

CURRENT ADMISSION AND DISCIPLINE RULE 23
(rearranged for side-by-side comparison)

Section 1. General Principles

Each person granted the privilege to practice law in this State has the obligation to behave at all times in a manner consistent with the trust and confidence reposed in him or her by this Court and in a manner consistent with the duties and responsibilities as an officer or judge of the courts of this State. The Supreme Court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as “attorney”) is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

The term “attorney” as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and

PROPOSED AMENDMENTS TO ADMISSION AND DISCIPLINE RULE 23 (without table of contents and exhibits)

I. Overview

Section 1. General Principles

(a) *Duties of attorneys.* Each person exercising the privilege to practice law in this State has the obligation to behave at all times in a manner consistent with the trust and confidence reposed in him or her by the Indiana Supreme Court (“Supreme Court”) and in a manner consistent with the duties and responsibilities as an officer or judge of the courts of this State.

(b) *Supreme Court’s exclusive jurisdiction.* The Supreme Court has exclusive jurisdiction of all cases in which an attorney is charged with misconduct under this Rule.

(c) *Purpose.* The procedures set forth in this Rule shall be employed and construed to protect the public, the courts and the members of the bar of this State from misconduct on the part of attorneys, and to protect attorneys from unwarranted claims of misconduct.

(d) *Definitions.*

(1) The term “attorney” as used in this Rule shall include all persons admitted to the bar of this State, all

Commented [A1]: Substantial proposed amendments are noted by yellow highlighting in the comments.

Commented [A2]: Language is clarified and additional definitions are added.

Commented [A3]: The term “attorney” is defined below. The phrase “under this Rule” is added to address arguments that other courts lack any jurisdiction to deal with misconduct, e.g., through contempt powers.

Commented [A4]: Definitions (3) through (7) are new.

<p>all courts of this State now in existence or hereafter created or established.</p> <p>Unless otherwise specified, the term “Clerk” as used in this rule shall mean the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.</p>	<p>persons who practice law in this State, and all judges of all courts of this State.</p> <p>(2) Unless otherwise specified, the term "Supreme Court Clerk" as used in this Rule shall mean the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court, 217 State House, Indianapolis, Indiana 46204.</p> <p>(3) The “Disciplinary Commission” shall mean the Disciplinary Commission of the Indiana Supreme Court established under Section 6(a) of this Rule.</p> <p>(4) The “Executive Director” shall mean the Executive Director of the Disciplinary Commission appointed under Section 8(a)(1) of this Rule.</p> <p>(5) The term “respondent” shall mean a person who is named as the respondent in any court proceeding under this Rule, or who is the subject of an investigation under Section 10 of this Rule.</p> <p>(6) “This Rule” shall mean Admission and Discipline Rule 23, including all of its Sections.</p> <p>(7) “Suspension without automatic reinstatement” shall mean suspension from the practice of law subject to reinstatement as provided under Section 18(b) pursuant to a final order in a disciplinary or disability</p>
---	--

Commented [A5]: “Supreme Court Clerk” replaces “Clerk” to avoid confusion regarding where documents should be filed when a case is before a HO. Address is added as aid for those needed to send documents to the Clerk.

	<p>proceeding , or pursuant to an order accepting resignation from the bar.</p>
<p>Section 2. Grounds for Discipline or Suspension</p> <p>(a) Any conduct that violates the Rules of Professional Conduct or the Code of Judicial Conduct heretofore adopted or as hereafter amended by this Court or any standards or rules of legal and judicial ethics or professional responsibility then in effect or hereafter adopted by this Court shall constitute grounds for discipline.</p> <p>(b) If an attorney admitted to practice in this State who is also admitted to practice in any other state should be disbarred or suspended by the proper authority of such other state, such disbarment or suspension shall constitute sufficient grounds for disbarment or suspension of said attorney in this State.</p> <p>(c) Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of such disability.</p>	<p>Section 2. Grounds for Discipline or Suspension</p> <p>(a) <i>Indiana standards of conduct.</i> Any conduct that violates the Rules of Professional Conduct or the Code of Judicial Conduct or any standards or rules of legal and judicial ethics or professional responsibility in effect in Indiana at the time of the alleged misconduct shall constitute grounds for discipline.</p> <p>(b) <i>Standards of conduct of other jurisdictions.</i> If an attorney admitted to practice in this State who is also admitted to practice in any other jurisdiction should be disbarred or suspended by the proper authority of the other jurisdiction, the disbarment or suspension shall constitute sufficient grounds for reciprocal discipline of the attorney in this State.</p> <p>(c) <i>Disability.</i> Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of the disability.</p>

Section 3. Types of Discipline and Suspension

- (a) One of the following types of discipline may be imposed upon any attorney found guilty of misconduct: permanent disbarment from the practice of law; suspension for a definite or an indefinite period from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite period, not to exceed six (6) months, from the practice of law with provision for automatic reinstatement upon such conditions as the Court shall specify in the order of suspension; a public reprimand; a private reprimand; or a private administrative admonition.
- (b) Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended for the duration of such disability.
- (c) In cases of misconduct or disability, this Court may, in lieu of permanent disbarment or suspension, place an attorney on probation and permit such attorney to continue practicing law if in its opinion such action is appropriate and desirable. In such event, the attorney will be subject to such conditions, limitations and restrictions as this Court may see fit to impose, and upon a violation of such conditions, restrictions or limitations, said attorney may be suspended or disbarred.

Section 3. Types of Discipline and Suspension; Notice of Orders and Opinions

- (a) *Discipline for professional misconduct.* One of the following types of discipline may be imposed upon any attorney found to have committed professional misconduct: (1) permanent disbarment from the practice of law; (2) suspension from the practice of law subject to reinstatement as provided under Section 18(b); (3) suspension from the practice of law for a fixed period of time, not to exceed 180 days, with provision for automatic reinstatement after the expiration of the fixed period, upon any conditions as the Supreme Court may specify in the order of suspension; (4) a public reprimand; (5) a private reprimand; or (6) a private administrative admonition.
- (b) *Disability suspension.* Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended indefinitely for the duration of the disability.
- (c) *Probation.* In cases of misconduct or disability, the Supreme Court may, in lieu of permanent disbarment or suspension, stay the discipline in whole or in part, place an attorney on probation and permit the attorney to continue practicing law if in its opinion this action is appropriate and desirable. In this event, the attorney shall be subject to conditions, limitations and restrictions as the Supreme Court may see fit to impose, and upon a violation of these

Commented [A6]: This refers suspension without automatic reinstatement. The term “definite” is removed. The period of suspension without automatic reinstatement is never definite because the length of the reinstatement process varies.

Commented [A7]: Changed from six months, consistent with the Court’s usual practice of framing such suspensions in terms of days rather than months. (180 days is also used in lieu of six months in Section 18(a) (reinstatement) and 26 (duties of suspended attorneys.))

Commented [A8]: Added to make explicit current Court practice.

<p>(d) Notice of permanent disbarment, resignation under Section 17, suspension, reinstatement (except automatic reinstatement), revocation of probation, release from probation, or public reprimand shall be communicated to the parties to the proceeding, the Clerk of this Court; the Clerk of the United States Court of Appeals for the Seventh Circuit; the Clerk of each of the Federal District Courts in this State; the Clerk of the United States Bankruptcy Courts in this State; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each county in which the attorney maintains an office; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each contiguous county; a newspaper of general circulation in each county in which the attorney maintains an office; the official publication of the Indiana State Bar Association; and the American Bar Association. In addition, notice of disbarment, resignation under Section 17 or suspension of one year or more shall be communicated to the Clerk of the United States Supreme Court. Notice of private reprimand shall be communicated to the parties to the proceeding and the Clerk of this Court. In cases where probation is imposed by this Court, the Clerk shall notify such persons as the Court may direct of the action taken and of the restriction, conditions or limitations.</p>	<p>conditions, restrictions or limitations, probation may be revoked and the attorney may be suspended or disbarred.</p> <p>(d) <i>Required notice of orders and opinions.</i></p> <p>(1) Notice of orders and opinions imposing permanent disbarment, accepting resignation under Section 17, imposing suspension, granting reinstatement, revoking probation, and imposing public reprimand shall be given by the Supreme Court Clerk to the respondent and the Disciplinary Commission; the Clerk of the United States Court of Appeals for the Seventh Circuit; the Clerk of each of the Federal District Courts in this State; the Clerk of the United States Bankruptcy Courts in this State; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each county in which the attorney maintains an office; the Clerk of the Court, Circuit and Superior Court judges, and Bar Association of each contiguous county; a newspaper of general circulation in each county in which the attorney maintains an office; the official publication of the Indiana State Bar Association; and the American Bar Association.</p> <p>(2) In addition, notice of disbarment, resignation under Section 17, or suspension of one year or more shall be given to the Clerk of the United States Supreme Court.</p> <p>(3) Notice of private reprimand shall be given to the respondent and to the Disciplinary Commission.</p>
---	---

Commented [A9]: Modified to clarify that the Clerk does not need to give notice of events that happen without order or opinion, e.g., release from probation when there is no objection. Also to clarify that it is the Clerk who gives notice, rather than being among those who receive notice.

	<p>(4) In cases where probation is imposed by the Supreme Court, the Supreme Court Clerk shall notify persons as the Supreme Court may direct of the action taken and of the restriction, conditions or limitations.</p>
<p>Section 21. Sources and Uses of Funds</p> <p>(a) The Indiana Supreme Court shall periodically designate a portion of the registration fees charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Disciplinary Commission. The Executive Secretary of the Disciplinary Commission shall deposit such funds into an account designated “Supreme Court Disciplinary Commission Fund.”</p> <p>(b) Disbursements from the fund shall be made solely upon vouchers signed by or pursuant to the direction of the Chief Justice of this Court.</p> <p>(c) The Supreme Court shall specifically approve all salaries to be paid out of the Disciplinary Commission Fund.</p> <p>(d) Not later than May 1 of each year, the Commission shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.</p>	<p><u>II. The Disciplinary Commission and Bar Associations</u></p> <p>Section 4. Sources and Uses of Funds</p> <p>(a) <i>Source and deposit of funds.</i> The Supreme Court shall periodically designate a portion of the registration fees charged to attorneys pursuant to Admission and Discipline Rule 2 to be used for the operations of the Disciplinary Commission. The Executive Director of the Disciplinary Commission shall deposit these funds into an account designated “Supreme Court Disciplinary Commission Fund.”</p> <p>(b) <i>Disbursements.</i> Disbursements from the fund shall be made solely upon vouchers signed by or pursuant to the direction of the Chief Justice of the Supreme Court.</p> <p>(c) <i>Salaries.</i> The Supreme Court shall specifically approve all salaries to be paid out of the Disciplinary Commission Fund.</p> <p>(d) <i>Budget.</i> Not later than May 1 of each year, the Disciplinary Commission shall submit for approval by the Supreme Court an operating budget for July 1 to June 30 of the following fiscal year.</p>

Section 5. Role of Bar Association

(a) Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this rule. Such bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. Such bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation of claims of misconduct upon request by the Disciplinary Commission.

(b) Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independently of any request by the Disciplinary Commission and without referring such dispute to the Disciplinary Commission. Such action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorney's services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with such attempt at resolution shall have a right to file a formal complaint with the Disciplinary Commission if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual

Section 5. Role of Bar Associations

(a) *Mandatory and prohibited actions.* Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this Rule. The bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. The bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation of claims of misconduct upon request by the Disciplinary Commission.

(b) *Permissive actions regarding fee disputes.* Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independently of any request by the Disciplinary Commission and without referring the dispute to the Disciplinary Commission. Action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorney's services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with the attempt at resolution shall have a right to file a formal grievance with the Disciplinary Commission pursuant to Section 10(a) if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual considerations taken into account in determining an attorney's

<p>considerations taken into account in determining an attorney's charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.</p> <p>(c) A bar association of this State shall be permitted to prepare and file a claim of misconduct with the Disciplinary Commission under the following circumstances:</p> <p>(1) The decision to prepare and file such claim of misconduct shall be taken at a regular or special meeting of said bar association after notice has been given to the members of such association</p> <p style="text-align: center;">or</p> <p>Where such association has a governing Board of Managers or Board of Directors, such decision may be taken at a regular or special meeting of such Board of Managers or Board of Directors after notice to such managers or directors.</p> <p>(2) A quorum of the members of such association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.</p> <p>(3) The decision to file a claim of misconduct shall be made by a roll call vote of the members, managers or directors in attendance at such meeting, with the vote of each member present being recorded.</p>	<p>charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.</p> <p>(c) <i>Authorization to file grievance.</i> A bar association of this State shall be permitted to prepare and file a grievance with the Disciplinary Commission under the following circumstances:</p> <p>(1) The decision to prepare and file the grievance shall be taken at a regular or special meeting of the bar association after notice has been given to the members of the association; or, where the association has a governing Board of Managers or Board of Directors, the decision may be taken at a regular or special meeting of the Board of Managers or Board of Directors after notice to the managers or directors.</p> <p>(2) A quorum of the members of the association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.</p> <p>(3) The decision to file grievance shall be made by a roll call vote of the members, managers or directors in attendance at the meeting, with the vote of each member present being recorded.</p>
---	---

Section 6. Composition of Supreme Court Disciplinary Commission

- (a) A Disciplinary Commission to be known as the “Disciplinary Commission of the Supreme Court of Indiana” (hereinafter referred to as “the commission”) is hereby created and shall have the powers and duties hereinafter set forth.
- (b) The Disciplinary Commission shall consist of nine (9) members appointed by the Supreme Court of Indiana, seven (7) of whom shall be admitted to the Bar of the Supreme Court and two (2) of whom shall be lay persons. Those who are not members of the Bar must take and subscribe to an oath of office which shall be filed and maintained by the Clerk. A reasonable effort shall be made to provide a geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5) years. The initial term of the two additional members authorized by the amendment of this subsection effective February 1, 1996, shall be for two (2) and four (4) years, respectively. Thereafter, the terms of each appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term,

Section 6. Composition of Supreme Court Disciplinary Commission

- (a) *Establishment.* A Disciplinary Commission to be known as the “Disciplinary Commission of the Supreme Court of Indiana” is hereby created and shall have the powers and duties hereinafter set forth.
- (b) *Composition.* The Disciplinary Commission shall consist of nine (9) members appointed by the Supreme Court of Indiana, seven (7) of whom shall be admitted to the Bar of the Supreme Court and two (2) of whom shall be lay persons. Those who are not members of the Bar must take and subscribe to an oath of office which shall be filed and maintained by the Supreme Court Clerk. A reasonable effort shall be made to provide diversity in membership, including practice area and geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this Rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5) years. The initial term of the two additional members authorized by the amendment of this subsection effective February 1, 1996, shall be for two (2) and four (4) years, respectively. Thereafter, the terms of each appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term, until the end of the unexpired term. Any member may be terminated by the Supreme Court for good cause.

Commented [A11]: Broadens efforts for diversity.

<p>until the end of such unexpired term. Any member may be terminated by the Court for good cause.</p> <p>(c) Commission members who are not admitted to the Bar shall not be eligible for appointment as hearing officers under Section 18(b) of this rule.</p>	
<p>Section 7. Organization of the Disciplinary Commission</p> <p>(a) The Commission shall annually elect from among its membership a Chairman who shall preside at all meetings, a Vice Chairman who shall preside in the absence of the Chairman, and a Secretary who shall keep the minutes of the meetings of the Commission.</p> <p>(b) Five (5) Commissioners shall constitute a quorum of the Commission and the Commission shall act by a vote of a majority of Commissioners present.</p> <p>(c) The Commission shall meet monthly at a time and place designated by the Chairman who may also convene special meetings of the Commission in his or her discretion. The members of the Commission shall be allowed their necessary expenses and such reasonable compensation as the Supreme Court shall fix from time to time.</p>	<p>Section 7. Organization of the Disciplinary Commission</p> <p>(a) <i>Officers.</i> The Disciplinary Commission shall annually elect from among its membership a Chairman who shall preside at all meetings, a Vice Chairman who shall preside in the absence of the Chairman, and a Secretary who shall keep the minutes of the meetings of the Disciplinary Commission.</p> <p>(b) <i>Quorum.</i> Five (5) Commissioners shall constitute a quorum of the Disciplinary Commission, and the Disciplinary Commission shall act by a vote of a majority of Commissioners present.</p> <p>(c) <i>Meetings.</i> The Disciplinary Commission shall meet monthly at a time and place designated by the Chairman, who may also convene special meetings of the Disciplinary Commission in his or her discretion.</p> <p>(d) <i>Expenses and compensation.</i> The members of the Disciplinary Commission shall be allowed their necessary expenses and reasonable compensation as the Supreme Court shall fix from time to time.</p>

Commented [A10]: HO qualifications are now covered in Section 18.

Section 8. Powers and Duties of the Disciplinary Commission

In addition to the powers and duties set forth in this Rule, the Commission shall have the power and duty to:

- (a) appoint with the approval of the Supreme Court an Executive Secretary of the Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Commission;
- (b) prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to such persons;
- (c) supervise the investigation of claims of misconduct;
- (d) issue subpoenas, including subpoenas duces tecum; the failure to obey such subpoena may be punished as contempt of this Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10(f) of this Rule;

Section 8. Powers and Duties of the Disciplinary Commission

(a) *Duties and powers.* In addition to the powers and duties set forth in this Rule, the Disciplinary Commission shall have the duty and power to:

- (1) Appoint with the approval of the Supreme Court an Executive Director of the Disciplinary Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Disciplinary Commission.
- (2) Prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to these persons.
- (3) Supervise the investigation of claims of misconduct.
- (4) Issue subpoenas; the failure to obey the subpoena may be punished as contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule.

<p>(e) do all things necessary and proper to carry out its powers and duties under these Rules;</p> <p>(f) the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.</p> <p>Section 23. Annual Report</p> <p>The commission shall make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.</p> <p>Section 24. Rules of Procedure</p> <p>The Commission may adopt rules and regulations for the efficient discharge of its power and duties. Such rules and regulations shall become effective upon approval by a majority of this Court.</p>	<p>(5) Do all things necessary and proper to carry out its powers and duties under these Rules.</p> <p>(6) Exercise the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.</p> <p>(7) Make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.</p> <p>(b) <i>Rules and regulations.</i> The Disciplinary Commission may propose rules and regulations for the efficient discharge of its power and duties. These rules and regulations shall become effective upon approval by a majority of the Supreme Court.</p>
<p>Section 9. Powers and Duties of the Executive Secretary</p> <p>In addition to the powers and duties set forth in this Rule, the Executive Secretary shall have the power and duty to:</p> <p>(a) administer the Commission's work;</p>	<p>Section 9. Powers and Duties of the Executive Director</p> <p>In addition to the powers and duties set forth in other Sections of this Rule, the Executive Director shall have the power and duty to:</p> <p>(a) Administer the Disciplinary Commission's work.</p>

Commented [A12]: This provision was formerly Section 23.

Commented [A13]: This provision was formerly Section 24.

<p>(b) appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule;</p> <p>(c) supervise and direct the work of the Commission's staff;</p> <p>(d) appoint and assign duties to investigators;</p> <p>(e) supervise the maintenance of the Commission's records;</p> <p>(f) issue subpoenas in the name of the Commission, including subpoenas duces tecum. The failure to obey such a subpoena shall be punished as a contempt of this Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10(f) of this Rule;</p> <p>(g) enforce the collection of the registration fee provided in Ind. Admission and Discipline Rule 2 against delinquent members of the Bar;</p> <p>(h) notwithstanding Section 22, cooperate with the attorney disciplinary enforcement agencies of other jurisdictions, including, upon written request, the release of any documents or records that are in the control of the Executive Secretary to the chief executive of an attorney disciplinary enforcement</p>	<p>(b) Appoint, with the approval of the Disciplinary Commission, staff as may be necessary to assist the Disciplinary Commission to carry out its powers and duties under this Rule.</p> <p>(c) Supervise and direct the work of the Disciplinary Commission's staff.</p> <p>(d) Appoint and assign duties to investigators.</p> <p>(e) Supervise the maintenance of the Disciplinary Commission's records.</p> <p>(f) Issue subpoenas in the name of the Disciplinary Commission. The failure to obey the subpoena shall be punished as a contempt of the Supreme Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10.1(c) of this Rule.</p> <p>(g) Enforce the collection of the registration fee provided in Ind. Admission and Discipline Rule 2 against delinquent members of the Bar.</p> <p>(h) Notwithstanding Section 22, cooperate with the attorney disciplinary enforcement agencies of other jurisdictions, including, upon written request, the release of any documents or records that are in the control of the Executive Director to the chief executive of an attorney</p>
--	---

<p>agency in any jurisdiction in which an Indiana attorney is also admitted; and</p> <p>(i) do all things necessary and proper to carry out the Executive Secretary's duties and powers under this Rule.</p>	<p>disciplinary enforcement agency in any jurisdiction in which an Indiana attorney is also admitted.</p> <p>(i) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.</p>
<p>Section 10. Investigatory Procedures</p> <p>(a) Upon receipt of a written, verified claim of misconduct (hereinafter referred to as “the grievance”), from a member of the public, a member of this bar, a member of the Commission, or a Bar Association (hereinafter referred to as “the grievant”) and completion of such preliminary investigation as may be deemed appropriate, the Executive Secretary shall:</p> <p>(1) Dismiss the claim, with the approval of the Commission, if the Executive Secretary determines that it raises no substantial question of misconduct; or</p> <p>(2) If the Executive Secretary determines that it does raise a substantial question of misconduct, send a copy of the grievance by certified mail to the attorney against whom the grievance is filed (hereinafter referred to as “the respondent”) and shall demand a written response. The respondent shall respond within twenty (20) days, or within such additional time as the</p>	<p>III. Specific Procedures</p> <p>Section 10. Investigatory Procedures</p> <p>(a) <i>Initial review of grievances.</i> Upon receipt of a written, verified request for investigation (“the grievance”), from any person, including a bar association (“the grievant”), and completion of a preliminary investigation as may be appropriate, the Executive Director may:</p> <p>(1) Dismiss the grievance, with subsequent approval by the Disciplinary Commission, if the Executive Director determines that it raises no substantial question of misconduct. In the event of a dismissal, the grievant and the attorney against whom the grievance is filed (“the respondent”) shall be given written notice of the Executive Director’s determination.</p> <p>(2) If the Executive Director determines that the grievance raises a substantial question of misconduct, the Executive Director shall send a copy of the grievance by certified mail to the respondent and shall demand a written response from the respondent.</p>

Commented [A18]: This Section has been substantially revised to streamline and make more efficient investigatory procedures.

Commented [A19]: Term now matches term used in Section 8(a)(2) and on website form.

Commented [A20]: Formerly “with the approval” of the Commission. In practice, the Executive Director presents a list of dismissed grievances to the Commission at its next meeting for review and approval. The change in wording better reflects, but does not change, actual practice.

