rules governing diversion in other jurisdictions. The Joint Committee reached the general conclusion that it would be beneficial to provide greater guidance regarding the circumstances in which diversion may be appropriate and the kinds of diversion that may be considered, to formalize a requirement for a specific agreement with the respondent lawyer, and to provide for a clear response in the event of non-compliance by the respondent lawyer. The Joint Committee also discussed issues related to operational features in the current process that may contribute to delays in referring a respondent lawyer to diversion and participation in the Lawyer Assistance Program. It was suggested, and the Joint Committee agreed, that the early involvement and following participation by disciplinary counsel in the process would facilitate effective implementation of diversion components.

The Joint Committee recommends creation of and amendments to a new Rule 6.6C to describe the availability of diversion for less serious misconduct, among other kinds of conduct, and to identify the kinds of conduct that would not normally be considered less serious for purposes of referral to diversion.

The Joint Committee recommends new Rule 6.6E to articulate the kinds of diversion that may be imposed.

The Joint Committee recommends amendments to Rule 6.6D, relabeled as Rule 6.6G, to provide for the involvement of disciplinary counsel in developing an individualized assistance plan and to link the plan to the kinds of diversion identified under new Rule 6.6E.

The Joint Committee recommends amendments to Rule 6.6E, relabeled as Rule 6.6H to provide that the assistance plan must be signed by the lawyer and include an acknowledgment that a material violation renders participation in diversion voidable. The lawyer assistance program committee would report compliance or non-compliance with the plan to disciplinary counsel.

The Joint Committee recommends new Rule 6.6I to require that disciplinary counsel report the lawyer's compliance or non-compliance to the entity considering the complaint. If the lawyer fails to comply with the plan, disciplinary counsel would be required to inform the lawyer that the plan is terminated and that disciplinary proceedings may be instituted, reinstated, or resumed. Disciplinary counsel must submit a recommendation to the entity considering the complaint.

## 1 PROPOSED AMENDMENTS

### 2 RULE 2.2 OPERATIONS COMMITTEE

3 A. Appointment. The operations committee consists of three members: one former or current board  
4 member appointed by the court from a list of three nominations submitted by the disciplinary board,  
5 one appointed by the court from a list of three nominations submitted by the association's board of  
6 governors, and one former or current commission member appointed by the court from a list of three  
7 nominations submitted by the judicial conduct commission. The state court administrator or designee  
8 serves as an ex officio, non-voting member. Committee members each serve for a term of three-years  
9 and until a successor is appointed and qualifies. Terms must be staggered so that no more than one  
10 member is appointed for a full three-year term in any one year. Except when filling an unexpired  
11 term, a member may not serve for more than two consecutive three-year terms.

12 B. Election of Chair. At the first meeting of the committee in each calendar year, the members of the  
13 committee shall elect a chair and vice chair. The chair, and in the chair's absence the vice-chair,  
14 performs the duties normally associated with the office and presides over all meetings of the full  
15 committee.

16 C. Secretary. The executive director of the association is the ex officio secretary to the committee.  
17 The secretary shall maintain permanent financial and non-disciplinary case administrative records  
18 regarding the lawyer disciplinary system and disciplinary personnel. The secretary shall regularly  
19 provide financial statements to the committee.

20 D. Compensation. Members receive no compensation for their services, but are reimbursed for  
21 reasonable and necessary expenses incurred in the performance of their duties. Costs associated with  
22 the administrative duties of the secretary are paid by the board from funds appropriated, deposited,  
23 or dedicated for its purposes.

24 E. Powers and Duties. The committee is responsible for;

1 (1)the fiscal management of the lawyer disciplinary system, including all issues related to  
2 personnel management;

3 (2) general oversight of caseload management efforts to ensure timely and efficient system  
4 operation; and

5 (3) conducting annual performance evaluation of disciplinary counsel.

6 The committee shall adopt rules for internal operations and procedures. The disciplinary board  
7 retains responsibility for issues of discipline.

8 The committee shall make an annual written report to the court, the association's board of governors,  
9 the disciplinary board, the state Board of Law Examiners, and the judicial conduct commission.

10 [Adopted on an emergency basis effective July 16, 1998; Adopted, as further amended, on a final  
11 basis effective September 8, 1998. Amended August 1, 2001. Amended \_\_\_\_\_]

1 **PROPOSED AMENDMENTS**

2 **RULE 2.3. HEARING PANELS.**

3 A. Appointment. Upon the filing of a petition, the chair of the board shall appoint a hearing panel  
4 to conduct hearings and submit findings and recommendations on matters assigned under Rule  
5 2.1H(2). The chair of the board shall appoint a lawyer member of the panel to serve as hearing panel  
6 chair. A hearing panel may consist of a three-member panel of not more than two lawyers and at  
7 least one public member appointed from current or former board members, ~~or may be a hearing~~  
8 ~~officer designated from among district court or surrogate judges.~~

9 B. Powers and Duties. Each hearing panel shall:

10 (1) Conduct hearings on matters referred by the board; and

11 (2) Submit findings and recommendations, together with the record of the hearing, to the court.

12 C. Abstention. A member of the hearing panel shall refrain from taking part in any proceedings in  
13 which a judge, similarly situated, would be required to disqualify.

14 [Adopted effective January 1, 1995; Amended on an emergency basis effective July 16, 1998;  
15 Adopted on a final basis effective September 8, 1998.]

16 [Amended effective July 1, 1999. Adopted effective January 1, 1995. Amended \_\_\_\_\_]

# 1 PROPOSED AMENDMENTS

## 2 RULE 2.4. DISTRICT INQUIRY COMMITTEES.

3 A. Disciplinary Districts. The state is divided into disciplinary districts:

4 (1) Southeastern District. The Southeastern District includes the following counties: Barnes, Cass,  
5 Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, and Stutsman.

6 (2) Northeastern District. The Northeastern District includes the following counties: Benson,  
7 Cavalier, Eddy, Foster, Grand Forks, Griggs, Nelson, Pembina, Pierce, Ramsey, Rolette, Steele,  
8 Towner, Traill, Walsh, and Wells.

9 (3) Western District. The Western District includes the following counties: Adams, Billings,  
10 Bottineau, Bowman, Burleigh, Burke, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger,  
11 McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Renville, Sheridan, Sioux, Slope,  
12 Stark, Ward, and Williams.