<p>Executive Secretary may allow, after the respondent receives a copy of the grievance. In the event of a dismissal as provided herein, the person filing the grievance and the respondent shall be given written notice of the Executive Secretary's determination. In the event of a determination that a substantial question exists, the matter shall proceed to subsection (b) hereinafter.</p>	<p>(b) <i>Grievance on behalf of Disciplinary Commission.</i> Upon receipt of information from any source, the Executive Director may draft a grievance on behalf of the Disciplinary Commission. The Executive Director shall send a copy of the grievance by certified mail to the respondent and shall demand a written response from the respondent.</p>
<p>(b) Thereafter, if the Executive Secretary, upon consideration of the grievance, any response from the respondent, and any preliminary investigation, determines there is a reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be docketed and investigated. If the Executive Secretary determines that no such reasonable cause exists, the grievance shall be dismissed with the approval of the Commission. In either event, the person filing the grievance (hereinafter referred to as "the grievant") and the respondent shall be given written notice of the Executive Secretary's determination.</p>	<p>(c) <i>Demand for information.</i> Disciplinary Commission staff may demand from the respondent any information or clarification necessary to complete its investigation. The respondent shall respond to the demand as set forth in Section 10(e).</p>
<p>. . . . [(c) is relocated below for comparison]</p> <p>(d) In conducting an investigation of any grievance, or in considering the same, the Executive Secretary or the Commission shall not be limited to an investigation or consideration of only matters set forth in the grievance, but shall be permitted to inquire into the professional conduct of the attorney generally. In the</p>	<p>(d) <i>Additional allegations or evidence.</i> In conducting an investigation of any grievance, before or after a Disciplinary Complaint is filed, the Disciplinary Commission and its staff are not limited to the matters raised in a grievance and may inquire into additional allegations or evidence regarding the professional conduct of the respondent. The Disciplinary Commission's staff shall notify the respondent of the additional allegations that may lead to a charge of misconduct</p>

Commented [A21]: Reflects current practice when information not in the form of a grievance comes to the attention of the Commission.

Commented [A14]: Response requirements are relocated to subsection (e).

Commented [A15]: The concept of "docketing" is eliminated. Under current procedure, "docketing" a case moves it from "preliminary investigation" (by a screening attorney) to "investigation" (by a litigation attorney). This amendment eliminates the need for the Commission to give notice to the respondent of this internal shift. It makes an artificially divided two-step process into a seamless investigation, allowing speedier action on grievances. Moreover, a respondent is always free to supplement his or her initial response to a grievance.

Commented [A16]: The topic of dismissal after investigation is relocated to (g)(2).

Commented [A22]: Revised to eliminate potentially confusing references to additional "charges." The focus of this subsection is the Commission's ability to investigate beyond the original allegations of the grievance.

Commented [A23]: This is added to make clear that the Commission may continue its investigation even after a complaint is filed if new evidence comes to light.

<p>event that the Executive Secretary or the Commission should consider any charges of misconduct against an attorney not contained in the grievance, the Executive Secretary shall notify the attorney of the additional charges under consideration, and the attorney shall make a written response to the additional charges under consideration within twenty (20) days after the receipt of such notification, or within such additional time as the Executive Secretary shall allow.</p> <p>Any additional charges of misconduct against an attorney, after such notice has been given by the Executive Secretary and the attorney has had an opportunity to reply thereto, may be the subject of a count of any complaint filed against the attorney pursuant to Sections 11 and 12 of this Rule.</p>	<p>in a demand letter sent by certified mail. The respondent shall respond to such a demand as set forth in Section 10(e).</p> <p>(e) <i>Duty to respond to demand for information.</i> The respondent shall provide a written response as demanded in 10(a), 10(b), 10(c), or 10(d) within thirty (30) days after respondent receives a copy of the grievance or demand or within such additional time as the Executive Director may allow. Additional time beyond a total of sixty (60) days to respond shall be allowed only for good cause shown. In addressing the allegations included in the grievance or in responding to a written demand from Disciplinary Commission staff, the respondent shall include relevant supporting documents.</p> <p>(f) <i>Self-report of misconduct.</i> If a respondent self-reports misconduct, the Executive Director may proceed directly to subsection (g) below.</p> <p>(g) <i>Action by Executive Director.</i> Upon completion of the investigation, the Executive Director may:</p> <ol style="list-style-type: none"> (1) Make a report of the investigation and a recommendation as soon as practicable to the Disciplinary Commission if the Executive Director
--	---

Commented [A17]: Response requirements are relocated to subsection (e).

Commented [A24]: The procedure for responding to Commission demands for information are located in one subsection rather than being embedded in subparts of the current section.

Commented [A25]: Increased from 20 days. A longer time to respond is intended to reduce requests for additional time.

Commented [A26]: Added to discourage unnecessary extensions of the deadline.

Commented [A27]: The primary purposes are to encourage self-reporting and to let the Commission and respondent submit a CA more promptly. However, the Executive Director is not prevented from conducting further investigation if other misconduct is suspected.

Commented [A28]: This eliminates the concept of “docketing” and makes what was a two-step process into a one-step process, allowing speedier action on grievances.

Commented [A29]: This replaces the requirement to make the report at the next meeting, which may not be practicable. Additionally, if time limitations are being placed on length of investigation, then a strict imposition of a time limit seems unnecessary.

<p>(c) If the grievance is docketed for investigation, the Executive Secretary shall conduct an investigation of the grievance. Upon completion of the investigation the Executive Secretary shall promptly make a report of the investigation and a recommendation to the Commission at its next meeting.</p>	<p>determines there is reasonable cause to believe that the respondent has committed misconduct; or</p> <p>(2) Dismiss the grievance, with subsequent approval by the Disciplinary Commission, if the Executive Director determines that no reasonable cause exists. In the event of a dismissal, the grievant and the respondent shall be given written notice of the Executive Director's determination by U.S. mail.</p> <p>(h) <i>Limitation on time to complete investigation.</i> Unless the Supreme Court permits additional time, any investigation into a grievance shall be completed and action on the grievance shall be taken within twelve (12) months from the date the grievance is received (or the date a response is demanded to a Disciplinary Commission grievance under Section 10(b), whichever is later). The purpose of the deadline is to enable the Supreme Court to exercise its supervisory authority over the Disciplinary Commission, but not to create substantive or procedural rights. Requests for additional time shall be submitted to the Supreme Court and shall briefly describe the circumstances necessitating the request. No response or objection shall be allowed. Delays caused by a respondent's noncooperation or requests for extensions of time, and periods during which the respondent is suspended from practice, shall not be counted toward the 12-month period. If the Disciplinary Commission does not file a Disciplinary Complaint within this time, the grievance shall be deemed dismissed.</p>
--	---

Commented [A30]: See comment to (a)(1) above.

Commented [A31]: A deadline for completion of an investigation has been added as part of the Court's supervisory authority over the Commission.

Section 10. Investigatory Procedures

....

- (e) It shall be the duty of every attorney against whom a grievance is filed under this Section to cooperate with the Commission's investigation, accept service, comply with the provisions of these rules, and when notice is given by registered or certified mail, claim the same in a timely manner either personally or through an authorized agent. Every attorney is obligated under the terms of Admission and Discipline Rule 2 to notify the Clerk of any change of address or name within thirty (30) days of such change, and a failure to file the same shall be a waiver of notice involving licenses as attorneys or disciplinary matters.
- (f) An attorney who is the subject of an investigation by the Disciplinary Commission may be suspended from the practice of law upon a finding that the attorney has failed to cooperate with the investigation.
 - (1) Such a finding may be based upon the attorney's failure to submit a written response to pending allegations of professional misconduct, to accept certified mail from the Disciplinary Commission that is sent to the attorney's official address of record with the Clerk and that requires a written response under this Rule, or to comply with any lawful demand for

Section 10.1. Noncooperation with Disciplinary Investigation

(a) *Duty to cooperate.* It shall be the duty of every attorney to cooperate with an investigation by the Disciplinary Commission, accept service, and comply with the provisions of this Rule.

(b) *Failure to cooperate.* The failure to: (1) respond to a grievance under this Rule; (2) comply with any written demand from the Disciplinary Commission staff under this Rule; (3) accept certified mail from the Disciplinary Commission that is sent to the attorney's official address of record with the Clerk and that requires a written response under this Rule; (4) comply with a subpoena issued pursuant to this Rule; or (5) unexcused failure to appear at any hearing on the matter under investigation shall be deemed failure to

Commented [A33]: Broken out from Rule 10 as a separate rule. Substantial changes are made to streamline and make more efficient noncooperation procedures.

Commented [A34]: Additional duties are listed in Section 23.1.

<p>information made by the Commission or its Executive Secretary in connection with any investigation, including failure to comply with a subpoena issued pursuant to sections 8(d) and 9(f) or unexcused failure to appear at any hearing on the matter under investigation.</p> <p>(2) Upon the filing with this Court of a petition authorized by the Commission, the Court shall issue an order directing the attorney to respond within ten (10) days of service of the order and show cause why the attorney should not be immediately suspended for failure to cooperate with the disciplinary process. Service upon the attorney shall be made pursuant to sections 12(g) and (h).</p> <p>The suspension shall be ordered upon this Court's finding that the attorney has failed to cooperate, as outlined in subsection (f)(1), above. An attorney suspended from practice under this subsection shall comply with the requirements of sections 26(b) and (c) of this rule.</p>	<p>cooperate with an investigation by the Disciplinary Commission.</p> <p>(c) <i>Suspension for noncooperation.</i> A respondent who fails to cooperate with an investigation by the Disciplinary Commission may be subject to suspension from the practice of law.</p> <p>(1) <i>Show cause order.</i> Upon the filing by the Disciplinary Commission of a “Verified Petition for Noncooperation Suspension,” the Supreme Court may issue an order directing the respondent to respond within ten (10) days of service of the order and to show cause why the respondent should not be immediately suspended for failure to cooperate with the disciplinary process. Service upon the respondent shall be made pursuant to Section 12(c). To comply with the show cause order, the respondent shall, within ten days of service: (1) file a response to the show cause order with the Supreme Court Clerk; and (2) cure the respondent’s failure to cooperate with the investigation (unless the alleged failure is contested in good faith in the response filed with the Supreme Court Clerk).</p> <p>(2) <i>Entry of noncooperation suspension order.</i> Upon a determination that the respondent has failed to cooperate with an investigation by the Disciplinary Commission, the Supreme Court may enter an order of noncooperation suspension. Upon this suspension</p>
--	--

Commented [A35]: Added to inform a respondent explicitly what must be done to comply with a show cause order.

<p>(3) Such suspension shall continue until such time as (a) the Executive Secretary certifies to the Court that the attorney has cooperated with the investigation; (b) the investigation or any related disciplinary proceeding that may arise from the investigation is disposed; or (c) until further order of the Court.</p> <p>(4) On motion by the Commission and order of the Court, suspension that lasts for more than six (6) months may be converted into indefinite suspension.</p>	<p>from the practice of law, the respondent shall comply with the requirements of Section 26.</p> <p>(3) <i>Certification of cooperation.</i> If the respondent complies with the demand from the Disciplinary Commission or its staff, the Executive Director shall certify to the Supreme Court that the respondent has cooperated with the investigation. Upon the filing of the certification, the Supreme Court may enter an order dismissing the proceeding as moot. If a noncooperation suspension has taken effect, the order shall also direct the Supreme Court Clerk to adjust the respondent's status on the Roll of Attorneys to reflect that the respondent is no longer suspended, provided that no other suspension is in effect. Any outstanding order to pay costs shall remain in effect, and the Disciplinary Commission may, if appropriate, seek costs under subsection (d).</p> <p>(4) <i>Conversion to indefinite suspension.</i> On motion by the Disciplinary Commission and order of the Supreme Court, a noncooperation suspension that lasts for more than ninety (90) days may be converted into indefinite suspension, after which the respondent may seek reinstatement only pursuant to Section 18(b) of this Rule.</p> <p>(5) <i>Repeated failures to cooperate.</i> If the respondent has been the subject of two or more prior petitions for noncooperation suspension within the preceding 12 months, the Disciplinary Commission may include in</p>
--	---

Commented [A36]: This shortens the time from six months so final resolution of the case can be accomplished sooner.

Commented [A37]: This new provision for repeat offenders allows the Commission and Court to bypass the initial noncooperation suspension and go directly to indefinite suspension.

<p>(5) Upon the disposition of any show cause petition filed pursuant to paragraph (f)(2), above, due to dismissal because the respondent cooperated, or due to suspension, disbarment, or resignation in any proceeding, the Commission may seek an order reimbursing the Commission in the amount of \$500 plus out-of-pocket expenses for its time and effort in seeking the order in addition to all other costs and expenses provided for by Section 16 of this rule. . . .</p>	<p>its Petition for Noncooperation Suspension a request that the Supreme Court issue an order of indefinite suspension. (This request shall not delay the entry of a noncooperation suspension order under (c)(2) above.) Upon such a request, the Supreme Court may issue an order directing the respondent to respond in writing within ten (10) days of service of the order and show cause why the respondent should not be immediately suspended for an indefinite period for repeatedly failing to cooperate with the disciplinary process. Unless the respondent shows good cause for a different disposition, the Supreme Court may enter an order of indefinite suspension, whether or not a noncooperation suspension is then in effect, and the respondent may seek reinstatement only pursuant to Section 18(b) of this Rule.</p> <p>(d) <i>Costs.</i> Upon the disposition of any Petition for Noncooperation Suspension due to dismissal because the respondent cooperated, or due to suspension, disbarment, or resignation in any proceeding, the Disciplinary Commission may seek an order reimbursing the Disciplinary Commission in the amount of \$500 plus out-of-pocket expenses for its time and effort in seeking the suspension, in addition to all other costs and expenses provided for by Section 21 of this Rule. An attorney who fails to pay this assessment by the due date of the annual registration fee required by Admission and Discipline Rule 2(b) shall be subject to an order of suspension pursuant to Section 21.</p>
--	--

Commented [A32]: The remainder of this subsection is now covered in Section 21(d).

Section 11. Pre-hearing Procedures

- (a) The members of the Commission shall consider and make a determination of the report and recommendations of the Executive Secretary not later than the meeting following the submission of the report. If the Commission determines that there is not reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be dismissed, and the grievant and the respondent shall be given written notice of the Commission's determination.

- (b) If after such consideration, the Commission determines there is a reasonable cause to believe the respondent is guilty of misconduct which would warrant disciplinary action, it shall file with the Clerk a complaint as provided in Section 12. . . .

Section 11. Disciplinary Commission Consideration of Grievances

- (a) *Consideration of Executive Director's report.* The members of the Disciplinary Commission shall consider and make a determination of the report and recommendations submitted by the Executive Director.

- (b) *Authorization to dismiss grievance.* If the Disciplinary Commission determines that there is not reasonable cause to believe that the respondent has committed misconduct, the grievance shall be dismissed and the grievant and the respondent shall be given written notice of the Disciplinary Commission's determination.

- (c) *Authorization to file Disciplinary Complaint.* If after its consideration, the Disciplinary Commission determines there is a reasonable cause to believe the respondent has committed misconduct which would warrant disciplinary action, it shall file with the Supreme Court Clerk a Disciplinary Complaint as provided in Section 12.

Commented [A38]: Formerly "Pre-hearing Procedures." Provisions dealing with conditional agreements are moved from this Section to new Section 12.1, Agreed Discipline. Provisions regarding appointment of HOs are moved to Section 13, Hearing Officers.

Commented [A39]: The requirement that the Commission consider the report and make a determination at the meeting following its submission is removed, as this time frame is sometimes impracticable.

Section 11.1. Interim and Summary Suspensions

- (a) Upon finding that an attorney has been found guilty of a crime punishable as a felony, the Supreme Court may suspend such attorney from the practice of law pending further order of the Court or final determination of any resulting disciplinary proceeding.

- (1) The judge of any court in this state in which an attorney is found guilty of a crime shall, within ten (10) days after the finding of guilt, transmit a certified copy of proof of the finding of guilt to the Executive Secretary of the Indiana Supreme Court Disciplinary Commission.

- (2) An attorney licensed to practice law in the state of Indiana who is found guilty of a crime in any state or of a crime under the laws of the United States shall, within ten (10) days after such finding of guilt, transmit a certified copy of the finding of guilt to the Executive Secretary of the Indiana Supreme Court Disciplinary Commission.

- (3) Upon receipt of information indicating that an attorney has been found guilty of a crime punishable as a felony under the laws of any state or of the United States, the Executive

Section 11.1. Duty to Report Findings of Guilt; Interim and Summary Suspensions

- (a) *Findings of criminal guilt.*
 - (1) *Duty to report finding of guilt of any felony or misdemeanor.*
 - (i) The judge of any court in this State in which an attorney is found guilty of any felony or misdemeanor shall, within ten (10) days after the finding of guilt, transmit a certified copy of proof of the finding of guilt to the Disciplinary Commission's Executive Director.

 - (ii) An attorney licensed to practice law in the State of Indiana who is found guilty of any felony or misdemeanor in any state or of a felony or misdemeanor under the laws of the United States shall, within ten (10) days after the finding of guilt, transmit a certified copy of the finding of guilt to the Disciplinary Commission's Executive Director.

 - (2) *Criminal conviction of crime punishable as a felony.*
 - (i) Upon receipt of information indicating that an attorney has been found guilty of a crime punishable as a felony under the laws of any state or of the United States (even if alternative

Commented [A40]: Clarifies that duty to report is not limited to felonies, a matter of frequent confusion.

<p>Secretary shall verify the information, and, in addition to any other proceeding initiated pursuant to this Rule, shall file with the Supreme Court a Notice of Finding of Guilt and Request for Suspension, and shall forward notice to the attorney by certified mail. The attorney shall have fifteen (15) days thereafter to file any response to the request for suspension. Thereafter, the Supreme Court may issue an order of suspension upon notice of finding of guilt which order shall be effective until further order of the Court.</p> <p>(b) If it appears to the Disciplinary Commission upon the affirmative vote of two-thirds (2/3) of its membership, that: (i) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (ii) the alleged conduct, if true, would subject the respondent to sanctions under this Rule, the Executive Secretary shall petition the Supreme Court for an order of interim suspension from the practice</p>	<p>misdemeanor sentence or other disposition is imposed), the Executive Director shall verify the information, and, in addition to any other proceeding initiated pursuant to this Rule, shall file with the Supreme Court a Notice of Finding of Guilt and Petition for Suspension, and shall forward notice to the attorney by certified mail.</p> <p>(ii) The attorney shall have fifteen (15) days after the service of the Notice to file any response to it.</p> <p>(iii) Upon finding that an attorney has been found guilty of a crime punishable as a felony, the Supreme Court may suspend the attorney from the practice of law pending further order of the Supreme Court or final determination of any resulting disciplinary proceeding.</p> <p>(b) <i>Emergency interim suspension.</i> If the Disciplinary Commission determines by the affirmative vote of two-thirds (2/3) of its membership, that: (1) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (2) the alleged conduct, if true, would subject the respondent to discipline under this Rule, the Executive Director shall petition the Supreme Court for an order of interim suspension from the practice of law or imposition of temporary conditions of probation on the attorney.</p>
---	---

Commented [A41]: Makes explicit Court's prior interpretation.

Commented [A42]: Clarifies that the time runs from the date of service, not the date of filing.

<p>of law or imposition of temporary conditions of probation on the attorney.</p> <p>(1) A petition to the Supreme Court for interim relief under this subsection shall set forth the specific acts and violations of the Rules of Professional Conduct submitted by the Commission as grounds for the relief requested. The petition shall be verified and may be supported by documents or affidavits. A copy of the petition, along with a notice to answer, shall be served by the Commission on the attorney in the same manner as provided in sections 12(g) and (h) of this rule. The Executive Secretary shall file a return on service, setting forth the method of service and the date on which the respondent was served with the petition and notice to answer. The attorney shall file an answer to the Commission's petition with the Supreme Court within fourteen (14) days of service. The answer shall be verified and may be supported by documents or affidavits. The attorney shall mail a copy of the answer to the Executive Secretary and file proof of mailing with the court.</p> <p>(2) The failure of the respondent to answer the Commission's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the</p>	<p>(1) The Disciplinary Commission's petition to the Supreme Court for interim relief under this subsection shall be verified and set forth the specific acts and violations of the Rules of Professional Conduct alleged by the Disciplinary Commission as grounds for the relief requested. The petition may be supported by documents or affidavits.</p> <p>(2) A copy of the petition and notice to answer shall be served by the Disciplinary Commission on the attorney in the same manner as provided in Sections 12(c) of this Rule. The Executive Director shall file a return on service, setting forth the method of service and the date on which the respondent was served with the petition and notice to answer.</p> <p>(3) The respondent shall file an answer to the Disciplinary Commission's petition with the Supreme Court within fifteen (15) days of service. The answer shall be verified may be supported by documents or affidavits. The respondent shall serve a copy of the answer on the Disciplinary Commission Executive Director and file proof of service with the Supreme Court Clerk.</p> <p>(4) If the respondent fails to answer the Disciplinary Commission's petition within the time provided in this Rule for an answer, that failure to answer shall constitute a waiver of the respondent's right to contest</p>
---	---

Commented [A43]: Changed from 14 days to be consistent with (2)(ii) above.