13 B. Appointment ~~=Special Members~~. The association president shall appoint a nine-member district  
14 inquiry committee, consisting of six lawyers and three public members, within each  
15 disciplinary district. ~~Upon the request of an inquiry committee chair, the association president may~~  
16 ~~appoint not more than three special members to an inquiry committee for purposes of conducting~~  
17 ~~investigations of complaints and preparing and presenting investigative reports. A special member~~  
18 ~~need not be a resident of or practice law in the disciplinary district for the inquiry committee to~~  
19 ~~which the member is appointed. A special member is appointed for a term of three months but, the~~  
20 ~~association president may extend the term for up to an additional nine months. A special member~~  
21 ~~may not vote on the disposition of a complaint under section E(3).~~

22 C. Terms of Office. All terms are for three years and a member of a district inquiry committee may  
23 not serve for more than two consecutive three-year terms. Terms must be staggered so that no more

1 than two lawyer members and one public member are appointed for full three-year terms in any one  
2 year. A member who has served two consecutive three-year terms may not be reappointed before the  
3 expiration of at least one year.

4 D. Chair. At the first meeting of each district inquiry committee in each calendar year, the members  
5 of the committee shall elect a chair who shall preside at all meetings, perform the usual duties of a  
6 chair, and be responsible for preparation of a report of the meeting to file with the board. A  
7 vice-chair shall be similarly elected to act in the absence of the chair.

8 E. Powers and Duties. Each district inquiry committee shall:

9 ~~(1) Through members designated by its chair or by using the services of counsel, investigate all~~  
10 ~~information about a lawyer which, if true, would be grounds for discipline or transfer to disability~~  
11 ~~inactive or incapacitated status, and provide a report of the investigation to counsel for distribution~~  
12 ~~to the district inquiry committee;~~

13 ~~(2)~~ Review investigative reports and recommendations;

14 ~~(3)~~ (2) Act on each complaint:

15 (a) by dismissal in accordance with Rule 3.1C,

16 (b) by approval of diversion from discipline,

17 (c) by issuance of an admonition or consent probation or both,

18 (d) by directing participation in a lawyer assistance program in conjunction with an  
19 admonition or consent probation; or

20 (e) by directing counsel to file a petition with the board initiating formal disciplinary or  
21 disability proceedings;

22 ~~(4)~~ (3) Dismiss a complaint after a lawyer's completion of all conditions of diversion from  
23 discipline; and

1 ~~(5)~~ (4) Discontinue diversion from discipline if a lawyer does not complete all conditions of that  
2 diversion.

3 ~~F. Failure to complete reports or investigation. Failure of the investigator designated under section~~  
4 ~~E(1) to complete reports in a timely fashion may result in reassignment of the investigation and~~  
5 ~~removal, unless counsel is the investigator, of the investigator from the district inquiry committee~~  
6 ~~by the association president. Failure of an investigator to timely complete an investigation under~~  
7 ~~Rule 3.1D does not prejudice the complaint.~~

8 ~~G. F.~~ Compensation. All expenses of the district inquiry committees incurred in connection with the  
9 enforcement of these rules must be paid from association funds.

10 [Adopted effective January 1, 1995; amended on an emergency basis effective may 28, 1997 (See  
11 Order in Sup.Ct. No. 970152); amended on an emergency basis effective July 16, 1998; Adopted on  
12 a final basis effective September 8, 1998.]

13 [Amended effective \_\_\_\_\_ .Amended effective August 1, 2004. Amended effective July  
14 1, 1999. Adopted effective January 1, 1995.]

# 1 PROPOSED AMENDMENTS

## 2 RULE 2.5. DISCIPLINARY COUNSEL.

### 3 A. Qualifications of Counsel.

4 (1) Counsel and substitute temporary counsel must be admitted to the practice of law in North  
5 Dakota; and

6 (2) With the exception of substitute temporary counsel, counsel may not engage in the private  
7 practice of law.

### 8 B. Powers and Duties. Counsel ~~shall~~ has the following powers and duties:

9 ~~(1) Receive and screen all complaints to determine whether summary dismissal is appropriate;~~

10 ~~(1) Upon referral by a district inquiry committee, investigate~~ (2) Investigate all information about  
11 a lawyer which, if true, would be grounds for discipline or transfer to disability inactive or  
12 incapacitated status and prepare an investigative report and recommendations for the district inquiry  
13 committee's disposition;

14 (3) In accordance with Rule 3.1C, dismiss a complaint;

15 ~~(2) (4) Advise~~ Provide training and education to the board, hearing panels, and the district inquiry  
16 committees on legal issues relating to lawyer discipline and disability;

17 ~~(3) (5) Prosecute disciplinary, disability, and reinstatement proceedings before hearing panels and~~  
18 the court;

19 ~~(4) (6) Supervise staff needed for the performance of investigative and prosecutorial functions,~~  
20 as authorized by the operations committee and within limits of funds available;

21 ~~(5) (7) Promptly notify the complainant and the lawyer of the disposition of each matter;~~

22 ~~(6) (8) Notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability~~  
23 inactive or incapacitated status, a reinstatement, or any public discipline imposed in this state;

24 ~~(7) (9) When a lawyer is convicted in this state of a serious crime *as defined* in Rule 4.1C, forward~~  
25 a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which  
26 the lawyer is admitted; and

27 (10) Maintain permanent records of informal matters, subject to the expunction requirements of  
28 Rule 6.1C; and

1     ~~(8)~~ (11) Provide regular reports on all complaints filed with the secretary to the district inquiry  
2 committees and the board at their scheduled meetings.

3 C. Advisory Letter. At the direction of the inquiry committee under Rule 3.1C, counsel shall issue  
4 an advisory letter in conjunction with dismissal of a complaint when:

5         (1) the respondent's conduct constitutes a violation, but does not warrant an admonition or  
6 sanction and it appears appropriate to caution the respondent concerning the respondent's conduct;

7 or

8         (2) the respondent's conduct does not constitute a violation, but the respondent should be  
9 cautioned.

10         An advisory letter is not a sanction and is not a disciplinary action. An advisory letter may  
11 not be introduced into evidence in any subsequent disciplinary proceeding.

12 D. Ex Parte Communications with Disciplinary Counsel

13         Members of an inquiry committee, hearing panel, the board, or the supreme court shall not  
14 communicate ex parte with disciplinary counsel regarding a pending or impending investigation or  
15 disciplinary matter except as explicitly provided for by law or for procedural, scheduling, or  
16 administrative purposes, or emergencies that do not deal with substantive matters or issues on the  
17 matters provided that:

18         (1) it is reasonable to believe that no party will gain a procedural or tactical advantage as a  
19 result of the ex parte communication; and

20         (2) provision is promptly made to notify all other parties of the substance of the ex parte  
21 communication and an opportunity to respond is allowed.

22

23 [Adopted effective January 1, 1995; amended on an emergency basis effective July 16, 1998;  
24 Adopted on a final basis effective September 8, 1998; Amended effective July 1, 1999; Amended  
25 effective \_\_\_\_\_. ]

## 1 PROPOSED AMENDMENTS

### 2 RULE 3.1.GENERALLY.

3 A. Initiation of Disciplinary Process. The board or district inquiry ~~committees~~ committee may  
4 consider on ~~their~~ its own ~~motions~~ motion alleged grounds for disciplinary action or disability  
5 proceedings. All complaints other than those upon motion by the board or a district inquiry  
6 ~~committees~~ committee must be in writing, signed by the complainant, filed with ~~the secretary~~  
7 ,disciplinary counsel, and assigned to the appropriate inquiry committee for appropriate future action.  
8 ~~The secretary may assign new complaints to another inquiry committee when it appears that the~~  
9 ~~inquiry committee to which the complaint would normally be assigned has a disproportionately high~~  
10 ~~caseload.~~

11 B. Initial Consideration. ~~The chair or, upon designation by the chair, the vice-chair of the district~~  
12 ~~inquiry committee~~ Disciplinary counsel shall evaluate complaints received. If the lawyer is not  
13 subject to the jurisdiction of the court, ~~the chair or vice-chair~~ counsel shall refer the matter to the  
14 appropriate entity in the jurisdiction in which the lawyer is admitted.

15 C. ~~Summary Dismissal of Complaint.~~ Subject to this section, a complaint ~~must~~ may be summarily  
16 dismissed by ~~the district inquiry committee~~ disciplinary counsel if the alleged facts, if true, are not  
17 grounds for disciplinary action or disability.

18 At least every 30 days, counsel shall submit to the inquiry committee to which the complaint is  
19 assigned a list of all complaints considered subject to summary dismissal. The list must include a  
20 summary of reasons for each dismissal. Upon review of the reported complaints, any committee  
21 member may, within 14 days of the date the list was mailed, request that the committee further  
22 consider a particular complaint. If the committee concludes summary dismissal of a particular  
23 complaint may be inappropriate, the committee shall direct that counsel conduct additional  
24 investigation. The committee shall review the recommendation and additional investigation for  
25 purposes of determining whether dismissal is appropriate. Counsel shall issue a letter of summary  
26 dismissal if a request for further consideration is not received within 14 days of the date the list of  
27 complaints was mailed or if the committee, following further consideration, notifies counsel that

1 additional investigation is not required and summary dismissal is appropriate.

2 If dismissal of a complaint is recommended by disciplinary counsel following investigation, the  
3 recommendation and accompanying investigative report must be submitted to the inquiry committee  
4 for consideration.

5 An inquiry committee may direct disciplinary counsel to issue an advisory letter in accordance  
6 with Rule 2.5C.

7 After summary dismissal or dismissal of a complaint, ~~the chair or vice-chair, as appropriate;~~  
8 counsel shall promptly notify the lawyer and complainant of the action and the reasons for the action  
9 and furnish a copy of the complaint to the lawyer. The lawyer is not required to respond to ~~the a~~  
10 complaint subject to summary dismissal. There is no appeal from a summary dismissal.

#### 11 D. Investigation and District Inquiry Committee Procedures.

12 (1) Complaints not summarily dismissed must be promptly investigated by ~~a member of the~~  
13 ~~district inquiry committee or counsel.~~ Failure to timely complete an investigation does not prejudice  
14 the complaint.

15 (2) ~~Upon assignment of the investigator, a~~ A copy of the complaint must be served on the lawyer.

16 (3) The lawyer, within twenty days of service of the complaint, shall serve a written response to  
17 the allegations in the complaint upon ~~the assigned investigator~~ counsel. An extension may be granted  
18 by ~~the chair~~ counsel only upon a showing of good cause. Failure to make a timely response ~~is an~~ may  
19 be deemed an admission that the factual allegations of the complaint are true for purposes of  
20 proceedings before the district inquiry committee.

21 At any time the complaint is under consideration by the district inquiry committee or counsel, the  
22 ~~district inquiry committee may refer the lawyer~~ may be referred to the lawyer assistance program for  
23 screening for possible participation in the lawyer assistance program. Screening for possible  
24 participation in the lawyer assistance program may also be initiated by the lawyer at any time the  
25 complaint is under consideration by the district inquiry committee or counsel.

1 (4) Concurrent with submission of the lawyer's written response under section D(3), the lawyer  
2 shall serve a copy of the response, including all attachments, upon the complainant. The lawyer shall  
3 provide to ~~the assigned investigator~~ counsel proof of service of the response upon the complainant.  
4 Any subsequent written reply to the lawyer's response by the complainant must be provided to the  
5 lawyer within a reasonable time after receipt by ~~the investigator~~ counsel.

6 (5) Within 60 days of ~~assignment, absent an extension from the chair, the investigator~~ of receiving  
7 the complaint or a request for investigation, whichever occurs later, counsel shall file a written report  
8 with the chair containing a summary of the investigation and conclusions, the response received from  
9 the lawyer, and relevant documents. An extension may be granted by the chair only upon a showing  
10 of good cause. Counsel shall serve the written report upon the lawyer and the complainant at the time  
11 the report is filed with the chair.

12 (6) Notice of the opportunity to appear before the district inquiry committee must be provided to  
13 the complainant unless the complaint is subject to summary dismissal under Rule 3.1C, unless there  
14 is a diversion from discipline, ~~or unless in the chair's opinion the complainant poses a threat of harm~~  
15 ~~to the committee.~~

16 (7) Notice of the opportunity to appear before the district inquiry committee must be provided to  
17 the lawyer before entry of any discipline by the district inquiry committee, before diversion from  
18 discipline, or before referral for formal proceedings.

19 (8) Counsel shall promptly notify the complainant and lawyer in writing of the disposition of the  
20 complaint and the reasons for the inquiry committee's decision. The complainant, lawyer, or counsel  
21 may appeal any disposition, except a determination that there is probable cause or a diversion from  
22 discipline, to the board by filing a written request for review with counsel within 30 days of mailing  
23 of notice. The person appealing the inquiry committee's decision must show that the committee  
24 acted arbitrarily, capriciously, or unreasonably. Upon receipt of the written request, counsel shall  
25 refer the file to the board which shall consider the merits of the appeal. The determination of the  
26 board may be the subject of a petition for leave to appeal to the court, but leave will not be granted

1 unless the person seeking leave to appeal shows that the board acted arbitrarily, capriciously, or  
2 unreasonably. A petition for leave to appeal must be submitted within 30 days of mailing of notice  
3 of the board's determination.