<p>petition, and the Supreme Court may enter an order of interim suspension or imposition of temporary conditions of probation in conformity with subsection (b)(5) either upon the record before it, or at the discretion of the Court, after a hearing ordered by the Court.</p> <p>(3) Upon the filing of the respondent's answer and upon consideration of all of the pleadings, the Court may:</p> <ul style="list-style-type: none"> (i) order interim suspension or imposition of temporary conditions of probation upon the petition and answer in conformity with subsection (b)(5); (ii) deny the petition upon the petition and answer; or (iii) refer the matter to a hearing officer, who shall proceed consistent with the procedures set forth in subsection (b)(4). <p>(4) Upon referral to a hearing officer of an interim relief matter from the Supreme Court, the hearing officer shall hold a hearing thereon within thirty (30) days of the date of referral and render a report to the Court containing findings of fact and a recommendation within fourteen</p>	<p>the petition, and the averments of the petition shall be conclusively established to be true.</p> <p>(5) The Supreme Court may enter an order of interim suspension or imposition of temporary conditions of probation in conformity with subsection (b)(9) either upon the record before it or, at the discretion of the Supreme Court, after a hearing ordered by the Supreme Court.</p> <p>(6) Upon the filing of the respondent's answer and upon consideration of all of the pleadings, the Supreme Court may:</p> <ul style="list-style-type: none"> (i) Order interim suspension or imposition of temporary conditions of probation upon the petition and answer in conformity with subsection (b)(9); (ii) Deny the petition; or (iii) Refer the matter to a hearing officer. <p>(7) If the Supreme Court refers a matter under this Section to a hearing officer, the hearing officer shall hold a hearing thereon within thirty (30) days after the date of referral and, within fourteen (14) days after the hearing, submit to the Supreme Court a Hearing Officer's Report, which report shall contain findings of</p>
---	---

<p>(14) days of the hearing. The Court shall thereafter act promptly on the hearing officer's report, findings and recommendation.</p> <p>(5) The Supreme Court, upon the record before it or after receiving a hearing officer's report, shall enter an appropriate order. If the Court finds that the Commission has shown by a preponderance of the evidence that:</p> <p>(i) the continuation of the practice of law by the respondent during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice; and</p> <p>(ii) the conduct would subject the respondent to sanctions under this rule;</p> <p>the Court shall grant the petition and enter an order of interim suspension or imposition of temporary conditions of probation. The order shall set forth an effective date and remain in effect until disposition of any related disciplinary proceeding or further order of the court.</p> <p>(6) In the event the Court issues an order of interim relief pursuant to subsection (b)(5), the respondent may file a verified motion with the Supreme Court at any time for dissolution or</p>	<p>fact and a recommendation regarding the proposed interim suspension.</p> <p>(8) The Supreme Court shall act promptly on the Hearing Officer's Report.</p> <p>(9) If the Supreme Court finds that the Disciplinary Commission has shown by a preponderance of the evidence that:</p> <p>(i) The continuation of the practice of law by the respondent during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice; and</p> <p>(ii) The conduct would subject the respondent to discipline under this Rule;</p> <p>the Supreme Court may grant the petition and enter an order of interim suspension or imposition of temporary conditions of probation. The order shall set forth an effective date and remain in effect until disposition of any related disciplinary proceeding or further order of the Supreme Court.</p> <p>(10) Dissolution or amendment of order.</p> <p>(i) If the Supreme Court issues an order of interim relief, the respondent may file a verified motion</p>
---	--

<p>amendment of the interim order by verified motion that sets forth specific facts demonstrating good cause. A copy of the motion shall be served on the Executive Secretary. Successive motions for dissolution or amendment of an interim order may be summarily dismissed by the Supreme Court to the extent they raise issues that were or with due diligence could have been raised in a prior motion. If the motion is in proper form, the Court may refer the matter to a hearing officer, who shall proceed consistent with the procedures set forth in subsection (b)(4).</p> <p>(7) In the event a verified complaint for disciplinary action has not been filed by the time an order of interim relief is entered, the Disciplinary Commission shall file a formal complaint within sixty (60) days of the interim relief order. When a respondent is subject to an order of interim relief, the hearing officer shall conduct a final hearing of the underlying issues and report thereon to the Court without undue delay.</p>	<p>with the Supreme Court at any time for dissolution or amendment of the interim order.</p> <p>(ii) The verified motion shall set forth specific facts demonstrating good cause to dissolve or amend the interim order. A copy of the motion shall be served on the Executive Director.</p> <p>(iii) If the verified motion is in proper form, the Supreme Court may refer the matter to a hearing officer who shall proceed consistent with the procedures set forth in subsection (b)(7).</p> <p>(iv) Successive motions for dissolution or amendment of an interim order may be summarily dismissed by the Supreme Court to the extent they raise issues that were or with due diligence could have been raised in a prior motion.</p> <p>(11) If a Disciplinary Complaint for disciplinary action has not been filed by the Disciplinary Commission against the respondent by the time an order of interim suspension is entered, the Disciplinary Commission shall file a Disciplinary Complaint within sixty (60) days of the Supreme Court's entry of the interim suspension order.</p> <p>(12) When a respondent in a disciplinary case is subject to an interim suspension order entered pursuant to this Section, the hearing officer shall conduct a final</p>
--	--

<p>(8) An attorney suspended from practice under this section shall comply with the requirements of subsections 26(b) and (c) of this rule.</p> <p>(c) Upon receipt of an order from a court pursuant to IC 31-16-12-8 or IC 31-14-12-5 stating finding that an attorney has been found to be delinquent in the payment of child support as a result of an intentional violation of an order for support, the Executive Secretary shall file with the Supreme Court a Notice of Intentional Violation of Support Order and Request for Suspension, and shall forward notice to the attorney by certified mail. The attorney shall have fifteen (15) days thereafter to file any response to the request for suspension. Thereafter, the Supreme Court may issue an order of suspension. Such order shall be effective until further order of the Court.</p> <p>Section 18. Petitions for Reinstatement</p> <p>(a) . . .</p> <p>A person who has been suspended pursuant to Section 11.1(c) of this rule may petition for reinstatement and pay a filing fee pursuant to</p>	<p>hearing of the underlying issues and file a report with the Supreme Court Clerk without undue delay.</p> <p>(13) A respondent suspended from practice under this Section shall comply with the duties of a suspended attorney under Section 26 of this Rule.</p> <p>(c) <i>Delinquency in paying child support.</i></p> <p>(1) Upon receipt of an order from a court pursuant to IC 31-16-12-8 or IC 31-14-12-5 finding that an attorney has been delinquent in the payment of child support as a result of an intentional violation of an order for support, the Executive Director shall file with the Supreme Court a Notice of Intentional Violation of Support Order and Request for Suspension and shall serve that request for suspension on the attorney by certified mail.</p> <p>(2) The attorney shall have fifteen (15) days after service to file any response to the request for suspension.</p> <p>(3) Any order of suspension issued by the Supreme Court shall be effective until further order of the Supreme Court.</p> <p>(4) An attorney suspended pursuant to Section 11.1(c) may be reinstated by the Supreme Court upon filing a “Motion for Relief from Suspension” and with a certified copy of a court order stating that the attorney</p>
--	--

Commented [A44]: This is relocated from former Section 18 for ease in locating it.

<p>subsection (c) of this section. If costs have been imposed as part of an order of suspension, those costs must be paid before any petition for reinstatement is filed.</p>	<p>is no longer in intentional violation of an order for child support. The motion shall be filed with the Supreme Court Clerk together with a filing fee of two hundred dollars (\$200). If costs were imposed as part of the order of suspension, those costs must be paid before a Motion for Relief from Suspension is filed.</p>
<p>Section 12. Prosecution of Grievances</p> <p>....</p> <p>(c) In the event the Commission determines that the misconduct, if proven, would warrant disciplinary action and should not be disposed of by way of an administrative admonition, the Executive Secretary shall prepare a verified complaint which sets forth the misconduct with which the respondent is charged and shall prosecute the case.</p> <p>(d) The complaint shall be entitled “In the Matter of,” naming the respondent. Six (6) copies shall be filed with this Court. The complaint may be verified on the basis of information and belief.</p> <p>(e) Contemporaneously with the filing of the complaint, the Commission shall promptly prepare and furnish to the Clerk as many copies of the complaint and</p>	<p>Section 12. Prosecution of Attorney Misconduct</p> <p>(a) <i>Disciplinary Complaint.</i> If the Disciplinary Commission determines that the misconduct, if proved, would warrant disciplinary action and should not be disposed of by way of a private administrative admonition, the Executive Director or designee shall prepare a verified Disciplinary Complaint (“the Disciplinary Complaint”) which sets forth the misconduct with which the attorney is charged and shall prosecute the case. The caption shall contain the title of the case, which shall be “In the Matter of,” naming the attorney as the respondent, and include the cause number assigned by the Supreme Court Clerk. The allegations in the Disciplinary Complaint may be verified on the basis of information and belief, and the Disciplinary Complaint shall be filed with the Supreme Court Clerk. The signature of the Executive Director or designee on the Disciplinary Complaint, and the signatures thereon by other attorneys for the Disciplinary Commission, shall serve as their appearance as attorney(s) for the Disciplinary Commission.</p> <p>(b) <i>Summons.</i> The Disciplinary Commission shall also prepare a summons and provide the Supreme Court Clerk with as many copies of the Disciplinary Complaint and summons as</p>

Commented [A45]: Provisions regarding PAAs are relocated in new Section 12.1, Agreed Discipline. Constructive service provisions are moved to Section 23.1(c). Minor and clarifying changes are made in addition to the changes noted in the margin.

Commented [A46]: The name of the complaint is changed from Verified Complaint to the more descriptive Disciplinary Complaint, although the verification requirement remains.

Commented [A47]: Added.

<p>summons as are necessary. The Clerk shall examine, date, sign and affix his/her seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. Separate or additional summons shall be issued by the Clerk at any time upon proper request by the Commission.</p> <p>(f) The summons shall contain:</p> <ol style="list-style-type: none"> (1) The name and address of the person on whom the service is to be effected; (2) The Supreme Court cause number assigned to the case; (3) The title of the case as shown by the complaint; (4) The name, address, and telephone number of the Disciplinary Commission; (5) The time within which this rule requires the person being served to respond, and a clear statement that in case of his or her failure to do so, the allegations in the complaint shall be taken as true. <p>The summons may also contain any additional information that will facilitate proper service.</p>	<p>are necessary for service. The Supreme Court Clerk shall examine, date, sign and affix the Supreme Court Clerk's seal to the summons and thereupon return to the Disciplinary Commission copies of the Disciplinary Complaint for service. Separate or additional summons shall be issued by the Supreme Court Clerk at any time upon request by the Disciplinary Commission.</p> <p>The summons shall contain:</p> <ol style="list-style-type: none"> (1) The name and address of the person on whom the service is to be effected. (2) The Supreme Court cause number assigned to the case. (3) The title of the case as shown by the Disciplinary Complaint. (4) The name, address, and telephone number of the Disciplinary Commission. (5) The time within which this Rule requires the respondent to respond, and a clear statement that in case of the respondent's failure to do so, the allegations in the complaint shall be taken as true. <p>The summons may also contain any additional information that will facilitate proper service.</p>
--	---

<p>(g) Upon the filing of such complaint, the summons and complaint shall be served upon the respondent by delivering a copy of them to the respondent personally or by sending a copy of them by registered or certified mail with return receipt requested and returned showing the receipt of the letter.</p> <p>In the event the personal service or service by registered or certified mail cannot be obtained upon any respondent attorney, said summons and complaint shall be served on the Clerk as set forth in Section 12(h) of this rule.</p> <p>....</p>	<p>(c) <i>Service of Disciplinary Complaint and summons.</i></p> <p>(1) Upon the filing of the Disciplinary Complaint, the summons and the Disciplinary Complaint shall be served upon the respondent by delivering a copy of them to the respondent personally or by sending a copy of them by registered or certified mail with return receipt requested and returned showing its receipt. Alternatively, service may be made electronically if authorized or required by the Supreme Court.</p> <p>(2) If personal service or service by registered or certified mail cannot be obtained upon a respondent, the summons and Disciplinary Complaint shall be served on the Supreme Court Clerk as set forth in Section 23.1(c) of this Rule.</p>
<p>Section 12. Prosecution of Grievances</p> <p>(a) If the Commission determines that there is reasonable cause to believe respondent is guilty of misconduct and the misconduct would not likely result in a sanction greater than a public reprimand if successfully prosecuted, and if the respondent and the Commission agree to an administrative resolution of the complaint, the Commission may resolve and dispose of minor misconduct by private</p>	<p>Section 12.1. Agreed Discipline</p> <p>(a) <i>Private administrative admonition.</i></p> <p>(1) <i>Available for minor misconduct.</i> If the Disciplinary Commission determines that there is reasonable cause to believe an attorney has committed misconduct that would not likely result in discipline greater than a public reprimand if successfully prosecuted, the Disciplinary Commission and the attorney may agree to resolve the matter by private administrative admonition without filing a Disciplinary</p>

Commented [A48]: Provisions re PAAs and conditional agreements are relocated to this new Section.

<p>administrative admonition without filing a verified complaint with the Court. Without limitation, misconduct shall not be regarded as minor if any of the following conditions exist:</p> <ul style="list-style-type: none"> (1) The misconduct involves misappropriation of funds or property; (2) The misconduct resulted in or is likely to result in material prejudice (loss of money, legal rights or valuable property rights) to a client or other person; (3) The respondent has been publicly disciplined in the past three (3) years; (4) The misconduct involved is of the same nature as misconduct for which the respondent has been publicly or privately disciplined in the past five (5) years; (5) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or (6) The misconduct constitutes the commission of a felony under applicable law. <p>(b) An administrative admonition shall be issued in the form of a letter from the Executive Secretary to the respondent summarizing the facts and setting out the applicable violations of the Rules of Professional</p>	<p>Complaint. Misconduct shall not be regarded as minor if:</p> <ul style="list-style-type: none"> (i) The misconduct involves misappropriation of funds or property; (ii) The misconduct resulted in or is likely to result in material prejudice (loss of money, legal rights or valuable property rights) to a client or other person; (iii) The attorney has been publicly disciplined in the past three (3) years; (vi) The misconduct involved is of the same nature as misconduct for which the attorney has been publicly or privately disciplined in the past five (5) years; (v) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the attorney; or (vi) The misconduct constitutes the commission of a felony under applicable law. <p>(2) <i>Private administrative admonition letters.</i></p> <ul style="list-style-type: none"> (i) An administrative admonition shall be issued in the form of a letter from the Executive Director to the attorney summarizing the facts and setting
---	---

Conduct. A copy of the admonition letter shall first be sent to each Justice of the Supreme Court and to the Supreme Court Administration Office. The administrative admonition shall be final within thirty (30) days thereafter, unless set aside by the Court. If not set aside by the Court, the admonition shall be sent to the respondent, and notice of the fact that a respondent has received a private administrative admonition shall be given by the Executive Secretary to the grievant. The fact that an attorney has received a private administrative admonition shall be a public record, which shall be filed with the Clerk and shall be kept by the Executive Secretary.

Section 11. Pre-hearing Procedures

.....

(c) After the filing of a complaint with the Clerk, the parties (commission and respondent) may conditionally agree upon the discipline to be imposed, in which event they shall jointly submit to the Division of Supreme Court Administration Office a statement of circumstances which shall contain the charges, the facts agreed to, the facts in

out the violations of the Rules of Professional Conduct.

(ii) The proposed admonition letter shall first be submitted to the Supreme Court. The administrative admonition shall be final within thirty (30) days thereafter, unless disapproved by the Supreme Court. If not disapproved by the Supreme Court, the Executive Director shall send the admonition letter to the attorney, and the Executive Director shall file a Notice that an attorney has received a private administrative admonition with the Supreme Court Clerk.

(iii) A Notice that an attorney has received a private administrative admonition shall be a public record, but the admonition letter shall be confidential. A copy of the admonition letter shall be kept by the Executive Director in the Disciplinary Commission's records.

(b) *Conditional Agreement for discipline.*

(1) *Submission to the Supreme Court.* After or with the filing of a Verified Complaint, the Disciplinary Commission and the respondent may jointly submit to the Supreme Court a statement of circumstances and conditional agreement for discipline ("the Conditional Agreement").

Commented [A49]: References to a particular agency is removed here and elsewhere, leaving it to the Court to determine internally which office or agency should receive items submitted to the Court. The Court can inform the Commission which office or agency is designated to receive documents that are submitted but not filed.

Commented [A50]: Recognizes that a conditional agreement is sometimes submitted at the same time a disciplinary complaint is filed.

dispute, the evidence the parties separately believe would be adduced in a hearing, the charge(s) which the parties agree are established, and the discipline with which the parties are in conditional agreement. Said statement shall also contain an affidavit executed by the respondent stating that the respondent consents to the agreed discipline and that:

- (1) The respondent's consent is freely and voluntarily rendered; the respondent is not being subjected to coercion or duress; the respondent is fully aware of the implications of submitting his or her consent;
- (2) The respondent is aware that there is a presently pending proceeding involving allegations that there exist grounds for his or her discipline the nature of which shall be specifically set forth;
- (3) The respondent acknowledges that the material facts set forth in the conditional agreement are true; and
- (4) The respondent submits his or her agreement because the respondent knows that if charges were predicated upon matters under investigation, or if the proceeding were

(2) *Contents of Conditional Agreement.* The Conditional Agreement shall contain the facts agreed to, the charge(s) which the Disciplinary Commission and the respondent agree are established, and the proposed discipline to which they conditionally agree. The Conditional Agreement shall not contain statements by witnesses attesting to the character or reputation of the respondent.

(3) *Respondent's affidavit.* The Conditional Agreement shall also contain an affidavit by the respondent stating that he or she consents to the agreed discipline and that:

- (i) The respondent's consent is freely and voluntarily given, and the respondent is aware of the implications of giving his or her consent;
- (ii) The respondent is aware that there is a pending proceeding alleging grounds for the respondent's discipline, the nature of which shall be specifically set forth;
- (iii) The respondent acknowledges that the material facts set forth in the Conditional Agreement are true; and
- (iv) The respondent acknowledges that if prosecuted, the respondent could not successfully defend himself or herself.

Commented [A51]: The statement that the parties may include other information they deem relevant is deleted as unnecessary.

Commented [A52]: This simplifies the current language, but the rewording does not prevent the parties from including other relevant information or from agreeing to fewer than all the charges and providing an explanation of such agreement in the CA.

<p>prosecuted, the respondent could not successfully defend himself or herself.</p> <p>Said statement may also contain any other information that the parties deem relevant, other than statements by witnesses attesting to the character or reputation of the respondent, which statements may not be submitted.</p> <p>Upon such submission, the Court will consider the same and (1) enter an order for the discipline conditionally agreed to or (2) submit to the parties a proposed disposition for such discipline as the Court shall deem appropriate, or (3) notify the parties that it declines to approve the agreement or recommend a disposition.</p> <p>In the event an order is entered as set forth under (1) above, such order shall be a final disposition of the matter. In the event the Court submits a proposed disposition as set forth under (2) above, and the parties shall desire to agree to such disposition, they shall, within sixty (60) days following the submission of such proposed disposition, file with the Clerk a statement of agreement, verified by the respondent and by a member of the Commission or the Executive Secretary thereof. Said statement of agreement shall reflect the prior conditional agreement, the prior action of the Court thereon and the agreement of the parties thereto. Upon such filing, the Court shall enter its disposition accordingly, which shall conclude the matter. In the event the parties do not desire to agree to such proposed disposition or in the event the Court proceeds as set forth under (3) above, the parties shall proceed as if no conditional agreement had been filed.</p>	<p>(4) <i>Consideration and disposition by the Supreme Court.</i> The Supreme Court shall consider the Conditional Agreement and either: (i) approve the Conditional Agreement and enter an order for the discipline conditionally agreed to; (ii) notify the Disciplinary Commission and the respondent that it declines to approve the Conditional Agreement; or (iii) submit to the Disciplinary Commission and the respondent a proposed disposition for discipline the Supreme Court deems appropriate (“Proposed Disposition”).</p> <p>(i) <i>Supreme Court approval.</i> The Conditional Agreement shall be effective upon entry of the order approving it by the Supreme Court.</p> <p>(ii) <i>Acceptance of Proposed Disposition.</i> If the Supreme Court submits a Proposed Disposition, the Disciplinary Commission and the respondent may agree to it by submitting to the Supreme Court, within thirty (30) days, a statement of agreement to the Proposed Disposition, verified by the respondent and by the Disciplinary Commission’s Executive Director or designee. The statement of agreement shall set forth or adopt by reference the Conditional Agreement, the Proposed Disposition, and the agreement of the Disciplinary Commission and the respondent. The Supreme Court may then enter an order approving</p>
--	--

Commented [A53]: Changed from 60 days so the matter can more quickly proceed to a HO if not accepted.

<p>It is the intent of this rule to encourage appropriate agreed dispositions of disciplinary matters. A conditional agreement shall not be admitted into evidence at any hearing of the matter.</p>	<p>the resulting agreement, which shall conclude the matter.</p> <p>(iii) <i>Rejection of Conditional Agreement.</i> If the Disciplinary Commission and the respondent do not agree to the Supreme Court’s Proposed Disposition or if the Supreme Court rejects the Conditional Agreement without a Proposed Disposition, the action shall proceed as if no Conditional Agreement had been submitted.</p> <p>(5) <i>Use of Conditional Agreement.</i> It is the intent of this Rule to encourage appropriate agreed dispositions of disciplinary matters. A Conditional Agreement not approved by the Court shall not be admitted into evidence at any hearing of the matter. If the Conditional Agreement is the basis of a final disposition, it may be admitted into evidence in a subsequent proceeding under this Rule, including contempt, probation violation, and reinstatement proceedings in which the facts agreed to in the Conditional Agreement may be relevant.</p>
<p>Section 11. Pre-hearing Procedures</p> <p>....</p> <p>(b) If after such consideration, the Commission determines there is a reasonable cause to believe the respondent is guilty of misconduct which would warrant disciplinary action, it shall file with the Clerk a complaint as provided in Section 12. Upon the filing of a complaint, the Supreme Court shall</p>	<p>Section 13. Hearing Officers</p> <p>(a) <i>Appointment and qualifications.</i> Upon the filing of a Disciplinary Complaint, the Supreme Court may appoint a hearing officer to hear the charges. The hearing officer shall be a member of the Bar of this State, shall have no investigations or actions regarding potential professional misconduct pending before the Supreme Court or any of its agencies, shall not be a member of the Disciplinary Commission or a member of the</p>

Commented [A54]: These additions would allow limited use of the CA as evidence.

Commented [A55]: Subparts (a) and (b) are relocated from former Section 11(b). Unused option of appointing more than one HO is removed.

Commented [A56]: New. Include actions before the Court or any of its agencies, which would include the Disciplinary Commission, STAD, and the Judicial Qualifications Commission.

<p>appoint a hearing officer or officers, not to exceed three (3) in number, who shall be members of the Bar of this Court, none of whom shall be members of the Disciplinary Commission, to hear and determine said charges. A respondent may on a showing of good cause petition the Court for a change of hearing officer within ten (10) days after the appointment of such hearing officer.</p> <p>Section 13. Hearing Officers</p> <p>In addition to the powers and duties set forth in the rule, hearing officers shall have the power and duty to:</p> <ul style="list-style-type: none"> (a) Conduct a hearing on a complaint of misconduct; (b) Administer oaths to witnesses; (c) Receive evidence and file a “Hearing Officer’s Report” making written findings of fact and conclusions of law; and (d) Do all things necessary and proper to carry out their responsibilities under this rule. 	<p>same law firm as a Disciplinary Commission member, and shall not be an employee of the Supreme Court.</p> <p>(b) <i>Change of hearing officer.</i> A respondent or the Disciplinary Commission may, on a showing of good cause, petition the Supreme Court for a change of hearing officer within ten (10) days after the appointment of the hearing officer.</p> <p>(c) <i>Powers and duties.</i> Hearing officers shall have the power and duty to:</p> <ul style="list-style-type: none"> (1) Conduct a hearing on a Disciplinary Complaint; (2) Administer oaths to witnesses; (3) Receive evidence and file a Hearing Officer’s Report making written findings of fact and conclusions of law; and (4) Do all things necessary and proper to carry out their responsibilities under this Rule.
<p>Section 14. Proceedings Before the Hearing Officer</p> <p>(a) The rules of pleading and practice in civil cases shall not apply. No motion to dismiss or dilatory motions shall be entertained. The case shall be heard on the complaint and an answer which shall be filed by the respondent within thirty (30) days after service of the summons and complaint, or such additional time</p>	<p>Section 14. Proceedings Before the Hearing Officer</p> <p>(a) <i>Rules of pleading and practice.</i></p> <p>(1) Except as otherwise specifically provided in Rule 23, the Indiana Rules of Trial Procedure, the Indiana Rules of Criminal Procedure, and the Indiana Rules of</p>

Commented [A57]: New.

Commented [A58]: This gives the Commission the ability to object to the appointment of a HO who is under disciplinary investigation—a fact that only the Commission may know.

Commented [A59]: Provides clarification of what rules do not apply.