4 ~~(9) The report required under section D(5) must be filed with the secretary upon disposition of the~~  
5 ~~matter by the district inquiry committee.~~

#### 6 E. Formal Proceedings.

7 (1) The board shall begin a formal disciplinary proceeding within 60 days of referral of a matter  
8 to the board for formal proceedings or within 60 days of the board's determination that there is  
9 probable cause to believe a lawyer committed misconduct warranting public discipline. Counsel shall  
10 initiate the proceeding by filing with the board and serving upon the lawyer a petition that is  
11 sufficiently clear and specific to inform the lawyer of the alleged misconduct. The time within which  
12 formal proceedings must be instituted may be extended for good cause. Upon receiving the petition  
13 the chair of the board shall assign the matter to a hearing panel.

14 At any time after assignment to the hearing panel, the hearing panel may refer the lawyer to the  
15 lawyer assistance program for screening for possible participation in the lawyer assistance program.  
16 Screening for possible participation in the lawyer assistance program may also be initiated by the  
17 lawyer at any time after the matter is assigned to the hearing panel. The hearing panel shall proceed  
18 with its consideration of the matter during the screening process.

19 (2) The lawyer shall serve an answer upon counsel and the assigned hearing panel within 20 days  
20 after the service of the petition, unless the time is extended by the chair of the hearing panel. In the  
21 event the lawyer fails to timely answer, the charges are admitted.

22 (3) If there are any material issues of fact raised by the pleadings or if the lawyer requests the  
23 opportunity to be heard in mitigation, the hearing panel shall give 25 days written notice of the  
24 hearing to the lawyer, complainant, and counsel, stating the date and place of hearing. The hearing

1 must be held in a judicial district in which the lawyer resides, is employed, or maintains an office.  
2 The notice of hearing must advise that the lawyer is entitled to be represented by counsel, to  
3 cross-examine witnesses, and to present evidence. The hearing must be recorded. The hearing panel  
4 may request that a transcript be made.

5 (4) Disciplinary counsel and the respondent may submit proposed findings, conclusions, and  
6 recommendations for sanction or order of dismissal to the hearing panel.

7 (5) All documents in a proceeding under this rule must be filed in accordance with Rule 5(d) of  
8 the North Dakota Rules of Civil Procedure, except the filing shall be made with the Secretary, with  
9 copies served upon the assigned hearing panel.

#### 10 F. Review by the Court.

11 (1) Within 60 days of the close of the hearing record, the hearing panel shall file with the secretary  
12 its order of dismissal, consent probation or reprimand. A copy of the panel's order must be served  
13 upon counsel, the complainant, and the lawyer. Counsel, the complainant, or the lawyer may seek  
14 court review of the panel's decision. A written petition for review, stating the reasons for the  
15 requested review, must be filed with the clerk within 20 days of service of the panel's order. The  
16 petition must contain a clear statement of the reasons petitioner believes the panel's decision is  
17 arbitrary, capricious, or unreasonable. The court may provide for oral arguments or the submission  
18 of briefs.

19 (2) Within 60 days of the close of the hearing record, the hearing panel shall submit to the court  
20 a report containing its findings and recommendations on each matter heard other than those resulting  
21 in dismissal, consent probation, or reprimand. The hearing panel's report shall contain mitigating  
22 or aggravating circumstances affecting the nature or degree of discipline recommended. A copy of  
23 the report submitted to the court must be served upon counsel, complainant, and the lawyer. Within  
24 20 days of service of the report, the lawyer and counsel may file objections to the report. Within 50  
25 days after service of the report, the lawyer and counsel may file briefs limited to objections timely

1 filed under this rule. Oral arguments may be requested by the lawyer or counsel, or may be set upon  
2 the court's own motion. Briefing and oral argument will be as provided in the North Dakota Rules  
3 of Appellate Procedure.

4 G. Reserved Authority. Nothing in these rules prevents the court from instituting disability or  
5 disciplinary proceedings, diversion from discipline, or participation in the lawyer assistance program  
6 on its own initiative.

7 [Adopted effective January 1, 1995. Amended effective July 1, 1999; August 1, 2001; January 16,  
8 2002; August 1, 2004; March 1, 2012; \_\_\_\_\_.]

## 1 PROPOSED AMENDMENTS

### 2 RULE 3.5. ADDITIONAL PROCEDURE.

3 A. Nature of Proceedings. Disability and disciplinary proceedings are neither civil nor criminal but  
4 are quasi-judicial proceedings.

5 B. Other Rules Apply. Except as otherwise provided in these rules and insofar as appropriate, the  
6 North Dakota Rules of Civil Procedure and North Dakota Rules of Evidence apply in disability and  
7 discipline proceedings.

8 C. Standard of Proof. Disposition of informal and formal charges of misconduct, petitions for  
9 reinstatement, and petitions for transfer to and from disability inactive or incapacitated status must  
10 be supported by clear and convincing evidence.

11 D. Burden of Proof. Counsel has the burden of proof in proceedings seeking discipline or transfer  
12 to disability inactive or incapacitated status. The lawyer has the burden of proof in proceedings  
13 seeking reinstatement or transfer from disability inactive or incapacitated status.

14 E. Prehearing Conference. ~~At the discretion of the hearing panel or upon request of either party, a~~  
15 ~~prehearing conference may be ordered for any purpose available under Rule 16 of the North Dakota~~  
16 ~~Rules of Civil Procedure. Following the filing of a petition for discipline, a petition for transfer to~~  
17 ~~disability inactive or incapacitated status, or a petition for reinstatement or readmission, the hearing~~  
18 ~~panel chair shall schedule at least one prehearing conference to be held as soon as practicable after~~  
19 ~~the petition is filed the time for a response has elapsed. The scheduling order must specify issues~~  
20 ~~that should be considered during the prehearing conference. The prehearing conference should be~~  
21 ~~arranged and conducted in a manner to ensure optimal use of resources.~~

22 F. Related Litigation. Except as authorized in Rules 4.1 and 5.1, a disability or disciplinary matter  
23 may not be delayed because of pending criminal or civil litigation, unless the board in its discretion

1 authorizes a stay for good cause shown.