<p>as may be allowed upon written application to the hearing officer that sets forth good cause. A written application for enlargement of time to answer shall be automatically allowed for an additional thirty (30) days from the original due date without a written order of the Hearing Officer. Any motion for automatic enlargement of time filed pursuant to this rule shall state the date when such answer is due and the date to which time is enlarged. The motion must be filed on or before the original due date or this provision shall be inapplicable. All subsequent motions shall be so designated and shall be granted by the hearing officer only for good cause shown.</p> <p>(b) The answer shall admit or controvert the averments set forth in the complaint by specifically denying designated averments or paragraphs or generally denying all averments except such designated averments or paragraphs as the respondent expressly admits. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state and his statement shall be considered a denial. If in good faith the respondent intends to deny only a part of an averment, he or she shall specify so much of it as is true and material and deny the remainder. All denials shall fairly meet the substance of the averments denied. Averments in a complaint are admitted when not denied in the answer. The answer shall assert any legal defense.</p>	<p>Appellate Procedure shall not apply to proceedings brought under this Rule.</p> <p>(2) Except as otherwise explicitly provided, the Indiana Rules of Evidence shall apply in all evidentiary hearings under this Rule.</p> <p>(3) No motion to dismiss or dilatory motions shall be entertained.</p> <p>(b) <i>Appearance and answer.</i></p> <p>(1) When the respondent first appears on his or her own behalf or by counsel, the respondent or counsel shall file an appearance form. That appearance form shall have the same caption as the Disciplinary Complaint and shall contain the name, address, attorney number, FAX number, and email address of the respondent or the respondent's counsel as applicable.</p> <p>(2) An answer shall be filed by the respondent within thirty (30) days after service of the summons and Disciplinary Complaint, or within any additional time as may be allowed upon written motion setting forth good cause for extension of time to answer the Disciplinary Complaint.</p> <p>(3) A written motion for enlargement of time to answer shall be automatically allowed for an additional thirty (30) days from the original due date without a</p>
--	---

Commented [A60]: Added to avoid any confusion on whether these rules apply.

Commented [A61]: This provision is new.

written order. A motion for automatic enlargement of time filed pursuant to this Rule shall state the date when the answer is due and the date to which time is to be enlarged. The motion must be filed on or before the original due date or this provision shall be inapplicable. Any other motion for enlargement of time to answer the Disciplinary Complaint shall be granted only for good cause shown.

(4) The respondent's answer shall admit or controvert the averments set forth in the Disciplinary Complaint by specifically denying designated averments or paragraphs or generally denying all averments except the designated averments or paragraphs as the respondent expressly admits. All denials shall fairly meet the substance of the averments denied. If in good faith the respondent intends to deny only a part of an averment, he or she shall specify so much of it as is true and material and deny the remainder.

(5) If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state and the statement shall be considered a denial.

(6) Averments in a Disciplinary Complaint are admitted when not denied in the answer.

(7) The answer shall assert any legal defense.

<p>(c) When a respondent has failed to answer a complaint as required by this section and that fact is made to appear by affidavit and an application for judgment on the complaint, the allegations set forth in the complaint shall be taken as true. If a respondent who has failed to answer has appeared in the action, he or she (or, if appearing by counsel, his or her counsel) shall be served with written notice of the application for judgment on the complaint at least seven (7) days prior to the hearing on such application. Upon application for judgment on the complaint and in the absence of any answer by the respondent, the hearing officer shall take the facts alleged in the complaint as true and promptly tender a report to the Supreme Court in conformity with subsection (h). If a hearing officer has not been appointed by the time an application for judgment on the complaint is filed and no appearance has been filed by or on behalf of the respondent, the Supreme Court shall act directly on the application for judgment on the complaint.</p>	<p>(c) <i>Failure to answer.</i></p> <p>(1) If a respondent fails to answer a Disciplinary Complaint as required by this Section, the Disciplinary Commission may file a “Motion for Judgment on the Complaint” asking that the allegations set forth in the Disciplinary Complaint be conclusively established as true.</p> <p>(2) The respondent shall have fourteen (14) days to file a response to the Motion for Judgment on the Complaint. If a respondent files a timely response to the Motion for Judgment on the Complaint, the hearing officer shall set the motion and the respondent’s response for hearing within twenty-eight (28) days, and shall give the Disciplinary Commission and the respondent at least seven (7) days’ notice of that hearing.</p> <p>(3) Upon Motion for Judgment on the Complaint and in the absence of a timely answer by the respondent that conforms with subsections (a) and (b) above, or in the absence of a response under subsection (c)(2), the hearing officer shall find the allegations set forth in the Disciplinary Complaint are conclusively established as true and promptly file a Hearing Officer’s Report in conformity with subsection (g).</p> <p>(4) If a hearing officer has not been appointed by the time a Motion for Judgment on the Complaint is filed,</p>
--	--

Commented [A62]: The requirement for service only if the respondent has appeared is removed. The 28-day period for setting a hearing is added.

<p>(d) Discovery shall be available to the parties on terms and conditions that, as nearly as practicable, follow the Indiana Rules of Civil Procedure pertaining to discovery proceedings.</p> <p>(e) At the discretion of the hearing officer, or upon the request of either party, a pre-hearing conference shall be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the verified complaint and answer thereto, and such other matters as may aid in the disposition of the action.</p> <p>(f) Within thirty (30) days after the hearing officer is appointed and has qualified, the hearing officer shall schedule a date for a final hearing on the complaint, which date, absent good cause to the contrary, shall be within ninety (90) days of the same.</p>	<p>the Supreme Court shall act directly on the Motion for Judgment on the Complaint.</p> <p>(d) <i>Discovery.</i> Discovery shall be available to the Disciplinary Commission and the respondent on terms and conditions that, as nearly as practicable, follow Indiana Trial Rules 26 through 37.</p> <p>(e) <i>Pre-hearing conference.</i> At the discretion of the hearing officer, or upon the request of either the Disciplinary Commission or the respondent, a pre-hearing conference shall be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the Disciplinary Complaint and answer, and any other matters as may aid in the disposition of the action.</p> <p>(f) <i>The hearing.</i></p> <p>(1) Within thirty (30) days after the respondent has filed a timely answer or the hearing officer is appointed and has qualified, whichever is later, the hearing officer shall schedule a date for a final hearing on the Disciplinary Complaint and the respondent's answer. Absent good cause, the hearing date shall be within ninety (90) days of the scheduling order.</p>
---	---

Commented [A63]: This is a new element. Sometimes a HO qualifies before the respondent answers the VC. In fairness to the respondent, this 30 day rule can run from the day of the answer if it is later than the day of HO's appearance.

<p>(g) The grievant, the respondent, and the Commission shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him or her and to produce at the hearing and require the production of evidence and witnesses in his or her own behalf at the hearing, as in civil proceedings. All notices connected with processing of such complaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint. Upon request of a party, the hearing officer may issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it or his or her attorney, who shall fill it in before service. The hearing officer may also authorize an attorney admitted to practice law in this state who has appeared for a party, as an officer of the court, to issue and sign such subpoena. Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Trial Rule 45. The hearing officer or officers shall have authority to enforce, quash or modify subpoenas upon proper application by an interested party or witness.</p>	<p>(2) The grievant, the respondent, and the Disciplinary Commission shall be given not less than fifteen (15) days written notice of the hearing date.</p> <p>(3) The respondent shall have the right to attend the hearing in person, to be represented by counsel, to examine witnesses and to submit evidence and witnesses as in civil proceedings.</p> <p>(4) Only the Supreme Court and its duly appointed hearing officer or hearing officers shall have jurisdiction to issue any orders or processes in connection with a disciplinary case brought under this Rule.</p> <p>(5) Upon request, the hearing officer may issue a subpoena for the attendance of witnesses or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to the Disciplinary Commission or the respondent or the respondent's attorney, who shall fill it in before service. The hearing officer may also authorize the Disciplinary Commission or the respondent or the respondent's attorney to issue and sign the subpoena. Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Indiana Trial Rule 45. The hearing officer or officers shall have authority to enforce, quash or modify subpoenas for good cause.</p>
--	--

<p>(h) The proceedings may be summary in form and shall be without the intervention of a jury and shall be conducted on the record.</p> <p>(i) Within thirty (30) days after the conclusion of the hearing, the hearing officer shall determine whether misconduct has been proven by clear and convincing evidence and shall file with the Clerk a written “Hearing Officer’s Report” with findings of fact and conclusions of law. Either party may request or the hearing officer at his or her own motion may make a recommendation concerning the disposition of the case and the discipline to be imposed. Such recommendation is not binding on the Supreme Court. A copy of the report shall be served by the hearing officer on the respondent and the Executive Secretary of the Disciplinary Commission at the time the report is filed with the Clerk.</p>	<p>(6) The hearing on the Disciplinary Complaint and the respondent’s answer shall be conducted by the hearing officer on the record and without a jury.</p> <p>(g) <i>Hearing Officer’s Report.</i></p> <p>(1) Within sixty (60) days after the conclusion of the hearing, the hearing officer shall file a Hearing Officer’s Report with the Supreme Court Clerk. The Hearing Officer’s Report shall include a determination whether it has been proved by clear and convincing evidence that the respondent committed misconduct as charged in the Disciplinary Complaint, and findings of fact and conclusions of law relevant to that determination.</p> <p>(2) The Disciplinary Commission and the respondent may request the hearing officer to make a recommendation concerning the discipline to be imposed if the hearing officer finds misconduct, or the hearing officer may make a recommendation at his or her own discretion. The recommendation by the hearing officer is not binding on the Supreme Court.</p> <p>(3) A copy of the Hearing Officer’s Report shall be served by the hearing officer on the respondent and the Disciplinary Commission when the report is filed with the Supreme Court Clerk. The Hearing Officer’s Report filed with the Supreme Court Clerk shall be accompanied by a copy of the report in electronic format, unless it was filed in electronic form. Any</p>
--	--

Commented [A64]: Changed from 30 days to allow parties to submit proposed findings and conclusions often requested by HO. Currently, HO Reports are almost never filed within 30 days of the conclusion of the hearing.

	<p>electronic format used by the word processing system to generate the report is permissible. When the Hearing Officer's Report is filed, the Disciplinary Commission shall transmit the record of the case (including any exhibits and transcripts that have been prepared) to the Supreme Court Clerk for filing.</p>
<p>Section 15. Supreme Court Review</p> <p>(a) The respondent or Commission shall have thirty (30) days after the filing of the Hearing Officer's Report to petition for a review of the same before the Supreme Court. Instead of a petition for review, the respondent or the Commission may file a brief on sanctions. If no petition for review or brief on sanctions is filed within thirty (30) days of the filing of the Hearing Officer's Report, the Supreme Court shall enter judgment or such other appropriate order.</p> <p>(b) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for</p>	<p>Section 15. Supreme Court Review</p> <p>(a) <i>Petition for Review.</i></p> <p>(1) <i>Time for filing.</i> The respondent or Disciplinary Commission shall have thirty (30) days after the filing of the Hearing Officer's Report to file a Petition for Review seeking a review of the case by the Supreme Court.</p> <p>(2) <i>Brief in Support of Petition for Review.</i> The respondent or the Disciplinary Commission may file a supporting brief at the time a petition for review is filed.</p> <p>(3) <i>Response and reply briefs.</i> The respondent or Disciplinary Commission opposing a Petition for Review shall have thirty (30) days from the date of service of the Petition for Review to file a response brief. The filer opposing a Petition for Review may raise in its response brief any issues for review that were not raised in the Petition for Review. The respondent or Disciplinary Commission filing the</p>

Commented [A65]: Added to aid the Court and its staff in reviewing the HO's report.

Commented [A66]: Added to give the Commission the responsibility for transmitting the record to the Clerk.

<p>review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The cost of procuring a transcript shall be borne by the party obtaining it for purposes of seeking review.</p> <p>(c) The respondent or Commission may file a brief at the time a petition for review is filed. Opposing parties shall have thirty (30) days from the date of service of the petition for review or brief on sanctions to file a response brief. The party opposing a petition for review may raise in its brief any issues for review that were not raised in the brief of the party filing the petition for review. The party filing the petition for review or brief on sanctions shall then have fifteen (15) days from the date of service of the response brief to file a reply brief. The briefs filed under the provisions of this rule need not conform to the Rules of Appellate Procedure adopted by this Court.</p>	<p>Petition for Review shall then have fifteen (15) days from the date of service of the response brief to file a reply brief addressing the response to the issues originally raised in the Petition for Review as well as any additional issues raised in the response brief. No further briefing shall be permitted without leave of the Supreme Court.</p> <p>(b) <i>Brief on Sanction.</i> If the respondent or the Disciplinary Commission desires to address the Supreme Court on the issue of the appropriate sanction to be imposed, they may file a "Brief on Sanction." In that event, the deadlines for filing response and reply briefs shall be the same as in the case of a Petition for Review. Alternatively, arguments regarding the issue of appropriate sanction may be included in a Petition for Review or supporting brief. No further briefing shall be permitted without leave of the Supreme Court.</p> <p>(c) <i>Format.</i> The Petition for Review and briefs filed under this Section shall comply with the formatting requirements of Section 23(j). They need not conform to the Rules of Appellate Procedure adopted by the Supreme Court.</p>
--	---

Commented [A67]: Added.

Commented [A68]: This allows for arguments regarding discipline to be included in a Petition for Review or supporting brief instead of in a separate brief.

Commented [A69]: Added.

Commented [A70]: This concerns primarily regarding paper, text, numbering and margins.

<p>Section 17.1. Termination of Probation</p> <p>(a) Unless provided in the order of probation, disciplinary probation shall remain in effect until terminated pursuant to this rule or by Court order.</p> <p>(b) At any time after fifteen (15) days prior to expiration of a period of probation, an attorney on probation may file with the Clerk and shall serve on the Commission (i) a “Petition for Termination of Probation,” and (ii) an affidavit by the attorney attesting to successful compliance with all terms of probation.</p> <p>(c) The Commission shall have fifteen (15) days after service of a petition for termination of probation to file with the Clerk and serve on the attorney an objection to the petition. If such an objection is filed, the order of probation and all related obligations shall continue until further order of the Court. The attorney shall have fifteen (15) days after service of an objection to file a response. The Commission</p>	<p>Section 16. Probation</p> <p>(a) <i>Imposition.</i> An order of the Supreme Court imposing suspension or granting reinstatement may include probation.</p> <p>(b) <i>Termination.</i></p> <p>(1) <i>Termination of probation not automatic.</i> Unless otherwise provided in the order, probation shall remain in effect until terminated pursuant to this Rule or by Supreme Court order.</p> <p>(2) <i>Petition for termination of probation.</i> No sooner than fifteen (15) days prior to expiration of the period of probation set by the Supreme Court’s order, the attorney may file with the Supreme Court Clerk: (i) a “Petition for Termination of Probation;” and (ii) an affidavit by the attorney attesting to compliance with all terms of probation.</p> <p>(3) <i>Objection to termination of probation.</i> The Disciplinary Commission shall have fifteen (15) days after service of a Petition for Termination of Probation to file with the Supreme Court Clerk an objection. If an objection is filed, probation shall continue until further order of the Supreme Court. The attorney shall have fifteen (15) days after service of an objection to file a response. The Disciplinary Commission shall</p>
--	--

Commented [A72]: Former Sections dealing with probation are now all found in Section 16.

Commented [A73]: Formerly Section 17.1.

Commented [A74]: Clarifies current practice.

<p>shall have ten (10) days after service of a response to file a reply.</p> <p>(d) If no objection to a petition for termination of probation is filed, the petition shall be deemed granted with no further action required by the Court, effective fifteen (15) days after the petition was filed, and the Clerk shall adjust the attorney's status on the Roll of Attorneys to reflect that the attorney is no longer on probation.</p> <p>Section 17.2. Revocation of Probation</p> <p>(a) <i>Motion to Revoke.</i> If the Executive Secretary receives information that an attorney on probation may have violated any condition of probation, the Executive Secretary may file a verified motion to revoke probation with the Court, setting forth specific facts in support of the motion. A motion for revocation of an attorney's probation shall not preclude the Commission from filing independent disciplinary charges based on the same conduct alleged in the motion.</p>	<p>have ten (10) days after service of a response to file a reply.</p> <p>(4) <i>Adjustment of status in absence of objection.</i> If no objection to a Petition for Termination of Probation is filed, the petition shall be deemed granted with no action by the Supreme Court, effective fifteen (15) days after the petition was filed. The Supreme Court Clerk shall adjust the attorney's status on the Roll of Attorneys to reflect that the attorney is no longer on probation, provided there is no other probation or any suspension in effect.</p> <p>(5) <i>Procedure if the Disciplinary Commission objects to termination of probation.</i> If the Disciplinary Commission files an objection to termination of probation, the dispute shall be resolved through the procedures set forth in Section 16(c)(4) unless the Supreme Court directs otherwise.</p> <p>(c) <i>Revocation.</i></p> <p>(1) <i>Motion to Revoke Probation.</i> If the Executive Director receives information that an attorney may have violated probation, the Executive Director may file a verified Motion to Revoke Probation with the Supreme Court Clerk, setting forth supporting facts. A Motion to Revoke Probation shall not preclude the Disciplinary Commission from filing independent</p>
--	--

Commented [A75]: Added to fill a gap in the rules by incorporating the procedure used with petitions to revoke probation.

Commented [A76]: Formerly Section 17.2.

<p>(b) <i>Response to Motion.</i> Within ten (10) days after service of a petition under subparagraph (a), the attorney shall file an answer under penalties of perjury admitting or controverting each of the allegations contained in the revocation motion. A general denial shall not be allowed and, if filed, will be taken as a failure to answer. The attorney's failure to answer timely will be deemed to be an admission to the averments in the motion to revoke probation, unless the Court in its discretion elects to give consideration to any answer that is filed before the Court acts on the revocation motion.</p>	<p>disciplinary charges against the attorney based on the same conduct alleged in the motion.</p> <p>(2) <i>Response to motion.</i> Within ten (10) days after service of a Motion to Revoke Probation, the attorney shall file a response under penalties of perjury admitting or denying each of the allegations in the motion. A general denial shall not be allowed and, if filed, shall be taken as a failure to respond. The attorney's failure to respond timely shall be deemed to be an admission to the allegations in the Motion to Revoke Probation.</p>
<p>(c) <i>Burden of Proof and Matters Considered.</i> The Executive Secretary has the burden of establishing by a preponderance of the evidence any violations of conditions of probation. Any reliable evidence of probative value may be considered regardless of its admissibility under rules of evidence so long as the opposing party is accorded a fair opportunity to controvert it.</p>	<p>(3) <i>Burden of proof and matters considered.</i> The Disciplinary Commission shall have the burden of proving violation of probation by a preponderance of the evidence. Any reliable evidence of probative value may be considered regardless of its admissibility under the rules of evidence so long as the opponent is provided a fair opportunity to controvert it.</p>
<p>(d) <i>Disposition.</i> After the time for filing an answer has expired, the Court may dispose of the matter on the pleadings and supportive materials or, in the event there are material factual disputes, may refer it to a hearing officer who shall hold a hearing on the revocation motion within fourteen (14) days of the date the hearing officer is appointed. The hearing officer shall file with the Clerk findings and a recommendation within ten (10) days of the hearing. Following receipt of the hearing officer's findings</p>	<p>(4) <i>Disposition.</i> After the time for filing a response has expired, the Supreme Court may dispose of the matter on the documents filed or, if there are material factual disputes, may refer it to a hearing officer. The hearing officer shall hold a hearing within fourteen (14) days of appointment. The hearing officer shall file with the Supreme Court Clerk findings and a recommendation within ten (10) days of the hearing.</p>

Commented [A71]: The Court already has this authority. This was deleted to avoid suggesting to respondents that they may disregard this deadline, or to suggest that the Court lacks this authority in other situations.

and recommendation, the Court shall enter an order granting or denying the revocation motion and entering an appropriate disposition consistent with the Court's ruling in the matter.

Section 17.3. Service in Termination and Revocation of Probation Matters

Service upon the attorney and the Executive Secretary shall be made by personal service or by certified mail, return receipt requested. Service shall be complete and sufficient upon mailing when served upon the attorney at his current address of record on the roll of attorneys, regardless of whether the attorney claims the mail.

Section 17.4. Immediate Suspension

In addition to a motion for revocation of probation, the Executive Secretary may also file a verified motion setting forth good cause for the immediate suspension of the attorney's license to practice. Upon a showing of good cause, the Court may order the attorney's license suspended immediately until such time as the revocation motion has been determined.

The Supreme Court may then enter an order deciding the matter.

(d) *Service in termination and revocation matters.* Service upon the attorney and the Disciplinary Commission through its Executive Director shall be made by personal service or by certified mail, return receipt requested. Service shall be complete upon mailing when served upon the attorney at his or her current address of record on the roll of attorneys, regardless of whether the attorney claims the mail. Alternatively, service may be made electronically if authorized or required by the Supreme Court.

(e) *Immediate suspension pending revocation.* In addition to a Motion to Revoke Probation, the Executive Director may also file a verified motion for the immediate suspension of the attorney's license to practice. Upon a showing of good cause, the Supreme Court may order the attorney's license suspended immediately until the Motion to Revoke Probation has been decided.

Commented [A77]: Formerly Section 17.3.

Commented [A78]: Formerly Section 17.4.

Section 17. Resignations and Consents to Discipline on Admission of Misconduct

- (a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign as a member of the bar of this Court, or may consent to discipline, but only by delivering an affidavit and five copies to the Supreme Court Administration Office and providing a copy to the Commission. The affidavit shall state that the respondent desires to resign or to consent to discipline and that:
- (1) The respondent's consent is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting his or her consent;
 - (2) The respondent is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his or her discipline the nature of which shall be specifically set forth;
 - (3) The respondent acknowledges that the material facts so alleged are true; and
 - (4) The respondent submits his or her resignation or consent because the respondent knows that if charges were predicated upon the matters under investigation, or if the proceeding were

Section 17. Resignation and Disbarment by Consent on Admission of Misconduct

- (a) *Affidavit consenting to resignation.* An attorney who is the subject of an investigation or a proceeding involving allegations of misconduct may consent to relinquish his or her license to practice law in this State under a resignation, by submitting an affidavit and simultaneously serving a copy on the Disciplinary Commission. The affidavit shall state that the respondent desires to consent to resignation and that:
- (1) The respondent's consent to the resignation is freely and voluntarily given and he or she is fully aware of the implications of giving his or her consent to resignation;
 - (2) The respondent is aware that there is a presently pending investigation or proceeding involving allegations of grounds for his or her discipline, the nature of which shall be specifically set forth;
 - (3) The respondent acknowledges that the material facts alleged in the pending investigation or proceeding are true; and
 - (4) The respondent acknowledges that if prosecuted, he or she could not successfully defend himself or herself.

Commented [A79]: Procedures for Consents to Discipline are relocated to new Section 17.1.

prosecuted, he or she could not successfully defend himself or herself.

(b) Upon receipt of the required affidavit in support of resignation, this Court may enter an order approving the resignation. In the case of consent to discipline, the Commission and the respondent may file a brief regarding an appropriate sanction within thirty (30) days of delivery of the required affidavit. The Court shall then enter an order imposing a disciplinary sanction on consent.

(c) An order entered under (b) above shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly

(b) *Supreme Court action on affidavit consenting to resignation.*

(1) *Approval of resignation.* The Supreme Court may enter an order approving the resignation. If approved, the respondent may seek reinstatement only under the provisions of Section 18(b) of this Rule.

(2) *Rejection of resignation.* If the Supreme Court notifies the respondent and the Disciplinary Commission that it rejects the respondent's consent to resignation, the investigation or proceeding then pending shall proceed as though no consent to resignation had been submitted.

(c) *Disbarment by consent.* If the Supreme Court notifies the respondent and the Disciplinary Commission that it rejects the respondent's resignation, the Supreme Court may include in the notice a proposal that the respondent submit a supplemental affidavit consenting to permanent disbarment instead of resignation. If the respondent submits a supplemental affidavit consenting to permanent disbarment, the Supreme Court may enter an order permanently disbarring the respondent from the practice of law in this State.

(d) *Confidentiality of affidavit.* An order entered under (b) or (c) above shall be a matter of public record. However, the affidavit required under the provisions of (a) and (c) above shall not be publicly disclosed or made available for use in any

Commented [A80]: Added as an alternative proposal that the Court can use if it believes resignation is insufficient for the admitted misconduct.

disclosed or made available for use in any other proceeding except upon order of this Court.	other proceeding except upon order of the Supreme Court.
See Section 17 above.	<p>Section 17.1. Consent to Discipline on Admission of Misconduct</p> <p>(a) <i>Affidavit consenting to discipline.</i> An attorney who is the subject of an investigation proceeding involving allegations of misconduct may consent to discipline by filing an affidavit with the Supreme Court Clerk, and serving a copy on the Disciplinary Commission, stating that the respondent desires to consent to discipline to be determined by the Supreme Court and that:</p> <ol style="list-style-type: none"> (1) The respondent's consent to discipline is freely and voluntarily rendered and he or she is fully aware of the implications of giving his or her consent to discipline; (2) The respondent is aware that there is a presently pending investigation or proceeding involving allegations of grounds for his or her discipline the nature of which shall be specifically set forth; (3) The respondent acknowledges that the material facts alleged in the pending investigation or proceeding are true; and

Commented [A81]: Consent to discipline is broken out into a separate Section from resignations, with the affidavit and briefs filed publicly with the Clerk rather than privately submitted to the Court. The respondent is unconditionally admitting to the allegations and the only issue is appropriate discipline. Thus, there is no need for the confidentiality in resignations.

	<p>(4) The respondent acknowledges that if prosecuted, he or she could not successfully defend himself or herself.</p> <p>(b) <i>Briefing and decision.</i> The respondent may file a brief on sanction simultaneously with the affidavit consenting to discipline. The Disciplinary Commission shall have thirty (30) days from the date of service of the affidavit to file a response brief on sanction. The respondent shall then have fifteen (15) days from the date of service of the Disciplinary Commission's brief to file a reply brief. No further briefing shall be permitted without leave of the Supreme Court. The Supreme Court may then enter an order imposing discipline on the respondent.</p>
<p>Section 4. Reinstatement</p> <p>.....</p> <p>(c) Whenever a person is suspended for a definite period not to exceed six (6) months with provision for automatic reinstatement, the commission shall have the right to file written objections to such automatic reinstatement, setting forth its reasons for such objections, which shall be limited to:</p> <ol style="list-style-type: none"> (1) failure to comply with the terms of the order; (2) pendency of other complaints; (3) failure to comply with the terms of Section 26, <i>infra</i>; and (4) failure to satisfy fully the costs of the proceeding assessed pursuant to Section 16. 	<p>Section 18. Reinstatement</p> <p>(a) <i>Reinstatement after suspension with automatic reinstatement.</i> Whenever an attorney is suspended for a fixed period not to exceed 180 days with automatic reinstatement, the Disciplinary Commission may file written objections to automatic reinstatement, which shall be limited to:</p> <ol style="list-style-type: none"> (1) Failure to comply with the terms of the order, including any conditions the Supreme Court may have specified in the order of suspension; (2) Pendency of other complaints; (3) Failure to comply with the terms of Section 26; and (4) Failure to satisfy fully the costs of the proceeding

Commented [A82]: This allows briefing on a pattern similar to the one for a petition for review of a HO's Report, in place of the current simultaneous briefing.

Commented [A85]: Most of provisions of Sections 4 and 18 are now found in Sections 18.

Commented [A86]: Formerly Sec. 4(c). Six months is changed to 180 days, consistent with Section 3(a).

<p>Such objections must be filed with the Court at least fifteen (15) days prior to the expiration of such period of suspension, and a copy of such objections shall be mailed to the suspended attorney. The Court shall conduct a hearing on such objections and upon the question of reinstatement of such attorney, except that the Court need not conduct a hearing when the reason for the objections is the respondent's failure to satisfy fully the costs of the proceeding assessed pursuant to Section 16. After such hearing, the Court shall determine whether or not such suspended attorney shall be reinstated. If the Court determines that such attorney should not then be reinstated, the Court shall, in its order, specify when such attorney shall be eligible to apply for reinstatement pursuant to subsection (a) of this section.</p> <p>If the Court determines that the respondent has failed to satisfy fully the costs assessed against him or her, the Court may enter an order staying the automatic reinstatement until the suspended attorney satisfies fully the costs of the proceeding assessed against such attorney or until further order of the Court.</p>	<p>assessed pursuant to Section 21, which must be satisfied no later than twenty (20) days prior to the expiration of the period of suspension.</p> <p>The objections must be filed with the Supreme Court Clerk at least fifteen (15) days prior to the expiration of the period of suspension. If the Supreme Court determines that the attorney should not then be reinstated, the Supreme Court's order may specify when and under what conditions the attorney may apply for reinstatement.</p>
<p>Section 18. Petitions for Reinstatement</p> <p>(a) A person who has been suspended from the practice of law under the provisions of this rule, except pursuant to Section 11.1(c) of this rule, may apply for reinstatement by filing with the Clerk a petition conforming with the requirements of Section 4 of</p>	<p>If the Supreme Court determines that the attorney has failed to satisfy fully the costs assessed against him or her, the Supreme Court may enter an order staying the automatic reinstatement until the suspended attorney satisfies fully the costs of the proceeding or until further order of the Supreme Court.</p> <p>(b) Reinstatement after suspension without automatic reinstatement. An attorney who has been suspended from the practice of law without automatic reinstatement, as defined in Section 1(d)(7), may file with the Supreme Court Clerk a Petition for Reinstatement, unless the order of suspension</p>

Commented [A87]: This addition addresses cases in which costs would not otherwise be due until after the suspension with automatic reinstatement expires. (Under Section 21(d), costs would otherwise be due October 1 after imposition.) This deadline gives the Commission time to check whether payment has been made and file an objection if warranted.

Commented [A83]: This is removed because the Court has the authority to determine the procedure to be used in any particular case.

Commented [A88]: Formerly Section 18(a) and (b).

Commented [A89]: This includes attorneys under disability suspension, resignation, and indefinite suspension for noncooperation.

<p>this rule. Nine (9) copies of such petition shall be filed with the Clerk, together with a filing fee of five hundred dollars (\$500).</p> <p>....</p> <p>Upon the filing of such petition and filing fee under this subsection, the commission shall schedule a hearing. After such hearing, the commission shall determine whether the petitioner has met the requirements set forth in Section 4 of this rule and may recommend that the Supreme Court enter an order continuing the suspension or reinstating the petitioner as a member of the Bar of this Court on such terms and conditions as the Supreme Court may deem proper. The applicant for reinstatement may petition this Court for a review of the recommendation of the Commission within thirty (30) days of the entry thereof.</p>	<p>provides otherwise, together with a filing fee of five hundred dollars (\$500).</p> <p>(1) <i>Time for filing.</i> The petition may be filed when the term of suspension prescribed in the order of suspension has elapsed, or at any time if the suspension is for an indefinite period of time. An attorney whose resignation from the bar has been accepted may petition for reinstatement when five (5) years have elapsed since the date of the order accepting the resignation.</p> <p>(2) <i>Prerequisites for seeking reinstatement.</i></p> <p>(i) The attorney must file the notification affidavit required by Section 26 before a petition for reinstatement is filed.</p> <p>(ii) The attorney must take the Multistate Professional Responsibility Examination (MPRE) within twelve (12) months before filing the petition and pass with a scaled score of one hundred (100) or above.</p> <p>(iii) At least twelve months must have passed since the Supreme Court denied a prior petition for reinstatement by the attorney.</p>
--	---

Commented [A90]: These items are either added or clarified as being prerequisites to filing a petition for reinstatement, not just the granting of reinstatement.

Commented [A91]: Making this a precondition to filing removes timing issues when a petitioner waits until after filing to take the MPRE. The score is raised to 100, which is the mean (average) scaled score.

Commented [A92]: This is added to prevent reinstatement petitions in rapid succession.

Section 4. Reinstatement

....

(b) A petition for reinstatement may be granted if the petitioner establishes by clear and convincing evidence before the disciplinary commission of this Court that:

- (1) The petitioner desires in good faith to obtain restoration of his or her privilege to practice law;
- (2) The petitioner has not practiced law in this State or attempted to do so since he or she was disciplined;
- (3) The petitioner has complied fully with the terms of the order for discipline;
- (4) The petitioner's attitude towards the misconduct for which he or she was disciplined is one of genuine remorse;
- (5) The petitioner's conduct since the discipline was imposed has been exemplary and above reproach;
- (6) The petitioner has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself or herself in conformity with such standards;
- (7) The petitioner can safely be recommended to the legal profession, the courts and the public as a

(3) *Proof needed for reinstatement.* A petition for reinstatement under (a) above may be granted only if the attorney establishes by clear and convincing evidence that:

- (i) The attorney desires in good faith to obtain restoration of his or her privilege to practice law;
- (ii) The attorney has not practiced law in this State or attempted to do so since he or she was disciplined;
- (iii) The attorney has complied fully with the terms of the order for discipline and the duties set forth in Section 26, including the filing of a notification affidavit;
- (iv) The attorney's attitude towards the misconduct for which he or she was disciplined is one of genuine remorse;
- (v) The attorney's conduct since the discipline was imposed has been exemplary and above reproach;
- (vi) The attorney has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and shall conduct

Commented [A93]: This requirement was formerly found only in Section 26. The duty to file a notification affidavit is again stressed.

<p>person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the Courts;</p> <p>(8) The disability has been removed, if the discipline was imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs;</p> <p>(9) The petitioner has taken the Multistate Professional Responsibility Examination (MPRE) within six (6) months before or after the date the petition for reinstatement is filed and passed with a scaled score of eighty (80) or above.</p>	<p>himself or herself in conformity with these standards;</p> <p>(vii) The attorney can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the courts; and</p> <p>(viii) The disability has been removed, if the suspension was imposed by reason of disability.</p>
<p>Section 18. Petitions for Reinstatement</p> <p>....</p> <p>(b) For the purpose of conducting hearings on petitions for reinstatement, the Commission may request the appointment of a hearing officer or hearing officers, who may but shall not be required to be members of the Commission. Such hearing officers shall have the same powers as the hearing officers provided for in Section 13, and shall hear such petition for reinstatement and make written findings of fact and recommendations to the Commission. Following the receipt of the findings and recommendations of the</p>	<p>(4) <i>Hearing on petition for reinstatement.</i></p> <p>(i) <i>Appointment of hearing officer.</i> Upon the filing of a Petition for Reinstatement, the Supreme Court may appoint a hearing officer who meets the qualifications of Section 13(a) to hear the matter. A hearing officer may be a former member of the Disciplinary Commission. The Disciplinary Commission may recommend a hearing officer to the Supreme Court.</p>

Commented [A84]: The MPRE requirement is removed from this list because it is now a prerequisite to filing a petition for reinstatement.

Commented [A94]: The reinstatement procedure is changed to be more similar to the procedure in disciplinary actions. Most notably, the HO makes a recommendation directly to the Court instead of to the Commission. Thus, the Commission staff can serve as counsel to the Commission throughout the proceeding without potential conflict of interest.

Commented [A95]: This adopts by reference the qualifications for an HO appointed after a Disciplinary Complaint is filed. This revision also removes the option of appointing a member of the Commission as HO, but makes clear that former Commission members are eligible.

hearing officer or officers, the Commission shall make its recommendation to this Court on such petition, as set forth in subsection (a) above.

(ii) *Change of hearing officer.* A attorney or the Disciplinary Commission may, on a showing of good cause, petition the Supreme Court for a change of hearing officer within ten (10) days after the appointment of the hearing officer.

(iii) *Powers and duties.* Hearing officers shall have the powers provided in Section 13. The provisions of Section 14(a)(1) and 14(d) through (g) shall apply to the extent practicable. After a hearing, the hearing officer shall determine whether the attorney has met the requirements set forth in (b)(2) above and shall file a Hearing Officer's Report making findings of fact, conclusions of law, and a recommendation on whether the attorney should be reinstated to the practice of law in this State.

(5) *Supreme Court review of the Hearing Officer's Report.* The attorney seeking reinstatement or the Disciplinary Commission may file a Petition for Review of the Hearing Officer's Report within thirty (30) days of entry. Briefing and consideration of a Petition for Review shall proceed under the provisions of Section 15 to the extent practicable.

(c) *Reinstatement under other Sections of Rule 23.* An attorney suspended under Section 11.1(c) (delinquency in paying child support), Section 21 (failure to pay costs and expenses), Section 20 (discipline imposed by other jurisdiction), or any other Section of this Rule with its own

Commented [A96]: Added to give procedural guidance.

Commented [A97]: This makes explicit the procedures currently followed and the Court's discretion in making a final decision.

Commented [A98]: Added to alert readers to reinstatement provisions found in other Sections.

<p>Section 4. Reinstatement</p> <p>....</p> <p>(d) The Court may provide for reinstatement on other terms and by other procedures than those set forth above, such as reinstatement conditioned only on the attorney's submission of proof of compliance with a requirement for reinstatement.</p>	<p>reinstatement provisions may be reinstated by following the procedures set forth in those Sections.</p> <p>(d) <i>Other terms and conditions.</i> The Supreme Court may provide for reinstatement on other terms and by other procedures than those set forth above, such as reinstatement conditioned only on the attorney's submission of proof of compliance with a requirement for reinstatement.</p>
<p>Section 25. Proceedings to Determine Disability</p> <p>(a) A member of the Commission, a member of the Bar of this Court, the Executive Secretary, any individual or any bar association of this State, may at any time file a verified petition with the Commission alleging that an attorney is disabled and should be suspended from the practice of law by reason of physical or mental illness or infirmity, or because of the use of or addiction to intoxicants or drugs.</p> <p>(b) If such petition is filed by a member of the Bar of this Court, by any other person or by a bar association, the Executive Secretary shall conduct an investigation of the facts stated in said petition and make a report with a recommendation to the Commission at its next meeting.</p> <p>(c) If the petition is filed by a member of the Commission or the Executive Secretary, or if after the investigation by the Executive Secretary, the Commission determines that there is good reason to</p>	<p>Section 19. Proceedings to Determine Disability</p> <p>(a) <i>Report to the Disciplinary Commission.</i> Any person, including a member of the Disciplinary Commission, a member of the Bar of this State, the Executive Director or designee, or any bar association of this State, may submit a report to the Disciplinary Commission suggesting that an attorney be suspended indefinitely from the practice of law due to disability caused by physical or mental infirmity or by the use of intoxicants or drugs.</p> <p>(b) <i>Investigation.</i> The Executive Director shall investigate the allegations and shall make a report to the Disciplinary Commission as soon as practicable.</p> <p>(c) <i>Hearing and Petition for Disability Suspension.</i> If the Disciplinary Commission determines that there is good reason to believe that the attorney is under a disability that would justify suspension, the Disciplinary Commission shall hold a hearing to determine if the attorney should be suspended indefinitely. To conduct the hearing, the Disciplinary</p>

Commented [A99]: Formerly Sec. 4(d).

Commented [A100]: Formerly Section 25. Revisions streamline, update, and clarify this section.

Commented [A101]: Changed from "verified petition." The less formal procedure is to encourage reports of impaired attorneys for prompt investigation and intervention if necessary, which may result in agreed resolution through JLAP.

Commented [A102]: Clarifies here and in other subsections the type of suspension involved.

Commented [A103]: Changed from "at its next meeting," which could be too soon to be practicable.

<p>believe that disability exists which would justify suspension of the attorney named in said petition, the Commission shall hold a hearing to determine if said attorney should be suspended because of such disability. For the purpose of conducting such hearing, the Commission may request the appointment of a hearing officer or hearing officers as provided in Section 18(b). The Commission shall report its findings and recommendations to this Court. The findings and recommendations to this Court may include a written recommendation for suspension pending final determination of the petition, and may also include a recommendation that the Court appoint a member of the Bar of this Court to inventory the client file of said attorney and to report to the Court the status of said matters, and this Court may forthwith enter an order of suspension upon such recommendation. The respondent shall have fifteen (15) days thereafter to petition this Court for a review and a dissolution of such order.</p> <p>(d) If the Commission recommends suspension, the respondent attorney shall have thirty (30) days after the filing of the report and recommendations of the commission to petition this Court for a review of the same. If no petition for review is filed within thirty (30) days of the findings and recommendations of the Commission, this Court shall enter an order of suspension of said attorney for the duration of such disability.</p>	<p>Commission may request the appointment of a hearing officer as provided in Section 18(b)(4). The hearing officer shall submit findings of fact and a recommendation to the Disciplinary Commission. The Disciplinary Commission may then file with the Supreme Court Clerk a Petition for Disability Suspension, which shall include its findings of fact. The Petition may also include a suggestion that the Supreme Court appoint an Attorney Surrogate under Section 27.</p> <p>(d) <i>Immediate emergency suspension.</i> The Disciplinary Commission's Petition for Disability Suspension may include a request for immediate emergency suspension pending final determination of the Petition for Disability Suspension. If the Supreme Court enters an order of immediate emergency suspension, the attorney shall have fifteen (15) days after entry of the order to file a motion for dissolution or modification of the order. The order of immediate emergency suspension shall remain in effect unless dissolved or modified by the Supreme Court.</p> <p>(e) <i>Objection to Petition for Disability Suspension.</i> The attorney shall have thirty (30) days after the filing of the Disciplinary Commission's Petition for Disability Suspension to file an objection.</p> <p>(f) <i>Suspension if no objection is filed.</i> If no timely objection is filed, the Supreme Court may enter an order of indefinite suspension of the attorney for the duration of the disability.</p>
--	---

Commented [A104]: This makes it clear that the HO reports to the Commission, not directly to the Court, in disability cases.

Commented [A105]: Added to update and replace current provision that the Commission may ask for appointment of an attorney to inventory client cases.

<p>(e) In the event that this Court grants a petition under this section, briefs may be filed and oral arguments heard, as this Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review, this Court shall determine whether the findings and recommendations of the Commission are supported by sufficient evidence, and shall enter its judgment, with or without opinion, as this Court shall determine.</p> <p>(f) Any attorney suspended for disability as provided in this section shall have the right to petition for reinstatement upon the termination of such disability in accordance with sections 4 and 18 of this rule.</p>	<p>(g) <i>Procedure if an objection is filed.</i> If an objection to the Petition for Disability Suspension is timely filed, briefs may be filed as the Supreme Court may direct. The briefs need not conform to the Supreme Court’s rules except as provided by Section 23(j). The Supreme Court may then enter an order on the Disciplinary Commission’s Petition for Disability Suspension.</p> <p>(h) <i>Procedure for reinstatement.</i> Any attorney suspended indefinitely for disability as provided in this Section may petition for reinstatement upon the termination of the disability as provided by Section 18(b).</p>
<p>Section 28. Discipline Imposed by Other Jurisdictions</p>	<p>Section 20. Discipline Imposed by Other Jurisdictions</p> <p>(a) <i>Definitions and applicability.</i></p> <p>(1) For the purpose of this Section, “foreign suspension” shall mean any suspension from the practice of law, revocation of the attorney’s license to practice law, disbarment, or acceptance of resignation with an admission of misconduct pursuant to an order in another jurisdiction.</p> <p>(2) “Foreign discipline” shall mean foreign suspension or any other public discipline imposed by another jurisdiction.</p>

Commented [A106]: Formerly Section 28.

Commented [A107]: The requirement that it be a “final” order is removed. Thus, this Section is applicable to attorneys under foreign interim suspensions.

<p>(a) Within fifteen (15) days of the issuance of any final order in another jurisdiction imposing a public disciplinary sanction, an attorney admitted to practice in this state shall notify the Executive Secretary in writing of the discipline. Upon notification from any source that an attorney admitted to practice in Indiana has been publicly disciplined in another jurisdiction, the Executive Secretary shall obtain a certified copy of the order of discipline.</p> <p>(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in Indiana has been disciplined in another jurisdiction, resulting in suspension or revocation of the attorney's license to practice law in that jurisdiction, disbarment or acceptance of resignation with an admission of misconduct, the Executive Secretary shall file a notice with the Court, attaching a certified copy of the order of discipline, and request the issuance of an order to the Executive Secretary and the attorney directing them to show cause in writing within thirty (30) days from service of the order why the imposition of reciprocal discipline in this state would be unwarranted.</p> <p>(c) Upon the expiration of thirty (30) days from service of the order set out in subsection (b), this Court shall</p>	<p>(3) This Section shall apply to an attorney admitted to practice in this State (“Indiana attorney”), regardless of whether the attorney’s license is active in good standing.</p> <p>(b) <i>Indiana attorney’s duty to report foreign discipline.</i> An Indiana attorney shall notify the Executive Director in writing of an order imposing foreign discipline within fifteen (15) days after entry of the order.</p> <p>(c) <i>Executive Director’s duty to obtain copy of order.</i> Upon notification from any source that an Indiana attorney has been subject to foreign discipline, the Executive Director shall obtain a certified copy of the order of discipline.</p> <p>(d) <i>Notice and request for reciprocal suspension.</i> Upon receipt of a certified copy of an order imposing foreign suspension, the Executive Director or designee shall file with the Supreme Court Clerk a Notice of Foreign Suspension. The Executive Director shall attach a certified copy of the order of foreign suspension and request the Supreme Court issue an order to the Executive Director and to the Indiana attorney directing either of them to show cause in writing within thirty (30) days from service of the order why the Supreme Court should not impose reciprocal discipline on the Indiana attorney. The burden is on the opponent to reciprocal suspension in this State to demonstrate that it should not be imposed.</p> <p>(e) <i>Supreme Court order.</i> After thirty (30) days from service of the show cause order, the Supreme Court may</p>
--	---

Commented [A108]: Added to make explicit.

Commented [A109]: This is relocated here from (c) below.