2 G. No Abatement. Restitution by the lawyer; unwillingness of a complainant to pursue a complaint;  
3 settlement of the complaint; or compromise between a complainant and the lawyer does not in itself  
4 abate any proceeding before the court, hearing panel, or district inquiry committee.

5 H. Time Limitations. Except as otherwise provided in these rules, time is directory and not  
6 jurisdictional. Failure to observe prescribed time intervals may result in discipline against the  
7 violator but does not abate any proceeding.

8 I. Organizational Members. If a complaint is filed against counsel, a member of a district inquiry  
9 committee, or a member of the board, the matter must proceed in accordance with these rules except  
10 that:

11 (1) If the lawyer is counsel, the board shall appoint a special substitute temporary counsel to  
12 present the case;

13 (2) If the lawyer is a member of a district inquiry committee, the complaint must be referred to  
14 another district inquiry committee; or

15 (3) If the lawyer is a member of the board and the remaining members decline to act, the chief  
16 justice shall appoint a special board of not less than three persons for the case.

17 [Amended effective \_\_\_\_\_ . Amended effective July 1, 1999. Adopted effective January  
18 1, 1995.]

## 1 PROPOSED AMENDMENTS

### 2 RULE 4.1.CRIMINAL CONDUCT.

3 A.Certificate of Conviction. The clerk of any court in this state in which a lawyer is convicted of a  
4 crime shall within ten days of the conviction certify the conviction to counsel.

5 B. Determination of "Serious Crime".Upon being advised that a lawyer subject to the jurisdiction  
6 of the court has been convicted of a crime, counsel shall determine whether the crime constitutes a  
7 serious crime. If the crime is a serious crime, counsel shall prepare an order for interim suspension  
8 and forward it to the court with a certificate or other satisfactory evidence of the conviction. Counsel  
9 shall in addition file formal charges against the lawyer predicated upon the conviction. If the crime  
10 is not a serious crime, counsel shall process the matter like any other information coming to the  
11 attention of the board.

12 C. Definition of "Serious Crime". A serious crime is any felony and any lesser crime a necessary  
13 element of which, as determined by the statutory or common law definition of the crime, involves  
14 interference with the administration of justice, false swearing, misrepresentation, fraud, willful  
15 failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or  
16 a conspiracy or solicitation of another to commit any of those crimes.

17 D. Immediate Suspension. Upon ~~the filing with the court of a certificate or other satisfactory~~  
18 ~~evidence of conviction demonstrating proof~~ that a lawyer has been convicted or has pled or been  
19 found guilty of a serious crime, the court shall enter an order immediately suspending the lawyer  
20 ~~pending final disposition of a disciplinary proceeding predicated upon the conviction regardless of~~  
21 the pendency of any appeal. Upon ~~good cause shown a showing of extraordinary circumstances~~, the  
22 court may in the interest of justice set aside or modify an the interim suspension ~~based on conviction~~  
23 ~~of serious crime after affording disciplinary counsel and the lawyer notice and an opportunity to be~~  
24 heard.

25 E. Formal Procedure. In formal proceedings after conviction or a plea or finding of guilt for a serious

1 crime, the sole issue is the extent of the final discipline to be imposed. A disciplinary proceeding so  
2 instituted will not be brought to hearing until all appeals from the conviction, plea, or finding are  
3 concluded, unless the respondent requests that the matter not be deferred.

4 F. Certificate Conclusive. A certificate of a conviction of an attorney for any crime is conclusive  
5 evidence of the commission of that crime in any disciplinary proceeding based upon the conviction.

6 G. Automatic Reinstatement. If a lawyer under interim suspension for a serious crime demonstrates  
7 that the underlying plea or finding of guilt or conviction has been reversed or vacated, the order for  
8 interim suspension must be vacated and the lawyer placed on active status. Vacation of the interim  
9 suspension does not automatically terminate any formal proceeding then pending against the lawyer.

10 [Amended effective \_\_\_\_\_]

## 1 PROPOSED AMENDMENTS

### 2 RULE 4.2. DISCIPLINE BY CONSENT.

3 A. Conditional Admission to Hearing Panel Approval. A lawyer may tender a conditional admission  
4 in exchange for a stated form of discipline. The tendered admission must be submitted to counsel  
5 and approved or rejected by the hearing panel, subject to final approval or rejection by the court if  
6 the stated form of discipline includes disbarment or suspension. If the stated form of discipline is  
7 rejected by the hearing panel, the admission must be withdrawn and cannot be used against the  
8 lawyer in any subsequent proceedings. After approval by the hearing panel of the proposed discipline  
9 and, if required, by the court, the final order of discipline must be entered in accordance with the  
10 conditional admission tendered.

11 B. Stipulation of Consent. ~~A lawyer who consents to a stated form of discipline, or disciplinary~~  
12 ~~counsel, shall present to the hearing panel a~~ Any disciplinary matter may be resolved by stipulation  
13 at any time after investigation and an opportunity for any complainant to have been heard. The  
14 stipulation must set forth the stated form of discipline, which may include terms and conditions of  
15 probation, and any other appropriate provisions. The stipulation; must be signed by the lawyer and  
16 disciplinary counsel, stating that the lawyer desires to consent to the discipline and that:

17 (1) Consent is freely and voluntarily rendered; there is no coercion or duress; the lawyer is fully  
18 aware of the implications of the consent;

19 (2) The lawyer is aware that there is presently pending an investigation into, or a proceeding  
20 involving, allegations that grounds for discipline exist, the nature of which must be specifically set  
21 forth;

22 (3) The lawyer acknowledges that the material facts are true; ~~and~~

23 (4) The lawyer knows that the charges cannot be successfully defended; ~~and~~ and

1 (5) The lawyer waives procedural rights that may be available in the absence of the stipulation,  
2 including as appropriate the right to a complaint specifying the allegations of misconduct, the right  
3 to answer the allegations in writing, the right to have the allegations reviewed by an inquiry  
4 committee, the right to a formal petition for discipline, the opportunity to answer the petition for  
5 discipline, and the right to defend against the petition for discipline in a disciplinary hearing before  
6 a hearing panel.

7 C. Form. A stipulation must:

8 (1) provide sufficient detail regarding the particular acts or omissions of the lawyer to permit the  
9 entity considering the stipulation to form an opinion regarding the propriety of the proposed  
10 resolution and, if approved, to ensure the stipulation is useful in any subsequent disciplinary  
11 proceeding against the lawyer;

12 (2) set forth the lawyer's prior disciplinary record or its absence; and

13 (3) fix the amount of costs and expenses to be paid by the lawyer.

14 ~~C. Order of Discipline~~ D. Approval of Stipulation.

15 (1) Approval by district inquiry committee. If the discipline by consent complaint is under  
16 consideration by the district inquiry committee, and the proposed sanction is a reprimand an  
17 admonition or consent probation, or a combination of both, the hearing panel shall enter the order.  
18 ~~In all other instances in which proposed discipline has been consented to and approved, the court~~  
19 ~~shall enter the order disciplining the lawyer on consent. The stipulation may be sealed only by order~~  
20 ~~of the court stipulation may be approved or rejected by the committee as a whole or the chair may~~  
21 expedite consideration of the stipulation by appointing a three-member panel of not more than two  
22 lawyer members and at least one public member to approve or reject the stipulation.

23 (2) Approval by disciplinary board. If the proposed sanction is a reprimand, suspension, or  
24 disbarment, the chair of the board shall appoint a three-member panel of not more than two lawyer  
25 members and at least on public member to approve or reject the stipulation. Approval may be  
26 granted at any point before entry of an order or recommendation by the hearing panel under Rule  
27 3.1F. If the proposed sanction is a reprimand by the court, suspension, or disbarment, the approval  
28 must be in the form of a recommendation to the court in the manner specified in Rule 3.1F(2).

29 (3) Approval by the court. All stipulations agreeing to a reprimand by the court, suspension, or

1 disbarment must be submitted to the court. Following review in the manner specified in Rule  
2 3.1F(2), the court shall enter the order regarding the stipulation. The stipulation may be sealed only  
3 by order of the court.

4 E. Stipulation rejected. An order rejecting a stipulation must state the reasons for the rejection. A  
5 rejected stipulation has no force or effect and neither it nor the fact of its rejection is admissible in  
6 evidence in any disciplinary, civil, or criminal proceeding.

7 F. Failure to comply. A lawyer's failure to comply with the terms of an approved stipulation may be  
8 grounds for discipline.

9 [Amended effective \_\_\_\_\_.Amended effective July 1, 1999. Adopted effective January 1, 1995.]

# 1 PROPOSED AMENDMENTS

## 2 RULE 4.3. PROBATION.

3 A. Imposition. Probation may be imposed only in those cases in which there is little likelihood that  
4 the lawyer will harm the public during the period of probation and the conditions of probation can  
5 be adequately supervised.

6 B. Conditions. The conditions of the probation must be specifically stated and must be stipulated in  
7 writing. Conditions may include participation in the lawyer assistance program. Only the court may  
8 impose conditions of probation which limit the lawyer's right to practice law in this jurisdiction.

9 C. Monitoring. Disciplinary counsel shall monitor the lawyer's compliance with the conditions of  
10 probation imposed under these Rules. Counsel shall determine the means of monitoring considered  
11 sufficient to oversee lawyer compliance. Counsel may consult with the Lawyer Assistance  
12 Committee for purposes of identifying an appropriate monitor. The probation monitor shall  
13 periodically report to counsel regarding the probationer's progress. Before termination of any period  
14 of probation, the probationer and the monitor must file an affidavit with counsel stating that the  
15 lawyer has complied with all probation conditions. In the event of noncompliance by the  
16 probationer, the monitor shall immediately report the noncompliance to counsel. Counsel shall  
17 promptly inform the entity that imposed probation for purposes of consideration under Rule 1.3B.

18 [Amended effective August 1, 2004; \_\_\_\_\_.]

## 1 PROPOSED AMENDMENTS

### 2 RULE 6.1.RECORDS.

3 A. Confidentiality. Before the filing of the petition with the board by counsel, all proceedings  
4 involving an allegation of misconduct or disability of a lawyer and all associated records, including  
5 the complaint, investigative report, and recommendation, are confidential, except that the pendency,  
6 subject matter, status of an investigation, and final disposition, if any, may be disclosed by the chair  
7 of the board if:

8 (1) The lawyer has waived confidentiality;

9 (2) The proceedings are based upon conviction of a crime;

10 (3) The proceedings are based upon allegations that have become generally known to the public;  
11 or

12 (4) It involves matters alleging any form of disability and the court enters an order transferring the  
13 lawyer to disability inactive or incapacitated status.

14 All officials and employees of the board, hearing panels, or district inquiry committees in the  
15 proceedings shall maintain the confidentiality of the proceedings. This rule does not deny access to  
16 relevant information to authorized agencies investigating qualifications for admission to practice,  
17 to the client protection fund operated by the association investigating the validity of a client's claim,  
18 to law enforcement agencies investigating qualifications for government employment, or to any  
19 judicial nominating committee. Upon the filing of a formal petition with the board, counsel shall  
20 inform the appropriate local prosecutor, by mailing a copy of the petition to the local prosecutor, if  
21 counsel determines the facts alleged in the petition may constitute a criminal violation.

22 The confidentiality established by this rule does not apply to the dissemination or exchange of

1 information concerning any proceeding involving an allegation of misconduct or disability between  
2 district inquiry committees or between district inquiry committees and the board.

3 This rule does not require the disclosure of any records concerning a lawyer's screening for or  
4 participation in the lawyer assistance program.

5 B. Public Proceedings. Upon filing of the petition with the board by counsel, the proceedings are  
6 public, except for:

7 (1) Deliberations of the hearing panel, the board, and the court;

8 (2) Information with respect to which the hearing panel has issued a protective order, after  
9 showing of good cause by the lawyer; and

10 (3) The work product of counsel, hearing panels, inquiry committees, and the board.

11 C. Expunction of Records. The secretary or disciplinary counsel, as applicable, shall expunge records  
12 relating to dismissed complaints as follows:

13 (1) Destruction Schedule. All records or other evidence of the existence of a dismissed complaint  
14 must be destroyed three years after the dismissal.

15 (2) Retention of Records. Upon application to the board by counsel, for good cause shown and  
16 with notice to the lawyer and opportunity to be heard, records that should otherwise be expunged  
17 under this rule may be retained for additional time not exceeding three years as the board directs.  
18 Counsel may, for good cause shown and with notice to the lawyer and opportunity to be heard, seek  
19 a further extension of the period for which retention of the records is authorized whenever a previous  
20 application has been granted for the maximum period of three years permitted under this paragraph.  
21 [Amended effective \_\_\_\_\_ . Amended effective August 1, 2004. Amended effective July 1,  
22 1999. Adopted effective January 1, 1995].