<p>suspend the attorney from the practice of law in this state indefinitely unless the Executive Secretary or the attorney demonstrate, or this Court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:</p> <ol style="list-style-type: none"> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; (3) The imposition of suspension by the Court would be inconsistent with standards governing sanctions in this rule or would result in grave injustice; or (4) The misconduct established warrants substantially different discipline in this state. <p>If this Court determines that any of those elements exists, this Court shall enter such other order of discipline as it deems appropriate. The burden is on the party seeking different discipline in this state to demonstrate that the imposition of the same discipline is unwarranted.</p> <p>(d) In all other aspects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the</p>	<p>suspend the Indiana attorney from the practice of law in this State indefinitely unless the Supreme Court finds on the face of the record that:</p> <ol style="list-style-type: none"> (1) The procedure in the foreign suspension case was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) An infirmity of proof gives rise to the clear conviction that the Supreme Court could not, consistent with its duty, accept as final the foreign jurisdiction's conclusion regarding misconduct; (3) The imposition of suspension by the Supreme Court would be inconsistent with standards governing discipline in this Rule or would result in grave injustice; or (4) The misconduct established warrants substantially different discipline in this State. <p>If the Supreme Court determines that any of the above factors exists, it may deny the request for reciprocal suspension or impose alternative discipline as it concludes is appropriate.</p> <p>(d) <i>Effect of foreign adjudication.</i> Except as provided above, a final adjudication in another jurisdiction that an Indiana attorney has committed misconduct shall establish conclusively the misconduct for purposes of a disciplinary</p>
---	--

<p>misconduct for purposes of a disciplinary proceeding in this state.</p> <p>(e) An attorney suspended under this section may file a "Motion for Reinstatement" in this state only after the attorney is reinstated to the practice of law in the jurisdiction that imposed the discipline and after the attorney has paid all costs assessed by the Court against him or her. However, regardless of the attorney's date of reinstatement in the foreign jurisdiction, the attorney's suspension in this state shall not be lifted until the attorney has been suspended at least as long as the attorney was suspended in the foreign jurisdiction.</p> <p>(1) The suspension in this state shall be deemed to begin on the date the foreign suspension begins only if the attorney promptly notifies the Commission of the foreign suspension and states that the attorney has suspended his or her practice in Indiana as of the date the foreign suspension began.</p> <p>(2) The motion for reinstatement shall be verified, shall be accompanied by certified proof of reinstatement in the foreign jurisdiction, and shall state the length of time the attorney was suspended in the foreign jurisdiction and the date on which the length of the attorney's Indiana suspension equals the length of the attorney's foreign suspension.</p>	<p>proceeding in this State.</p> <p>(e) <i>Motion for Release from Reciprocal Suspension.</i> An Indiana attorney suspended under this Section may file a "Motion for Release from Reciprocal Suspension" in this State only after he or she is reinstated to the practice of law in the jurisdiction that imposed the foreign suspension and after the attorney has paid all costs assessed by the Supreme Court. Regardless of the Indiana attorney's date of reinstatement in the foreign jurisdiction, however, the attorney shall not be released from reciprocal suspension in this State until he or she has been suspended at least as long as he or she was suspended in the foreign jurisdiction.</p> <p>(1) The suspension in this State shall be deemed to begin on the date the foreign suspension begins only if the Indiana attorney promptly notifies the Disciplinary Commission of the foreign suspension and states that the attorney has suspended his or her practice in Indiana as of the date the foreign suspension began.</p> <p>(2) The Motion for Release from Reciprocal Suspension shall be verified, shall be accompanied by certified proof of reinstatement in the foreign jurisdiction, and shall state the length of time the Indiana attorney was suspended in the foreign jurisdiction and the date on which the length of the attorney's Indiana suspension equals the length of the attorney's foreign suspension.</p>
---	--

Commented [A110]: Changed from "motion for reinstatement" to further distinguish from petitions for reinstatement after suspension without automatic reinstatement.

<p>(3) The Court may grant the motion without appointment of a hearing officer, and the provisions of Admission and Discipline Rules 23(4) and (18) shall not apply.</p> <p>(4) If the attorney's reinstatement in the foreign jurisdiction is subject to terms of probation, the attorney's reinstatement in Indiana shall be subject to compliance with those terms as determined by the disciplinary authorities in the foreign jurisdiction.</p>	<p>(3) The Supreme Court may decide the motion without appointment of a hearing officer, and the provisions of Section 18(b) shall not apply.</p> <p>(4) If the Indiana attorney's reinstatement in the foreign jurisdiction is subject to terms of probation, the attorney's release from reciprocal suspension in Indiana shall also be subject to compliance with those terms. The Indiana attorney shall promptly notify the Disciplinary Commission of any modification or revocation of probation in the foreign jurisdiction.</p>
--	--

Commented [A111]: This reporting requirement is added. The Commission can then do what it deems appropriate with this information.

<p>Section 16. Expenses</p> <p>The judgment of this Court imposing discipline will normally include an order that the respondent pay the costs and expenses of the proceeding. The Executive Secretary shall prepare an itemized statement of expenses allocable to each case, including expenses incurred by the Commission in the course of the investigatory, hearing or review procedures under this rule and costs attributable to the services of the hearing officer. The Executive Secretary shall include in the itemized statement of expenses a fee of two hundred fifty dollars (\$250) payable to the Clerk, as reimbursement for the Clerk's processing of all papers in connection with the proceeding. Proceedings for the collection of the costs taxed</p>	<p>IV. General Provisions</p> <p>Section 21. Costs and Expenses</p> <p>(a) <i>Imposition of costs and expenses in disciplinary proceedings.</i> If the Supreme Court imposes discipline or other sanction, including a sanction for contempt, the Supreme Court may issue an order that the respondent pay the costs and expenses of the proceeding. The Executive Director shall prepare an itemized statement of expenses allocable to each case, including: (1) expenses incurred by the Disciplinary Commission in the course of the investigatory, hearing or review procedures under this Rule; (2) costs attributable to the services of the hearing officer; and (3) a fee of two hundred fifty dollars (\$250) payable to the Supreme Court Clerk, as reimbursement for the processing of all papers in connection with the proceeding. Proceedings for the collection of the</p>
---	--

Commented [A112]: Formerly Section 16.

against the respondent may be initiated by the Executive Secretary on the order approving expenses and costs entered by this Court.

Section 18. Petitions for Reinstatement

(d) Any person filing a petition for reinstatement shall be responsible for the payment of any and all costs incurred by the Commission in conducting a hearing upon said petition for reinstatement which exceed the amount of the filing fee provided for in subsection (a) above. Any such costs shall be paid by the petitioner within ten (10) days of the receipt of a statement therefor from the Commission. In no event will there be any refund or rebate of any part of the filing fee as provided for in subsection (a) above.

costs taxed against the respondent may be initiated by the Executive Director on the Supreme Court's order approving expenses and costs.

(b) *Costs of hearing in reinstatement proceedings.* Any attorney filing a petition for reinstatement under Section 18, or seeking reinstatement to practice under any other provision of this Rule, shall be responsible for the payment of all costs incurred by the Disciplinary Commission in conducting a hearing that exceed the amount of any filing fee paid by the attorney seeking reinstatement. The Disciplinary Commission shall send a statement of costs to the attorney, and the attorney shall pay the costs within ten (10) days of the receipt of the statement. In no event shall there be any refund or rebate of any part of any filing fee paid by the person seeking reinstatement.

(c) *Costs for Disciplinary Commission services in providing copies of documents.*

(1) *Documents.* The Disciplinary Commission may charge a person requesting copies of documents the same costs that the Supreme Court has authorized the Supreme Court Clerk to charge for copies of documents.

(2) *Delivery costs.* In addition, the Disciplinary Commission may charge the costs of postage or other delivery services in responding to requests for copies of documents.

Commented [A113]: Relocated from section dealing with reinstatement.

Commented [A114]: This is a new provision to permit the Commission receive some compensation for its services in providing documents.

<p>Section 16. Expenses</p> <p>... An attorney who fails to pay costs and expenses assessed pursuant to this section by the due date of the annual registration fee required by Admission and Discipline Rule 2(b) shall be subject to an order of suspension from the practice of law pursuant to Indiana Admission and Discipline Rule 2(h), and shall be reinstated only upon paying the outstanding costs and expenses and submitting to the Clerk a written application for reinstatement and payment of an administrative reinstatement fee of two hundred dollars (\$200).</p>	<p>(3) <i>Right to withhold until payment is made.</i> The Disciplinary Commission may withhold the documents requested until the costs for its service are paid.</p> <p>(4) <i>Inapplicable to discovery requests.</i> This subsection (c) shall not apply to the Commission's responses to discovery requests in the course of litigation.</p> <p>(d) <i>Failure to pay costs and expenses.</i> An attorney who fails to pay costs and expenses assessed pursuant to this Section or any other provision of this Rule (except subsection (c) above) by the due date of the annual registration fee required by Admission and Discipline Rule 2(b) may be subject to an order of suspension from the practice of law pursuant to Indiana Admission and Discipline Rule 2(h), and shall be reinstated only upon paying the outstanding costs and expenses and filing with the Supreme Court Clerk a written application for reinstatement and payment of an administrative reinstatement fee of two hundred dollars (\$200). The requirements of Section 18(b) shall not apply to these proceedings.</p>
<p>Section 22. Public Disclosure</p> <p>(a) Except as provided in Section 22(b), after a verified complaint has been filed with the Court, all proceedings, except for adjudicative deliberations,</p>	<p>Section 22. Public Access</p> <p>(a) <i>Documents and information about disciplinary matters.</i></p>

Commented [A115]: An attorney is not subject to suspension merely for failure to pay costs for copies.

and all papers filed of record with the Clerk shall be open and available to the public. Proceedings and papers that relate to matters that have not resulted in the filing of a verified complaint shall not be open and available to the public. Investigative reports and other work product of the Executive Secretary or his or her agents, and statements of circumstances conditionally agreeing to discipline submitted pursuant to Section 11(c), shall be confidential and not open to public inspection.

(1) After a Disciplinary Complaint has been filed with the Supreme Court, all papers filed with the Supreme Court Clerk pertaining to that particular Disciplinary Complaint shall be open and available to the public, except as provided by Administrative Rule 9.

(2) After a Disciplinary Complaint has been filed with the Supreme Court, all proceedings shall be open to the public, except adjudicative deliberations or as provided in Section 22(b).

(3) Proceedings and papers that relate to matters that have not resulted in the filing of a Disciplinary Complaint shall be confidential and not available to the public.

(4) Communications among members and staff of the Disciplinary Commission regarding disciplinary matters, minutes and notes regarding Disciplinary Commission meetings and deliberations, and investigative reports and other work product of the Executive Director or his or her agents shall be confidential and not available to the public.

(5) Conditional Agreements under Section 12.1(b), private administrative admonition letters under Section 12.1(a), resignation affidavits under Section 17(d), and affidavits consenting to disbarment under Section 17(d) shall be confidential and not open to public inspection.

Commented [A116]: This has been added to incorporate by reference Admin. R. 9 regarding access to court records.

Commented [A117]: Added to make explicit the confidential nature of these items.

Commented [A118]: Added, to make explicit current practice.

<p>(b) Hearings before hearing officers shall be open to the public. However, hearing officers may, in the exercise of sound discretion, order a closed hearing or other appropriate relief on the motion of the hearing officer, or at the request of the Commission or the respondent if, in the opinion of such hearing officer, the conduct of a closed hearing is necessary for any of the following purposes:</p> <ol style="list-style-type: none"> (1) For the protection of witnesses; (2) To prevent likely disruption of the proceedings; (3) For the security of the hearing officer, or any of the parties to the proceedings; (4) To prevent the unauthorized disclosure of attorney-client confidences not at issue in the proceeding; (5) For any other good cause shown which in the judgment of the hearing officer requires such hearing to be closed. 	<p>(b) <i>Hearings.</i> Hearings before hearing officers shall be open to the public. However, hearing officers may order a hearing to be closed if necessary for any of the following purposes:</p> <ol style="list-style-type: none"> (1) For the protection of witnesses. (2) To prevent likely disruption of the proceedings. (3) For the security of the hearing officer or any of the participants at the proceedings. (4) To prevent the unauthorized disclosure of attorney-client confidences not at issue in the proceeding. (5) For any other good cause shown which in the judgment of the hearing officer requires the hearing to be closed.
<p>Section 11.2. Filing and Service of Pleadings and Other Papers</p> <p>(a) <i>Filing.</i></p> <ol style="list-style-type: none"> (1) Except as otherwise provided in subsection (2) hereof, all pleadings and papers subsequent to the complaint which are required to be served upon a party shall be filed with the Clerk. (2) No deposition or request for discovery or response thereto shall be filed with the Court 	<p>Section 23. Filing, Service, Submission, Format of Documents; Motion Practice</p> <p>(a) <i>Filing; general provisions.</i></p> <ol style="list-style-type: none"> (1) Pleadings, motions, and other documents shall have a caption showing the Indiana Supreme Court as the court in which they are filed and shall be filed with the Supreme Court Clerk (not with the clerk of a trial

Commented [A120]: Formerly Section 11.2, with additions of (h) through (l).

<p>unless required under circumstances set forth in Trial Rule 5(D)(2).</p> <p>(3) Original depositions shall be maintained according to the procedures set forth in Trial Rule 5(D)(3).</p> <p>(4) In the event it is made to appear to the satisfaction of the hearing officer that the original of a deposition or request for discovery or response thereto cannot be filed with the Court when required, the Court may allow use of a copy instead of the original.</p> <p>(5) The filing of any deposition shall constitute publication.</p> <p>(b) <i>Filing With the Court Defined.</i> All papers will be deemed filed with the Clerk when they are:</p> <p>(1) personally delivered to the Clerk;</p> <p>(2) deposited in the United States Mail, postage prepaid, properly addressed to the Clerk; or</p> <p>(3) deposited with any third-party commercial carrier for delivery to the Clerk within three (3) calendar days, cost prepaid, properly addressed.</p>	<p>court, even if the judge of that court is serving as hearing officer in the disciplinary proceeding).</p> <p>(2) No deposition, request for discovery, or discovery response shall be filed with the Supreme Court Clerk unless permitted under circumstances set forth in Trial Rule 5(E)(2).</p> <p>(3) Original depositions shall be maintained according to the procedures of Trial Rule 5(E)(3).</p> <p>(4) The filing of any deposition shall constitute publication.</p> <p>(b) <i>Filing defined.</i> All papers shall be deemed filed when they are:</p> <p>(1) Personally delivered to the Supreme Court Clerk;</p> <p>(2) Deposited in the United States Mail, postage prepaid, properly addressed to the Supreme Court Clerk;</p> <p>(3) Deposited with any third-party commercial carrier for delivery to the Supreme Court Clerk within three (3) calendar days, cost prepaid, and properly addressed; or</p> <p>(4) Electronically filed as authorized or required by the Supreme Court.</p>
---	--

Commented [A121]: To clarify a point of frequent confusion.

Commented [A119]: Removed as unnecessary.

Commented [A122]: Changes here and elsewhere anticipate electronic filing, submission, and service of documents.

<p>(c) <i>Filing; Number of Copies.</i> Except as otherwise provided in this rule, the following shall be filed with the Clerk:</p> <p>(1) An original and one (1) copy of any pleading, motion or other paper directed to the attention of the hearing officer that is filed between the date the Court appoints the hearing officer and the date the hearing officer files written findings of fact.</p> <p>(2) An original and one (1) copy of a motion for extension of time, an appearance, a motion to withdraw appearance, a petition by the Commission for an order to show cause under Rule 23(10)(f), and a motion by the Commission to dismiss a show cause proceeding under Rule 23(10)(f).</p> <p>(3) An original and five (5) copies of all other documents filed with the Clerk.</p> <p>(d) <i>Required Service.</i> All documents tendered to the Clerk for filing must be served upon all parties or their counsel and the hearing officer, after one has been appointed.</p> <p>(e) <i>Time for Service.</i> A party shall serve a document no later than the date the document is filed.</p>	<p>(c) <i>Filing; required documents.</i> Only the original of a document shall be filed with or tendered to the Supreme Court Clerk. No paper original shall be required for any documents electronically filed with or tendered to the Supreme Court Clerk.</p> <p>(d) <i>Time for service.</i> A filer shall serve a document no later than the date it is tendered for filing.</p> <p>(e) <i>Required service.</i> All documents tendered to the Supreme Court Clerk for filing must be served upon all participants or their counsel and the hearing officer, after one has been appointed.</p> <p>(f) <i>Manner and date of service.</i> Unless otherwise provided in this Rule, all documents shall be deemed served</p>
---	---

Commented [A123]: The Clerk is able to scan the original for distribution to the Court.

<p>(f) <i>Manner and Date of Service.</i> Unless otherwise provided in this rule, all papers will be deemed served when they are:</p> <ol style="list-style-type: none"> (1) personally delivered; (2) deposited in the United States Mail, postage prepaid, properly addressed; or (3) deposited with any third-party commercial carrier for delivery within three (3) calendar days, cost prepaid, properly addressed. <p>(g) <i>Certificate of Service.</i> An attorney or unrepresented party tendering a document to the Clerk for filing shall certify that service has been made, list the parties or others served, and specify the date and means of service. The certificate of service shall be placed at the end of the documents and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for filing. The Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.</p>	<p>when they are:</p> <ol style="list-style-type: none"> (1) Personally delivered; (2) Deposited in the United States Mail, postage prepaid, properly addressed; (3) Deposited with any third-party commercial carrier for delivery within three (3) calendar days, cost prepaid, and properly addressed; or (4) Electronically served as authorized or required by the Supreme Court. <p>(g) <i>Certificate of service.</i> Anyone tendering a document to the Supreme Court Clerk for filing in a disciplinary proceeding shall certify that service has been made, list the persons served, and specify the date and means of service. The certificate of service shall be placed at the end of the document and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for filing. The Supreme Court Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.</p> <p>(h) <i>Documents submitted to the Supreme Court.</i> Documents directed to be submitted to the Supreme Court shall be delivered to the Supreme Court agency or office designated by the Supreme Court to accept the submissions. Submission may be made electronically if authorized or</p>
---	---

Commented [A124]: This has been added to help avoid confusion over what to do with documents required to be "submitted to the Supreme Court," e.g., PAAs, conditional agreements, resignations, Commission requests for additional time to complete an investigations.

required by the Supreme Court. The date of submission shall be the date received by the Supreme Court agency or office. Unless submitted electronically, one paper original shall be submitted. Documents submitted to the Supreme Court shall not be filed with the Supreme Court Clerk.

(i) *Inclusion of contact information.* A person filing or submitting a pleading, motion, or document shall include at any place under the signature line the person's address, telephone number, FAX number, and email address.

(j) *Format.* Motions, petitions for review, and briefs shall conform to the following requirements:

- (1) The pages shall be 8 1/2 by 11 inch white paper of a weight normally used in printing and typing.
- (2) The document shall be produced in a neat and legible manner using black print. It may be typewritten, printed or produced by a word processing system. It may be copied by any copying process that produces a distinct black image on white paper. Text shall appear on only one side of the paper.
- (3) The font shall be Arial, Baskerville, Book Antiqua, Bookman, Bookman Old Style, Century, Century Schoolbook, Courier, Courier New, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino or Times New Roman and the typeface shall be 12-point or larger in body text.

Commented [A125]: Added. This is helpful when the Clerk or Court needs to contact a respondent or counsel.

Commented [A126]: Added. These requirements are based on Appellate Rule 43(B) through (G).

(4) All text shall be double-spaced except that footnotes, tables, charts, or similar material and text that is blocked and indented shall be single-spaced.

(5) The pages shall be numbered at the bottom.

(6) All four margins for the text of the document shall be at least one (1) inch from the edge of the page.

(k) *Electronic copy.* Petitions and briefs may be accompanied by a copy of the document in electronic format, unless the document is filed in electronic form. Any electronic format used by the word processing system to generate the document is permissible.

(l) *Motion practice.* Unless provided otherwise by these Rules or by order of the Supreme Court, a request for an order or for other relief shall be made by filing a written motion. A motion for relief from a prior order shall be filed no later than thirty (30) days after the date of the order, absent good cause shown for seeking relief at a later date. Any response to a motion must be filed within fifteen (15) days after the motion is served. The Supreme Court or hearing officer has the discretion to rule on a motion without waiting for a response. The movant may not file a reply to a response without leave of the Supreme Court or hearing officer. Any reply must be tendered within five (5) days of service of the response and accompanied by the filing of a motion for leave to file the reply.

Commented [A127]: Added. This can helpful to the Court and its staff. It is permissive, not required.

Commented [A128]: This is added for procedural guidance.

Commented [A129]: Among other things, this prevents a respondent from asking for reconsideration of an order imposing discipline more than 30 days after entry absent good cause for delay.

Section 10. Investigatory Procedures

....

(e) It shall be the duty of every attorney against whom a grievance is filed under this Section to cooperate with the Commission's investigation, accept service, comply with the provisions of these rules, and when notice is given by registered or certified mail, claim the same in a timely manner either personally or through an authorized agent. Every attorney is obligated under the terms of Admission and Discipline Rule 2 to notify the Clerk of any change of address or name within thirty (30) days of such change, and a failure to file the same shall be a waiver of notice involving licenses as attorneys or disciplinary matters.

Section 12. Prosecution of Grievances

....

(h) Each attorney admitted to practice law in this State shall be deemed to have appointed the Clerk as his or her agent to receive service of any and all papers, processes or notices which may be called for by any provision of this rule. Such papers, process or notice may be served by filing the same with the Clerk as the agent for said attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of such papers, process or notice together with such affidavit, the Clerk shall immediately mail such papers, process or notice to

Section 23.1. Obligations of Attorneys regarding Service; Constructive Service

(a) *Obligation to accept service.* It shall be the duty of every attorney against whom a grievance is submitted to accept service, and when notice is given by registered or certified mail, to claim the notice in a timely manner either personally or through an authorized agent.

(b) *Obligation to notify Supreme Court Clerk of change of contact information.* Every attorney is obligated under Admission and Discipline Rule 2(a) to notify the Supreme Court Clerk of any change of contact information. A failure to notify the Supreme Court Clerk of a change in contact information shall be deemed a waiver of notice involving disciplinary matters.

(c) *Supreme Court Clerk as agent to receive constructive service.* Each attorney admitted to practice law in this State or practicing law in this State shall be deemed to have appointed the Supreme Court Clerk as his or her agent to receive constructive service of all papers, including processes and notices, called for by any provision of this Rule when actual service on the attorney at the attorney's addresses shown on the records of the Supreme Court Clerk cannot be accomplished, or when the attorney has not provided the Supreme Court Clerk with an address. These papers may be served by filing them with the Supreme Court Clerk as the agent for the attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of the papers and the affidavit, the Supreme Court Clerk shall

Commented [A130]: Contents of this new Section are relocated here to make clear that the requirements are uniformly applicable and to make them easier to locate.

Commented [A131]: Contents of (a) and (b) are relocated from former Sections 10(e) (re noncooperation).

Commented [A132]: Contents of (c) are relocated from former Section 12(h) (re prosecution).

Commented [A133]: Added for clarification.

<p>such attorney at the attorney's office address, or if unavailable the attorney's residence address, as shown upon the records of the Clerk, and the Clerk shall file a written certification showing the mailing of such papers, process or notice to said attorney. Upon the completion of this procedure, said attorney shall be deemed to have been served with such papers, process or notice.</p>	<p>immediately mail notification to the attorney at the attorney's office address, or if unavailable the attorney's residence address, as shown in the records of the Supreme Court Clerk, informing the attorney that the papers have been filed with the Supreme Court Clerk as agent for the attorney. Alternatively, the Supreme Court Clerk may accomplish this notification by emailing copies of or hyperlinks to the documents to the attorney at his or her email address, as shown upon the records of the Supreme Court Clerk. The Supreme Court Clerk shall then file a written certification showing the mailing or emailing of the notification to the attorney. If the attorney has provided no contact information to the Supreme Court Clerk, the Supreme Court Clerk may, but need not, attempt to accomplish notification through other means. Upon the completion of this procedure, the attorney shall be deemed to have been served with the papers.</p>
<p>Section 11.3. Computation of Time</p> <p>(a) <i>Non-Business and Business Days.</i> For purposes of this rule, a non-business day shall mean a Saturday, a Sunday, a legal holiday as defined by state statute, or a day the Office of the Clerk is closed during regular business hours. A business day shall mean all other days.</p> <p>(b) <i>Counting Days.</i> In computing any period of time allowed by these Rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of</p>	<p>Section 23.2. Computation of Time</p> <p>(a) <i>Non-business and business days.</i> For purposes of this Rule, a non-business day shall mean a Saturday, a Sunday, a legal holiday as defined by State statute, or a day the Office of the Supreme Court Clerk is closed during regular business hours. A business day shall mean all other days.</p> <p>(b) <i>Counting days.</i> In computing any period of time allowed by this Rule, by order of the Supreme Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a non-business day. If the last day is a</p>

Commented [A134]: This change allows the Clerk to mail a simple notification, rather than requiring the Clerk to resend the papers themselves (the attempted service of which has already failed). Notification could, at the Clerk's option, be accomplished by mailing the papers themselves.

Commented [A135]: Currently, the Clerk already sends scanned copies of the documents by email to the attorney as an extra measure, in addition to service by mail, because the Commission's service by mail has already failed. This allows such email notification to be sufficient by itself. The alternative of sending hyperlinks instead of copies anticipates the upcoming case management system in which the documents will be accessible through hyperlinks. The changes to the constructive service provision gives the Clerk increased flexibility in determining how best to complete constructive service on the attorney.

Commented [A136]: Formerly Section 11.3.

<p>the period so computed is to be included unless it is a non-business day. If the last day is a non-business day, the period runs until the end of the next business day. When the time allowed is less than seven (7) days, all non-business days shall be excluded from the computation.</p> <p>(c) <i>Extension of Time When Served by Mail or Carrier.</i> When a party serves a document by mail or third-party commercial carrier, the time period for filing any response or reply to the document shall be extended automatically for an additional three (3) days from the date of deposit in the mail or with the carrier. This Rule does not extend any time period that is not triggered by a party's service of a document, such as the time for filing a petition for review.</p>	<p>non-business day, the period runs until the end of the next business day. When the time allowed is less than seven (7) days, all non-business days shall be excluded from the computation.</p> <p>(c) <i>Extension of time when served by mail or carrier.</i> When the Disciplinary Commission or the respondent serves a document by mail or third-party commercial carrier, the time period for filing any response or reply to the document shall be extended automatically for an additional three (3) days from the date of deposit in the mail or with the carrier. This extension of time does not extend any time period that is not triggered by service of a document, such as the time for filing a petition for review.</p>
<p>Section 19. Assistance of Law Enforcement Agencies and to Lawyer Disciplinary Agencies in Other Jurisdictions</p> <p>(a) The Commission, or the Executive Secretary, may request any law enforcement agency or office to assist in an investigation. Such assistance shall include the furnishing of all available information about the respondent.</p> <p>(b) The Supreme Court may order a person domiciled or found within this state to give testimony or a statement or to produce documents or other things for use in an attorney discipline or disability proceeding in another state. The order may be made</p>	<p>Section 24. Assistance of Law Enforcement Agencies and to Attorney Disciplinary Agencies in Other Jurisdictions</p> <p>(a) <i>Assistance from law enforcement.</i> The Disciplinary Commission, or the Executive Director, may request any law enforcement agency or office to assist in an investigation. This assistance shall include the furnishing of all available information about the respondent.</p> <p>(b) <i>Assistance to other jurisdictions.</i> The Supreme Court may order a person domiciled or found within this State to give testimony or a statement or to produce documents or other things for use in an attorney discipline or disability</p>

Commented [A137]: Formerly Section 19.

<p>upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this state, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of the Indiana Rules of Trial Procedure. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Court. A person may be required to give testimony or a statement only in the county wherein he or she resides or is employed or transacts business in person, or at such other convenient place as is fixed in the order. The person appointed shall have the power to administer any necessary oath. Any order to testify or to produce documents or other things issued as prescribed in this subsection may be enforced in the circuit court of the county wherein the person commanded to appear is domiciled, upon petition of any party interested in the subject attorney discipline or disability proceeding.</p>	<p>proceeding in another jurisdiction. The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this State, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of the Indiana Rules of Trial Procedure. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Supreme Court. A person may be required to give testimony or a statement only in the county in which he or she resides or is employed or transacts business in person, or at another convenient place fixed in the order. The person appointed shall have the power to administer any necessary oath. Any order to testify or to produce documents or other things issued as prescribed in this subsection may be enforced in the circuit court of the county in which the person commanded to appear is domiciled, upon petition of any person interested in the attorney discipline or disability proceeding.</p>
<p>Section 20. Immunity</p> <p>Each person shall be absolutely immune from civil suit for all of his or her oral or written statements intended for transmittal either: a) to the Commission, the Executive</p>	<p>Section 25. Immunity</p> <p>(a) <i>Statements to the Disciplinary Commission or Lawyers Assistance Program.</i> Each person shall be absolutely immune from civil suit for all of his or her oral or written</p>

Commented [A138]: Formerly Section 20.

<p>Secretary, or the Commission staff, or made in the course of investigatory, hearing or review proceedings under this rule; or b) to a Lawyers Assistance Program approved by the Supreme Court. Oral or written statements made to others which are not intended for such transmittal have no immunity under this Section. The Executive Secretary, his staff, counsel, investigators, hearing officers, and the commissioners shall be immune from suit for any conduct arising out of the performance of their duties.</p>	<p>statements intended for transmittal either: (1) to the Disciplinary Commission, the Executive Director, or the Disciplinary Commission staff, or made in the course of investigatory, hearing or review proceedings under this Rule; or (2) to a Lawyers Assistance Program approved by the Supreme Court. Oral or written statements made to others which are not intended for such transmittal have no immunity under this Section.</p> <p>(b) <i>Suit arising from performance of duties.</i> The Executive Director, his or her staff, counsel, investigators, hearing officers, and the members of the Disciplinary Commission shall be immune from suit for any conduct arising out of the performance of their duties.</p>
<p>Section 26. Duties of Disbarred or Suspended Attorneys, and Attorneys who have Resigned</p>	<p>Section 26. Duties of Suspended Attorneys, Disbarred Attorneys, and Attorneys whose Resignation has been Accepted</p> <p>(a) <i>Applicability.</i> This Section shall apply to all attorneys who have been disbarred, or whose law license has been suspended under this Rule or any other provision of the Indiana Admission and Discipline Rules, including suspensions for registration fee nonpayment, continuing legal education noncompliance, and nonpayment of costs (“license maintenance suspension”). Disbarment shall include disbarment by consent, and suspension shall include resignation under Section 17.</p>

Commented [A139]: Subsections are rearranged for better ease in comparison.

Commented [A141]: This Section has been rearranged to make it flow more logically.

Commented [A142]: This makes explicit that these duties apply to attorneys who are suspended for any reason.

<p>(b) <i>Duties of Disbarred and Suspended Attorneys.</i> Upon receiving notice of the order of suspension or disbarment, the respondent shall not undertake any new legal matters between service of the order and the effective date of the discipline. Upon the effective date of the order, the respondent shall not maintain a presence or occupy an office where the practice of law is conducted. A respondent suspended for more than six (6) months or disbarred shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, legal assistant, law clerk or similar title.</p> <p>(a) <i>Duties of Disbarred Attorneys.</i></p> <p>(1) In any case where an attorney has been disbarred under the provisions of this rule, said attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt requested, all clients being represented by him</p>	<p>(b) <i>Duties of all suspended and disbarred attorneys.</i></p> <p>(1) Upon receiving notice of the order of suspension or disbarment, including disbarment by consent, the respondent shall not undertake any new legal matters between receipt of the order and the effective date of the suspension or disbarment. Upon the effective date, the respondent shall not practice law, represent clients, or maintain a presence or occupy an office where the practice of law is conducted.</p> <p>(2) Upon receiving notice of the order of suspension or disbarment, the attorney shall file a notice of his or her suspension or disbarment in every pending matter in which the attorney has filed an appearance. The attorney shall attach a copy of the suspension or disbarment order to the notice.</p> <p>(c) <i>Additional duties of attorneys who have been disbarred, suspended without automatic reinstatement, or suspended for more than 180 days.</i></p> <p>(1) This subsection (c) shall apply to attorneys who have been disbarred, suspended without automatic reinstatement for any length of time as defined in Section 1(d)(7) (including those under resignation), and attorneys whose active suspension exceeds 180 days (including license maintenance suspensions).</p> <p>(2) The attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt</p>
---	---

Commented [A143]: Added to ensure that courts and opposing parties receive notice of suspension of attorneys in pending cases.

Commented [A144]: Most of these duties formerly applied only to disbarred attorneys. Those duties are extended to attorneys who are suspended without automatic reinstatement or whose suspension exceeds 180 days for the protection of their clients.

<p>or her in pending matters, of the disbarment and the attorney's consequent inability to act as an attorney. Such notice shall advise said clients to seek legal advice of the client's own choice elsewhere.</p> <p>(2) In addition to notifying clients as set forth above, the attorney who has been disbarred shall move in the Court or agency in which any proceeding is pending for leave to withdraw as such attorney, shall notify all attorneys for adverse parties in such proceedings, and shall furnish the address of the client involved to the Court or agency and to the attorneys for adverse parties.</p> <p>(3) Any attorney who has been disbarred under the provisions of this rule shall make available to any of his or her clients, to new counsel for any of said clients or to any other person designated by the Court having appropriate jurisdiction all papers, documents, files or information which may be in his or her possession.</p>	<p>requested, all clients being represented by him or her in pending matters, of the disbarment or suspension and the attorney's inability to act as an attorney. This notice shall advise the clients to seek legal advice of the client's own choice elsewhere.</p> <p>(3) In addition to notifying clients as set forth above, the attorney shall move to withdraw as counsel in the court or agency in which any proceeding is pending, shall notify all attorneys for adverse parties in these proceedings, and shall furnish the address of the client involved to the court or agency and to the attorneys for adverse parties.</p> <p>(4) The attorney shall make available to any of his or her clients, to new counsel for any of the clients or to any other person designated by the court having appropriate jurisdiction, all papers, documents, files or information which may be in his or her possession.</p> <p>(5) The attorney shall take any action as is necessary to cause the removal of any indicia of attorney, lawyer, counselor at law, legal assistant, law clerk or similar title, displayed or communicated in any form or medium, including the internet.</p> <p>(6) The attorney shall close any IOLTA account or other attorney trust account the attorney may have and disburse any funds in the account(s) to their rightful owner(s).</p>
---	--

Commented [A145]: This formerly applied to disbarred attorneys and those suspended for more than six months. The remainder of this subsection is new.

Commented [A146]: This is new.

<p>(4) Within thirty (30) days after the effective date of the disbarment order, the disbarred attorney shall file with this Court an affidavit showing that he or she has fully complied with the provisions of the order and with these rules and also stating all other State, Federal and Administrative jurisdictions to which the attorney has been admitted to practice. The disbarred attorney shall also serve a copy of such affidavit upon the Executive Secretary and shall set forth the address where communications may thereafter be directed to him or her.</p> <p>(c) <i>Duties of Suspended Attorneys.</i> The suspended attorney shall, within twenty (20) days from the date of the notice of the suspension, file with the Court an affidavit showing that:</p> <p>(1) All clients being represented by the attorney in pending matters have been notified by certified mail, return receipt requested, of the nature and duration of the suspension, and all pending matters of clients requiring the attorney's services during the period of suspension have been placed in the hands and care of an attorney</p>	<p>(7) Within thirty (30) days after the effective date of the disbarment or suspension order (or within 10 days of the date active suspension exceeds 180 days in the case of license maintenance suspensions), the attorney shall file with the Supreme Court a notification affidavit showing that he or she has fully complied with the provisions of the order and with this Rule. The notification affidavit shall disclose all other State, Federal and Administrative jurisdictions to which the attorney has been admitted to practice. If the attorney is representing no clients at the time the order is entered, the affidavit shall so state. The attorney shall also serve a copy of the affidavit upon the Executive Director and shall set forth the address where communications may be directed to him or her.</p> <p>(d) <i>Additional duties of suspended attorneys not subject to subsection (c).</i> A suspended attorney not subject to subsection (c) shall, within thirty (30) days from the date of the notice of the suspension, file with the Supreme Court a notification affidavit showing that:</p> <p>(1) All clients being represented by the attorney in pending matters have been notified by certified mail, return receipt requested, of the nature and duration of the suspension, and all pending matters of clients requiring the attorney's services during the period of suspension have been placed in the hands and care of an attorney admitted to practice in this State with the consent of the client.</p>
--	---

Commented [A147]: With these suspensions, it is not clear at the time of the order whether the suspension will last for more than 180 days.

Commented [A148]: Added to clarify a point of frequent confusion.

Commented [A149]: This would apply primarily to attorneys suspended with automatic reinstatement (which is limited to 180 days under Section 3(a)) and to those under license maintenance suspension (until it exceeds 180 days, when subsection (c) is triggered).

Commented [A150]: Changed from 20 days for consistency with (c).

<p>admitted to practice before the Supreme Court of Indiana with the consent of the client.</p> <p>(2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.</p> <p>(3) Proof of compliance with this section of the rule shall be a condition precedent to reinstatement.</p> <p>(d) <i>Duties of Attorneys who have Resigned.</i> An attorney whose resignation from the Bar has been accepted pursuant to Section 17 of this rule shall comply with the provisions of this section applicable to a disbarred attorney.</p>	<p>(2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.</p> <p>(3) If the suspended attorney is representing no clients at the time the order of suspension is entered, the affidavit shall so state.</p> <p>(e) <i>Requirement for reinstatement.</i> Compliance with this Section shall be a requirement for reinstatement to practice. Filing a notification affidavit shall be a prerequisite for filing a petition for reinstatement under Section 18.</p>
<p>Section 27. Attorney Surrogates</p> <p>(a) <i>Definitions for purposes of this section only:</i></p> <p>“Attorney Surrogate” means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an attorney surrogate for a lawyer.</p>	<p>Section 27. Attorney Surrogates</p> <p>(a) <i>Definitions for purposes of this Section only.</i></p> <p>(1) “Attorney Surrogate” means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an Attorney Surrogate for a Lawyer.</p>

Commented [A151]: Added for clarity.

Commented [A152]: Added. See also Section 18(b)(2)(ii).

Commented [A140]: No longer needed due to inclusion of resignation in definition of suspension without automatic reinstatement.

<p>“Court of competent jurisdiction” means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.</p> <p>“Disabled” means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs the Lawyer's ability to practice law.</p> <p>“Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.</p> <p>“Lawyer” means a member of the Bar of this State who is engaged in the private practice of law in this State. “Lawyer” does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.</p> <p>(b) <i>Designation of Attorney Surrogate</i></p> <p>(1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 2(b), a Lawyer may designate an attorney surrogate in the Clerk of Courts Portal (www.in.gov/judiciary/cofc/license) provided</p>	<p>(2) “Court of competent jurisdiction” means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.</p> <p>(3) “Disabled” means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs the Lawyer's ability to practice law.</p> <p>(4) “Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.</p> <p>(5) “Lawyer” means a member of the Bar of this State who is engaged in the private practice of law in this State. “Lawyer” does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.</p> <p>(b) <i>Designation of Attorney Surrogate.</i></p> <p>(1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 2(b), a Lawyer may designate an Attorney Surrogate in the Clerk of Courts Portal</p>
---	--

<p>by the Clerk of the Supreme Court by specifying the attorney number of the attorney surrogate and certifying that the attorney surrogate has agreed to the designation in a writing in possession of both the lawyer and the surrogate. The designation of an attorney surrogate shall remain in effect until revoked by either the designated attorney surrogate or the Lawyer designating the attorney surrogate. The Lawyer who designates the attorney surrogate shall notify the Clerk of the Supreme Court of any change of designated attorney surrogate within thirty (30) days of such change. The Clerk shall keep a list of designated attorney surrogates and their addresses.</p> <p>(2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity where indicated in the attorney surrogate designation section of the Clerk of Courts Portal (www.in.gov/judiciary/cofc/license). Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no attorney surrogate shall be appointed for a Lawyer practicing in a Fiduciary Entity.</p> <p>(3) A lawyer not practicing in a Fiduciary Entity who does not designate an attorney surrogate pursuant to subsection (1) above will be deemed to designate a senior judge or other suitable member of the bar of this State in good standing</p>	<p>(www.in.gov/judiciary/cofc/license) provided by the Supreme Court Clerk by specifying the attorney number of the Attorney Surrogate and certifying that the Attorney Surrogate has agreed to the designation in a writing in possession of both the Lawyer and the surrogate. The designation of an Attorney Surrogate shall remain in effect until revoked by either the designated Attorney Surrogate or the Lawyer designating the Attorney Surrogate. The Lawyer who designates the Attorney Surrogate shall notify the Supreme Court Clerk of any change of designated Attorney Surrogate within thirty (30) days of the change. The Supreme Court Clerk shall keep a list of designated Attorney Surrogates and their addresses.</p> <p>(2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity where indicated in the Attorney Surrogate designation section of the Clerk of Courts Portal (www.in.gov/judiciary/cofc/license). Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no Attorney Surrogate shall be appointed for a Lawyer practicing in a Fiduciary Entity.</p> <p>(3) A Lawyer not practicing in a Fiduciary Entity who does not designate an Attorney Surrogate pursuant to subsection (1) above shall be deemed to designate a senior judge or other suitable member of the bar of this State in good standing appointed by a court of</p>
--	--

appointed by a court of competent jurisdiction to perform the duties of an attorney surrogate.

(c) *Role of Attorney Surrogate*

(1) Upon notice that a Lawyer has:

- (a) died;
- (b) disappeared;
- (c) become disabled; or
- (d) been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26

any interested person (including a local bar association) or a designated attorney surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an attorney surrogate.

(2) A copy of the verified petition shall be served upon the Lawyer at the address on file with the Clerk of the Supreme Court of Indiana or, in the event the Lawyer has died, upon the personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition),

competent jurisdiction to perform the duties of an Attorney Surrogate.

(c) *Role of Attorney Surrogate.*

(1) Upon notice that a Lawyer has:

- (i) Died;
- (ii) Disappeared;
- (iii) Become disabled; or
- (iv) Been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26,

any interested person (including a local bar association) or a designated Attorney Surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an Attorney Surrogate.

(2) A copy of the verified petition shall be served upon the Lawyer at the address on file with the Supreme Court Clerk or, in the event the Lawyer has died, upon the personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition), determine whether there is an occurrence under (i), (ii), (iii) or (iv), and an

<p>determine whether there is an occurrence under (a), (b), (c) or (d), and an attorney surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an attorney surrogate should be appointed then the court shall appoint as attorney surrogate either the designated attorney surrogate as set forth pursuant to subsection (b)(1), a suitable member of the Bar of this State in good standing or a senior judge.</p> <p>(3) Upon such appointment, the attorney surrogate may:</p> <ul style="list-style-type: none"> (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention; (b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel; (c) apply for extensions of time pending employment of replacement counsel by the client; (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; (e) give notice to appropriate persons and entities who may be affected, other than 	<p>Attorney Surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an Attorney Surrogate should be appointed then the court shall appoint as Attorney Surrogate either the designated Attorney Surrogate as set forth pursuant to subsection (b)(1), a suitable member of the Bar of this State in good standing or a senior judge.</p> <p>(3) Upon appointment, the Attorney Surrogate may:</p> <ul style="list-style-type: none"> (i) Take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention; (ii) Notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel; (iii) Apply for extensions of time pending employment of replacement counsel by the client; (iv) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; (v) Give notice to appropriate persons and entities who may be affected, other than clients, that the Attorney Surrogate has been appointed;
--	--

<p>clients, that the attorney surrogate has been appointed;</p> <p>(f) arrange for the surrender or delivery of clients' papers or property;</p> <p>(g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;</p> <p>(h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and</p> <p>(i) do such other acts as the court may direct to carry out the purposes of this section.</p> <p>(4) If the attorney surrogate determines that conflicts of interest exist between the attorney surrogate's clients and the clients of the Lawyer, the attorney surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney surrogate shall take no action with regard to those cases or files</p> <p>(d) <i>Jurisdiction of Court</i></p> <p>A court of competent jurisdiction that has granted a verified petition for appointment under this section shall have jurisdiction over the files, records and property of clients of the Lawyer and may make orders necessary or appropriate to protect the</p>	<p>(vi) Arrange for the surrender or delivery of clients' papers or property;</p> <p>(vii) As approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to the accounts;</p> <p>(viii) Deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and</p> <p>(xi) Do other acts as the court may direct to carry out the purposes of this Section.</p> <p>(4) If the Attorney Surrogate determines that conflicts of interest exist between the Attorney Surrogate's clients and the clients of the Lawyer, the Attorney Surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the Attorney Surrogate shall take no action with regard to those cases or files.</p> <p>(d) <i>Jurisdiction of court.</i> A court of competent jurisdiction that has granted a verified petition for appointment under this Section shall have jurisdiction over the files, records and property of clients of the Lawyer and may make orders necessary or appropriate to protect the interests of the Lawyer, the clients of the Lawyer and the public. The court shall also have jurisdiction over closed files of the clients of the Lawyer</p>
--	---

<p>interests of the Lawyer, the clients of the Lawyer and the public. The court shall also have jurisdiction over closed files of the clients of the Lawyer and may make appropriate orders regarding those files including, but not limited to, destruction of the same.</p> <p>(e) <i>Time Limitations Suspended.</i></p> <p>Upon the granting of a verified petition for appointment under this section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.</p> <p>(f) <i>Applicability of Attorney-Client Rules.</i></p> <p>Persons examining the files and records of the law practice of the Lawyer pursuant to this section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this section. The attorney-client privilege shall apply to communications by or to the attorney surrogate to the same extent as it would have applied to communications by or to the Lawyer. However, the attorney surrogate relationship does not create an attorney/client</p>	<p>and may make appropriate orders regarding those files including, but not limited to, destruction of the files.</p> <p>(e) <i>Time limitations suspended.</i> Upon the granting of a verified petition for appointment under this Section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.</p> <p>(f) <i>Applicability of attorney-client rules.</i> Persons examining the files and records of the law practice of the Lawyer pursuant to this Section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this Section. The attorney-client privilege shall apply to communications by or to the Attorney Surrogate to the same extent as it would have applied to communications by or to the Lawyer. However, the Attorney Surrogate relationship does not create an attorney/client relationship between the Attorney Surrogate and the client of the Lawyer.</p>
---	---

relationship between the attorney surrogate and the client of the Lawyer.