1 PROPOSED AMENDMENTS

2 RULE 6.3. NOTICE OF STATUS - NONCOMPLIANCE.

3 A. Notice Required. Within 10 days after the date of the order by which the lawyer is disbarred,  
4 transferred to disability inactive or incapacitated status, placed on interim suspension, or suspended,  
5 the lawyer shall cause notice to be given by registered or certified mail, return receipt requested, to:

6 (1) All clients being represented in pending matters;

7 (2) Co-counsel in pending matters; and

8 (3) Opposing counsel in pending matters, or in the absence of such counsel, the adverse parties.

9 This notice must also state the place of residence of the client and of the lawyer. The notice must  
10 include the order of the court and state that the lawyer cannot act as a lawyer after the effective date  
11 of the order.

12 B. Special Notice. The court may direct the issuance of notice to such financial institutions or others  
13 as may be necessary to protect the interests of clients or other members of the public.

14 C. Client Property. The lawyer shall deliver to all clients being represented in pending matters any  
15 papers or other property to which they are entitled and shall notify them and any lawyer representing  
16 them of a suitable time and place where the papers and other property may be obtained, calling  
17 attention to any urgency for obtaining the papers or other property. The lawyer shall promptly refund  
18 any part of fees paid in advance which have not been earned.

19 D. New Representation Prohibited. The respondent may not undertake any new legal matters  
20 between service of the order and the effective date of discipline. Upon the effective date of the  
21 order, the respondent may not maintain a presence in or occupy an office in this jurisdiction where  
22 the practice of law is conducted. The respondent shall take such action as is necessary to cause the

1 removal of any indicia of lawyer, counselor at law, legal assistant, law clerk, or similar title.

2 ~~D.~~ E. Effective Date. Orders imposing suspension or disbarment, reprimand, probation, or transfer  
3 to disability inactive or incapacitated status are effective immediately, unless otherwise ordered by  
4 the court.

5 E. F. Winding Up. In the event the client does not obtain another lawyer before the effective date of  
6 the disbarment, transfer, or suspension, it is the responsibility of the disciplined lawyer to move for  
7 leave to withdraw in each court or agency in which a proceeding is pending. The lawyer shall file  
8 with the court or agency before which the matter is pending a copy of the notice to opposing counsel  
9 or adverse parties.

10 F. G. Proof of Compliance. Within 10 days after the effective date of an order of disbarment,  
11 suspension, or transfer to disability inactive or incapacitated status, the lawyer shall file with the  
12 court an affidavit showing:

13 (1) Full compliance with the provisions of the order and with these rules;

14 (2) All other state, federal and administrative jurisdictions of admission to practice;

15 (3) The residence or other addresses where communications may thereafter be directed to the  
16 lawyer; and that

17 (4) A copy of such affidavit has been served upon counsel.

18 H. Contempt. Disciplinary counsel may petition the Supreme Court to hold a disbarred or suspended  
19 lawyer in contempt for failing to comply with sections A through G of this rule or the provisions of  
20 an order entered in a disciplinary proceeding. The court may order the lawyer to appear and show  
21 cause, if any, why the lawyer should not be held in contempt of court and sanctioned accordingly.  
22 [Amended effective \_\_\_\_\_.]

## 1 PROPOSED AMENDMENTS

### 2 RULE 6.4. PROFESSIONAL TRUSTEESHIPS.

3 A. Inventory of Attorney Files, Trust Assets, and Other Duties. If a lawyer has been transferred to  
4 disability inactive or incapacitated status, placed on interim suspension, or has been suspended or  
5 disbarred, and there is evidence of non-compliance with Rule 6.3; or if a lawyer has apparently  
6 abandoned the lawyer's law practice, or has died, and no partner, shareholder, personal  
7 representative, administrator, executor or other responsible party capable of conducting the lawyer's  
8 affairs is known to exist, the presiding judge in the judicial district in which the lawyer's primary  
9 place of business is located, upon the application of any interested party, may appoint one or more  
10 lawyers as a professional trustee, to inventory the active files of the lawyer, to take control of the  
11 attorney's trust and business accounts and any trust assets, to take possession of the attorney's law  
12 practice, and to take appropriate action, including marshalling assets of the law practice, primarily  
13 to protect the interests of the lawyer's clients and secondarily to protect the interests of the lawyer.  
14 Notice of such order of appointment must be given to the clerk.

15 B. Protection for Records. Any professional trustee so appointed is not permitted to disclose  
16 information contained in any files without the consent of the client to whom the file relates, except  
17 as necessary to carry out the appointment order of the court.

18 C. Instructions. The professional trustee may apply to the presiding judge in the judicial district  
19 issuing the order of appointment for instructions whenever necessary to carry out or conclude the  
20 duties and obligations imposed by this rule.

21 D. Immunity. All professional trustees appointed under this rule have qualified immunity from  
22 liability for conduct in the performance of their official duties. This immunity does not extend to  
23 employment under section E.

24 E. Acceptance of Clients. With the consent of any client, the appointed professional trustee may, but

1 need not, accept employment to complete any legal matter.

2 F. Legal Fees and Costs. The professional trustee is entitled to reimbursement for actual expenses  
3 incurred for costs (including physical office overhead, publication of notices, travel, secretarial,  
4 telephone, postage, moving and storage expenses) and for reasonable hourly fees. Application for  
5 approval of costs and fees must be to the presiding judge in the judicial district issuing the order of  
6 appointment at the conclusion of the trusteeship and must be accompanied by an accounting of all  
7 assets coming into the professional trustee's possession. Any application must be made on such  
8 notice to the board and to the lawyer or, if deceased, to the lawyer's personal representative, or  
9 administrator as the court may order. For good cause shown, an interim application for costs and  
10 legal fees may be made. The professional trustee shall, from the time of appointment, have absolute  
11 priority as an administrative expense against the law practice of the lawyer, including all personal  
12 and other property incident to the practice and all legal fees due the lawyer, whether arising before  
13 or after the appointment. To the extent such assets of the lawyer are insufficient to pay approved  
14 professional trustees fees and costs, the board shall pay the same if funds are available. To the extent  
15 the funds of an identifiable interest bearing trust account cannot be traced back to a particular client  
16 by the professional trustee, the funds may be applied toward client claims, creditors, and the  
17 approved fees and costs of the professional trustee, with the remaining amount deposited into the  
18 client protection fund.

# 1 PROPOSED AMENDMENTS

## 2 RULE 6.6. DIVERSION FROM DISCIPLINE.

3 A. Lawyer Assistance Program Committee. A lawyer assistance program committee is established  
4 pursuant to by Administrative Rule 49.

5 B. Cases Appropriate for Diversion from Discipline. The purpose of diversion from discipline is to  
6 protect the public by improving the professional competence of and providing educational, remedial,  
7 and rehabilitative programs to members of the association through:

8 1. The early identification of lawyers who have violated the North Dakota Rules of Professional  
9 Conduct in ways which do not raise questions about the lawyer's moral fitness or integrity, but about  
10 the lawyer's practice administration or organization, health, or competence.

11 2. The prevention of similar ethical violations by identified lawyers by altering the circumstances  
12 which caused the violation.

13 3. The improvement of the quality and speed of formal disciplinary proceedings against those  
14 lawyers whose conduct warrants formal proceedings by reducing recidivism and reallocating  
15 disciplinary system time toward more serious disciplinary matters.

16 C. Cases involving poor administration, poor practice skills, alcohol or drug addiction or abuse, less  
17 serious misconduct, or other deficiencies in professional capabilities are often best suited for  
18 diversion from discipline. For purposes of this rule, conduct is not ordinarily considered less serious  
19 misconduct if any of the following considerations apply:

20 1. The misconduct involves the misappropriation of funds;

21 2. The misconduct results in or is likely to result in substantial prejudice to a client or other  
22 person, absent adequate provisions for restitution;

23 3. The lawyer has been sanctioned in the preceding three years;

1 4. The misconduct is of the same nature as misconduct for which the lawyer has been  
2 sanctioned in the preceding five years;

3 5. The misconduct involves dishonesty, deceit, fraud, or misrepresentation;

4 6. The misconduct constitutes a crime that is classified as a felony; or

5 7. The misconduct is part of a pattern of similar misconduct.

6 D. In considering a case for diversion from discipline, the reviewing entity shall determine whether,  
7 under all of the circumstances, diversion from discipline can reasonably be expected to treat, educate,  
8 or alter the respondent's behavior or otherwise address the underlying problem so as to minimize the  
9 risks that the respondent will commit the same or similar acts of misconduct in the future. Such  
10 circumstances include the nature of the violation; the duty involved; whether the respondent was  
11 involved in self-dealing, dishonest conduct, or a breach of fiduciary duty; whether harm resulted; and  
12 the absence or presence of aggravating or mitigating factors; and whether diversion was previously  
13 attempted.

14 E. Diversion under this rule may include:

15 1. Fee arbitration;

16 2. Arbitration;

17 3. Mediation;

18 4. Law office management assistance;

19 5. Psychological and behavioral counseling;

20 6. Completion of an addiction treatment program;

21 7. An agreement for random testing for drugs and alcohol;

22 8. Monitoring;

23 9. Restitution;

24 10. Continuing legal education; or

25 11. Any other program or corrective course of action considered appropriate to address the  
26 lawyer's misconduct.

27 F. Intake and Screening. Referral to the lawyer assistance program can be initiated by any person  
28 involved in discipline, including a lawyer against whom a complaint has been filed. The lawyer  
29 assistance program will conduct appropriate intake and screening to determine whether a lawyer who  
30 has been referred to the program would benefit from the lawyer assistance program.

1 ~~D.~~ G. Individualized Assistance Plan. ~~If, after~~ After intake and screening, the lawyer assistance  
2 program committee ~~determines that will determine whether~~ a lawyer would benefit from the  
3 program, ~~the committee will select.~~ Disciplinary counsel and a person with expertise in the apparent  
4 problem area ~~who~~ will work with the lawyer to be assisted in developing an individualized assistance  
5 plan. The individualized assistance plan ~~shall~~ must be approved by the committee. An individualized  
6 assistance plan ~~might~~ may include, e.g., ~~completion of an office management training program,~~  
7 ~~mentoring in office management skills, completion of an addiction treatment program, an agreement~~  
8 ~~for random testing for drugs and alcohol, or an agreement to obtain appropriate professional~~  
9 ~~counseling~~ any of the forms of diversion identified in Section E.

10 ~~E.~~ H. Approval of Individualized Assistance Plan. If participation in the lawyer assistance plan is to  
11 be a condition of diversion from the discipline system, the assistance plan must be signed by the  
12 lawyer and must include a specific acknowledgment that a material violation of a term of the plan  
13 renders the lawyer's participation in diversion voidable. The assistance plan must be approved by  
14 the entity currently considering the complaint against the lawyer, whether it is a district inquiry  
15 committee, the disciplinary board, or the Supreme Court. The assistance plan may be amended on  
16 agreement of the lawyer and the reviewing entity. The lawyer assistance program committee ~~shall~~  
17 ~~be~~ is responsible for monitoring compliance with the individualized assistance plan and reporting  
18 compliance or non-compliance to ~~the entity that approved the plan~~ disciplinary counsel.

19 I. Compliance - Non-Compliance with Individualized Assistance Plan. Disciplinary counsel shall  
20 report the lawyer's compliance or non-compliance with the individualized assistance plan to the  
21 entity considering the complaint for further disposition of the complaint. If the lawyer fails to comply  
22 with the plan, counsel shall notify the lawyer that the plan is terminated and that disciplinary  
23 proceedings may be instituted, resumed, or reinstated. Counsel shall submit a recommendation to  
24 the entity considering the complaint.

25 ~~F.~~ J. Costs of Individualized Assistance Plan. A lawyer participating in the lawyer assistance  
26 program is responsible for all costs associated with compliance with the lawyer's individualized  
27 assistance plan.

1 G. K. Confidentiality and Immunity. Information regarding a lawyer's participation in a lawyer  
2 assistance program is confidential under Administrative Rule 49, section 4.

3 Immunity of persons involved in the lawyer assistance program is governed by  
4 Administrative Rule 49, section 5.

5 [Adopted effective August 1, 2004. Amended effective \_\_\_\_\_.]

1 PROPOSED AMENDMENTS

2 RULE 6.7. EFFECTIVE DATE.

3 These rules, as amended, become effective on ~~August 1, 2004~~ \_\_\_\_\_. Any matter then  
4 pending with respect to which a formal hearing has been commenced shall be concluded under the  
5 procedure existing prior to the effective date of these rules.

6 [Amended effective \_\_\_\_\_. Amended effective August 1, 2004. Amended effective July 1,  
7 1999. Adopted effective January 1, 1995.]