(g) Final Report of Attorney Surrogate: Petition for Compensation; Court Approval.

When the purposes of this section have been accomplished with respect to the law practice of the Lawyer, the attorney surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the attorney surrogate. The attorney surrogate may also file with the court a petition for reasonable fees and expenses in compensation for performance of the attorney surrogate's duties. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a final order to that effect and discharging the attorney surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the attorney surrogate. The amount of fees and expenses allowed shall be a judgment against the Lawyer or the estate of the Lawyer. The judgment is a lien upon all assets of the Lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this section. The judgment lien is subordinate to nonpossessory liens and security interests created

(g) Final report of Attorney Surrogate: petition for compensation; court approval. When the purposes of this Section have been accomplished with respect to the law practice of the Lawyer, the Attorney Surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the Attorney Surrogate. The Attorney Surrogate may also file with the court a petition for reasonable fees and expenses in compensation for performance of the Attorney Surrogate's duties. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a final order to that effect and discharging the Attorney Surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the Attorney Surrogate. The amount of fees and expenses allowed shall be a judgment against the Lawyer or the estate of the Lawyer. The judgment is a lien upon all assets of the Lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this Section. The judgment lien is subordinate to nonpossessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

<p>prior to its taking effect and may be foreclosed upon in the manner prescribed by law.</p> <p>(h) <i>Immunity</i></p> <p>Absent intentional wrongdoing, an attorney surrogate shall be immune from civil suit for damages for all actions and omissions as an attorney surrogate under this section. This immunity shall not apply to an employment after acceptance of representation of a client with the agreement of the client under subsection (c)(3)(h) above.</p>	<p>(h) <i>Immunity.</i> Absent intentional wrongdoing, an Attorney Surrogate shall be immune from civil suit for damages for all actions and omissions as an Attorney Surrogate under this Section. This immunity shall not apply to an employment after acceptance of representation of a client with the agreement of the client under subsection (c)(3)(h) above.</p>
	<p>Section 28. [reserved]</p>
<p>Section 29. Maintenance Of Trust Funds In Approved Financial Institutions; Overdraft Notification.</p> <p>(a) <i>Clearly Identified Trust Accounts In Approved Financial Institutions And Related Recordkeeping Requirements.</i></p> <p>....</p> <p>(2) Every attorney shall maintain and preserve for a period of at least five (5) years, after final disposition of the underlying matter, the records of trust accounts, including checkbooks, canceled checks, check stubs, written withdrawal authorizations, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date,</p>	<p>V. Trust Accounts</p> <p>Section 29. Trust Account Funds</p> <p>(a) <i>Required trust account records.</i> An attorney who is licensed in Indiana shall maintain current financial records as provided for in this Rule and required by Rule 1.15 of the Indiana Rules of Professional Conduct. An attorney shall keep records sufficient to determine, at any time, the amount held for each client or other beneficiary in relation to the total amount held in the trust account as a pooled whole. For each trust or other fiduciary account, attorneys shall create and retain the following records for a period of five (5) years after the conclusion of each matter:</p> <p>(1) Deposit and disbursement journals containing a record of deposits to and withdrawals from each trust</p>

Commented [A153]: The parts of old Sec. 29 dealing with overdrafts have been relocated into new Sec. 30. Because of the extensive rearrangement of Rule 29, a precise side-by-side comparison is difficult. Parts of old Rule 29 have been rearranged for better ease in comparison.

Commented [A156]: Attorneys are required to keep records of their trust account. However, the existing recordkeeping rule at Admis. Disc. R. 23, Section 29(a) is cumbersome and only vaguely describes which records an attorney is required to keep. **With this revision, this section now explicitly sets forth which records an attorney is required to retain in order to comply with the recordkeeping requirements of Prof. Cond. R. 1.15(a).** This new section is based upon the ABA's Model Rules for Client Trust Account Records, which was adopted by the House of Delegates on August 9, 2010. This section does not create any new recordkeeping requirements, but merely clarifies the existing requirements.

<p>amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property held in trust.</p> <p>(3) The “ledger” required by this rule shall set forth a separate record of each trust, client or beneficiary, the source of all funds deposited in that account, the names of all persons for whom the funds are, or were, held, the amount of such funds, the description and the amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed.</p> <p>(4) All receipts shall be deposited intact, funds shall not be commingled with other funds of the attorney or firm, and records or deposits shall be sufficiently detailed to identify each item.</p> <p>(5) Withdrawals shall be based upon a written withdrawal authorization stating the amount of the withdrawal, the purpose of the withdrawal, and the payee. The authorization shall contain the signed approval of an attorney. Withdrawals shall be made only by wire transfer or by check payable to a named payee and not to “cash”. Wire transfers shall be authorized by written withdrawal authorization and evidenced by a document from the financial institution indicating the date of the transfer, the payee and the amount.</p> <p>(6) Only an attorney admitted to practice law in this jurisdiction or his or her designee shall be an authorized signatory on the account.</p>	<p>account, specifically identifying the date, source of funds, description, amount, and client or beneficiary of each item deposited; the date, payee, purpose, amount, and client or beneficiary of each item disbursed; and a running total of the balance of the trust account as a pooled whole (an example of a deposit and disbursement journal is appended to this Section as Exhibit A);</p> <p>(2) Ledgers for all trust accounts showing, for each separate trust client or beneficiary, the amount of funds disbursed or deposited, the date of disbursement or deposit, the source of funds deposited, the payee of funds disbursed, and a running total of the amounts held in trust for each separate client or beneficiary (examples of client ledgers are appended to this Section as Exhibit B);</p> <p>(3) A ledger detailing the nominal amount of attorney funds held in the account, showing the amount of attorney funds disbursed or deposited, the date of their disbursement or deposit, and a running balance of the amount of attorney funds held in the trust account (an example of a ledger of attorney owned funds is appended to this Section as Exhibit C);</p> <p>(4) Relevant fee agreements;</p> <p>(5) All checkbook registers, bank statements, records of deposit, and cancelled checks;</p>
--	--

Commented [A157]: Exhibits are not included in this side-by-side comparison.

<p>(7) Records required by this rule may be maintained by electronic, photographic, computer or other media provided they otherwise comply with this rule and provided further that printed copies can be produced.</p> <p>....</p> <p>(a)(1) Attorneys shall deposit all funds held in trust in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts” and shall inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Commission.</p>	<p>(6) Records of all electronic disbursements from trust accounts, including the name of the person authorizing the disbursement, the date of the disbursement, the name of the recipient, the purpose of the disbursement, and the client or beneficiary for whom the disbursement was made; and</p> <p>(7) All periodic reconciliation reports for each trust account.</p> <p>(b) <i>Availability of records.</i> Records required by Indiana Admission and Discipline Rule 23, Section 29(a) may be maintained by electronic, photographic, or other media provided that they otherwise comply with these rules and printed copies can be produced. If trust account records are maintained electronically, the attorney shall ensure that backups occur regularly and frequently.</p> <p>(c) <i>Trust account safeguards.</i></p> <p>(1) Attorneys shall deposit all funds held in trust in accounts clearly identified as “trust” or “escrow” accounts. Attorneys shall inform the financial institution of the purpose and identity of each trust account. Funds held in trust include funds held in any fiduciary capacity, whether as attorney, trustee, agent, guardian, executor or otherwise. Trust accounts shall be maintained only in financial institutions approved by the Indiana Supreme Court Disciplinary Commission.</p>
--	--

FROM RULE 7 OF COMMISSION RULES
GOVERNING OVERDRAFT REPORTING

B. Admission and Discipline Rule 23, Section 29(a)(6) contemplates that a designee who is not admitted to practice law in Indiana may be an authorized signatory on a trust account. In the event an attorney or law firm delegates trust account signature authority to any person who is not admitted to practice law in Indiana, such delegation shall be accompanied by specific safeguards, including at a minimum the following:

1. All periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory; and
2. Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no signature authority over the trust account.

(2) Attorneys shall not pay personal or business expenses directly from a trust account; instead, attorneys shall promptly withdraw fully earned fees from the trust account by first disbursing the fully earned fees to the attorney's personal or business account.

(3) Only an attorney admitted to practice law in Indiana or a person under the direct supervision of the attorney shall be an authorized signatory or authorized to disburse funds from a trust account. If an attorney or law firm delegates authority to disburse funds from a trust account to a person not admitted to practice law in Indiana, this delegation shall be accompanied by safeguards, including at minimum:

- (i) All bank statements or periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory, or the supervising attorney shall review the bank statements electronically directly from the financial institution; and
- (ii) Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no authority to disburse funds from the trust account.

<p>(a)(8) Upon dissolution of any partnership of attorneys or of any professional corporation of attorneys, the partners or shareholders shall make appropriate written arrangements for the maintenance of the records specified under this rule.</p> <p>(a)(9) Upon the disposition of a law practice, appropriate written arrangements for the maintenance of the records specified in this rule shall be made.</p> <p>Section 30. Audits of Trust Accounts</p> <p>(a) <i>Generally.</i> Whenever the Executive Secretary has probable cause to believe that a trust account of an attorney contains, should contain, or has contained</p>	<p>(4) All receipts shall be deposited into a trust account intact, and records of deposits should be sufficiently detailed to identify each item deposited.</p> <p>(5) Disbursements from a trust account shall not be made by a check payable to “cash” or to “bearer.” Disbursements from a trust account shall not be made by ATM withdrawal or cash withdrawal.</p> <p>(6) Provided that the attorney complies with Admission and Discipline Rule 23, Sections 29(a) and 29(c)(5), an attorney may make disbursements from a trust account by means of electronic transfer.</p> <p>(7) Attorneys shall reconcile their internal trust account records, specifically the records required by Admission and Discipline Rule 23, Section 29(a)(1-3) with the periodic bank account statements from the financial institution.</p> <p>(d) <i>Dissolution or sale of law practice.</i> Upon dissolution or sale of a law practice, the owner(s) or partner(s) shall make reasonable arrangements for the maintenance and preservation of the records required by Section 29(a).</p>
--	---

Commented [A159]: With some minor exceptions, attorneys are currently prohibited from making disbursements from their trust accounts electronically. This conflicts with some federal practice, which requires filing fees to be paid electronically. In order to eliminate the conflict with federal rules and streamline this rule with modern banking practice, this section now permits attorneys to make disbursements electronically, provided that they keep certain records of the electronic disbursements. ATM withdraws and cash withdraws are still prohibited.

Commented [A160]: Reconciliation was generally presumed to be implicit in the requirement that attorneys safeguard their clients’ funds. The assumption is now made explicit by requiring reconciliations.

Commented [A154]: Old Sec. 30 has been deleted. The authority to conducts audits is found in Sec. 10 and new Sec. 30.

<p>funds belonging to a client that have not been properly maintained or properly handled pursuant to Section 29, the Executive Secretary shall request the approval of the Commission to audit the accuracy and integrity of all trust accounts maintained by the attorney. In the event that the Commission approves, the Executive Secretary shall proceed to audit the accounts.</p> <p>(b) <i>Confidentiality.</i> Investigations, examinations, and audits shall be conducted so as to preserve the private and confidential nature of the attorney's records insofar as is consistent with these rules.</p>	
<p><u>INDIANA SUPREME COURT DISCIPLINARY COMMISSION RULES GOVERNING ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING</u></p> <p>The following rules and procedures, issued pursuant to the authority granted to the Indiana Supreme Court Disciplinary Commission by the Supreme Court of the State of Indiana in Admission and Discipline Rule 23, Sections 24 and 29(b), govern the administration of an attorney trust account overdraft reporting program in the State of Indiana.</p> <p>Rule 1. Definitions</p> <p>As used herein:</p> <p>A. “Financial institution” means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.</p>	<p>Section 30. Overdraft Notification and Processing</p> <p>(a) <i>Definitions.</i> As used in this Section:</p> <p>(1) “Financial institution” means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.</p>

Commented [A155]: Deleted as duplicative of general confidentiality rule.

Commented [A166]: The separate “Indiana Supreme Court Disciplinary Commission Rules Governing Attorney Trust Account Overdraft Reporting” are relocated here for better ease of access. No substantial changes are made, except for subsection (g).

Commented [A161]: Parts of these Rules have been rearranged for better ease in comparison.

<p>B. “Trust account” means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.</p> <p>C. “IOLTA (Interest on Lawyer Trust Account)” means an attorney trust account in a financial institution pursuant to Professional Conduct Rule 1.15(f).</p> <p>D. “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.</p> <p>From old Sec. 29</p>	<p>(2) “Trust account” means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Professional Conduct Rule 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.</p> <p>(3) “IOLTA (Interest on Lawyer Trust Account)” means an attorney trust account maintained pursuant to Professional Conduct Rule 1.15(f).</p> <p>(4) “Properly payable” refers to an instrument or other disbursement which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.</p>
<p>(g) <i>Definitions.</i> For purposes of this rule:</p> <p>(1) “Financial institution” means a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.</p> <p>(2) “Properly payable” means an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.</p>	

Commented [A162]: These definitions have been deleted from Sec. 29 as inapplicable to that section.

(3) "Notice of dishonor" means the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

(4) "Trust account" means any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.

Rule 2. Approval of Financial Institutions

A. Indiana Admission and Discipline Rule 23, Section 29(a)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached hereto as Exhibit A, whereby it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing

(b) *Approval of financial institutions.*

(1) Section 29(c)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached to this Section as Exhibit A under which it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust

<p>insufficient funds, irrespective of whether or not the instrument is honored.</p> <p>B. The written agreement of any financial institution is binding upon all branches of the financial institution.</p> <p>C. The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish it on its website. The names of approved financial institutions will also be available by written or telephone inquiry to the Disciplinary Commission.</p> <p>D. The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in writing to the Disciplinary Commission, or until such time as its approval is revoked by the Disciplinary Commission.</p> <p>Rule 3. Disapproval and Revocation of Approval of Financial Institutions</p> <p>A. A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached hereto as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary</p>	<p>account containing insufficient funds, regardless of whether the instrument is honored.</p> <p>(2) The written agreement of any financial institution is binding upon all branches of the financial institution.</p> <p>(3) The Disciplinary Commission shall maintain a public listing of all approved financial institutions and shall publish it on its website. The names of approved financial institutions shall also be available by written or telephone inquiry to the Disciplinary Commission.</p> <p>(4) The written agreement of any financial institution shall continue in full force and effect and be binding upon the financial institution until the financial institution gives thirty (30) days' notice of cancellation in writing to the Disciplinary Commission, or until its approval is revoked by the Disciplinary Commission.</p> <p><i>(c) Disapproval and revocation of approval of financial institutions.</i></p> <p>(1) A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached to this Section as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary Commission to approve a financial institution due to its failure or refusal to</p>
---	---

<p>Commission to approve a financial institution due to its failure or refusal to submit an executed written agreement in the form attached as Exhibit A is not appealable or otherwise subject to challenge.</p> <p>B. The approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.</p> <p>C. The Executive Secretary shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. Thereafter, the financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to file a written request with the Executive Secretary seeking reconsideration of the revocation decision. In the event an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Secretary or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved</p>	<p>submit an executed written agreement in the form attached as Exhibit A is not appealable or otherwise subject to challenge.</p> <p>(2) A prior approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.</p> <p>(3) The Executive Director or designee shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. The financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to submit a written request with the Executive Director or designee seeking reconsideration of the revocation decision. If an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Director or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved status of a financial institution shall continue until the</p>
---	--

status of a financial institution shall continue until such time as the reconsideration process is final.

- D. Once the approval of a financial institution has been revoked, the institution shall not thereafter be approved as a depository for trust accounts until such time as the institution petitions the Disciplinary Commission for approval and includes within the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

Rule 4. Duty to Notify Financial Institutions of Trust Accounts

- A. Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting. For each trust account, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.
- 1) For IOLTA accounts as required by Rule 1.15(f), notice by the attorney to the financial institution that the account is an IOLTA account shall constitute notice to the financial institution that the account is subject to overdraft reporting to the Disciplinary Commission.

time the reconsideration process is final. The financial institution shall be liable for the costs of the reconsideration of the revocation decision and the costs of any hearing on the request.

- (4) Once the approval of a financial institution has been revoked, the institution shall not again be approved as a depository for trust accounts until the institution petitions the Disciplinary Commission for approval and includes in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

(d) *Duty to notify institutions of trust accounts.*

- (1) Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting. For each trust account, an attorney or law firm shall maintain a copy of each notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.

- (i) For IOLTA accounts as required by Professional Conduct Rule 1.15(f), notice by the attorney to the financial institution that the account is an IOLTA account shall constitute notice to the financial institution that the account is subject to

Commented [A167]: This is new.

<p>2) For non-IOLTA trust accounts as permitted by Rule 1.15(f)(1), every attorney shall notify each financial institution that the account is subject to overdraft reporting to the Disciplinary Commission by submitting a notice in the form attached as Exhibit B for each such account to the financial institution in which the account is maintained.</p> <p>B. In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each such trust account. However, every member of the firm is responsible for insuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.</p>	<p>overdraft reporting to the Disciplinary Commission.</p> <p>(ii) For non-IOLTA trust accounts as permitted by Professional Conduct Rule 1.15(f)(1), every attorney shall notify each financial institution that the account is subject to overdraft reporting to the Disciplinary Commission by submitting a notice in the form attached to this Section as Exhibit B.</p> <p>(2) In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each trust account. However, every member of the firm is responsible for ensuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.</p>
<p>Rule 5. Duty of Financial Institutions</p> <p>A. Each financial institution shall report to the Indiana Supreme Court Disciplinary Commission any properly payable attorney IOLTA or non-IOLTA trust account instrument presented against insufficient funds as set forth in Indiana Admission and Discipline Rule 23, Section 29(b) through (g) and these rules irrespective of whether the instrument is honored.</p> <p>B. No financial institution shall be responsible for forwarding a report of any overdraft on an account</p>	

Commented [A163]: Deleted as repetitive. The agreement with the financial institution includes these provisions.

about which it has not received notice pursuant to Rule 4(A)(1) or (2) above from the depositor attorney that it is a trust account subject to overdraft reporting.

Rule 7. Miscellaneous Matters

- A. Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any such application for exemption shall be in writing and shall include:
- 1) a copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;
 - 2) a copy of the agreement between the applicable financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;
 - 3) a list of the names of all financial institutions, account names, and account numbers of all trust

(e) *Maintaining a trust account in a foreign jurisdiction.*
Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any application for exemption shall be in writing and shall include:

- (1) A copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;
- (2) A copy of the agreement between the financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;
- (3) A list of the names of all financial institutions, account names, and account numbers of all trust

<p>accounts maintained by the attorney in the foreign jurisdiction; and</p> <p>4) a certification under oath by the attorney that each such foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.</p> <p>Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.</p> <p>....</p> <p>C. All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, 30 South Meridian Street, Suite 850, Indianapolis, Indiana 46204.</p>	<p>accounts maintained by the attorney in the foreign jurisdiction; and</p> <p>(4) A certification under oath by the attorney that each foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.</p> <p>Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.</p>
<p>From old Section 29</p> <p>(c) <i>Overdraft Reports.</i> The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:</p> <p>(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.</p>	<p>(f) <i>Overdraft reports.</i></p> <p>(1) Overdraft notifications made by financial institutions to the Disciplinary Commission shall be in the following format:</p> <p>(i) In the case of a dishonored instrument or dishonored disbursement, the report shall be identical to the overdraft notice customarily forwarded to the customers of the financial institution, and it should include a copy of the dishonored instrument, if a copy is normally provided to customers of the financial institution.</p>

Commented [A164]: Deleted as unnecessary.

Commented [A168]: Previously Sec. 26(c).

- (2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.
- (d) *Timing of Reports.* Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.
- (e) *Consent By Attorneys.* Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.
- (f) *Costs.* Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

Rule 6. Processing of Overdraft Reports by the Commission

- A. Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Secretary shall send a letter to the depositor attorney seeking a documented

(ii) In the case of disbursements or instruments that are presented against insufficient funds but which are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created.

(2) Reports under subsection (f)(1) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(3) Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing in this Rule shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this Rule.

(g) *Investigation of overdrafts.*

(1) Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the

Commented [A169]: Previously Sec. 29(d).

Commented [A170]: Previously Sec. 29(e)

Commented [A171]: Previously Sec. 29(f)

Commented [A172]: The existing process for investigation overdrafts is cumbersome and time consuming. The staff currently must open a trust account overdraft inquiry. The attorney must then respond to this overdraft inquiry. If the response is insufficient, the matter is elevated to a Commission Grievance. The attorney must then respond to the Commission Grievance. The grievance is then investigated again, and then can be docketed. Only then can the Commission consider the matter. **This new process eliminates all unnecessary steps. The Commission may now either dismiss an overdraft on its face, or authorize bringing a disciplinary action.**

<p>explanation of the overdraft within ten (10) business days. This letter is a demand for information, noncompliance with which is a violation of Professional Conduct Rule 8.1(b). If bank error is claimed by the attorney, a written statement from a bank officer must be submitted with the explanation. If office error is claimed by the attorney, affidavits from the appropriate office personnel must be submitted with the explanation.</p>	<p>Executive Director or designee shall send a letter to the respondent attorney seeking a comprehensive explanation of the overdraft, to which the respondent shall respond within thirty (30) days of receipt. This letter is a demand for information, noncompliance of which is a violation of Professional Conduct Rule 8.1(b).</p>
<p>B. If the depositor attorney does not provide a timely explanation or if the explanation provided does not document the existence of bank error or isolated office inadvertence, the Executive Secretary shall present the matter to the full Disciplinary Commission to consider the issuance of a grievance pursuant to Indiana Admission and Discipline Rule 23, Section 10(a). Thereafter, the procedures of Admission and Discipline Rule 23 for the processing of grievances shall apply.</p>	<p>(2) If the respondent fails to timely and adequately respond to the notice of overdraft and demand for explanation, the Executive Director or designee may file a non-cooperation case against the respondent pursuant to Section 10.1.</p> <p>(3) Upon considering the respondent's response to the notice of overdraft, the Executive Director or designee may dismiss the overdraft matter as not presenting a substantial issue of misconduct, or the Executive Director or designee may continue to investigate the matter and then present the matter for consideration to the Disciplinary Commission pursuant to Section 11. Thereafter, the procedures for disciplinary actions shall apply.</p> <p>(4) In investigating an overdraft, the Disciplinary Commission and the Executive Director or designee shall have all investigatory powers otherwise available when investigating grievances, including but not limited to the power to issue subpoenas, take testimony, require accountings, send demand letters, and perform trust account audits. Likewise, a</p>

Commented [A173]: This increases the time from 10 to 30 days.

Commented [A165]: This language is deleted as unnecessarily narrow.

	<p>respondent attorney who is the subject of an overdraft investigation shall fully and promptly cooperate with the Disciplinary Commission's investigation.</p> <p>(5) Nothing in this Section shall limit the Disciplinary Commission's ability to investigate overdrafts or trust account mismanagement pursuant to its authority under Section 10.</p>
--	--

Commented [A174]: This subsection makes explicit that the Commission may still investigate trust account misconduct if the misconduct is reported by a member of the public (instead of via a trust account overdraft).