RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 1:20. DISCIPLINE OF MEMBERS OF THE BAR

Rule 1:20. Discipline of Members of the Bar

GLOSSARY OF ATTORNEY DISCIPLINE TERMS

Agreement in Lieu of Discipline--the vehicle used to accomplish diversion of "minor" unethical conduct matters where an attorney admits "minor" unethical conduct has been committed and that attorney qualifies for diversionary treatment. See R. 1:20-3(i)(2)(B).

Board or Disciplinary Review Board--the intermediate appellate tribunal in disciplinary matters.

Complaint--the written document formally charging the respondent with specific violations of unethical conduct. A complaint is issued after completion of an investigation if it meets the standard of R. 1:20-4(a).

Consent Matter--the appellate process before the Disciplinary Review Board and the Supreme Court by which the extent of discipline to be imposed as the result of discipline by consent is reviewed, without oral argument. See R. 1:20-15(g) and R. 1:20-16(e).

Director--the Director of the Office of Attorney Ethics, who administers the Office of Attorney Ethics, Ethics Committees, Fee Committees, the Random Audit Program, the Annual Attorney Registration Statement, and the Trust Overdraft Notification Program.

Disciplinary Oversight Committee--the Disciplinary Oversight Committee reviews the annual disciplinary system budget and makes recommendations to the Supreme Court concerning the disciplinary system.

Discipline by Consent--a procedure whereby a respondent may agree with an investigator, presenter or ethics counsel to admit facts constituting unethical conduct and recommend specific discipline or a range of specific discipline, subject to review by the Disciplinary Review Board. See R. 1:20-10(b).

Diversion--a non-disciplinary treatment by consent for attorneys who admit they have committed "minor" unethical conduct and who otherwise qualify for diversionary treatment. Diversion is accomplished through an "Agreement In Lieu of Discipline." See R. 1:20-3(i)(2)(A) and (B).

Ethics Committee(s)--one or more district ethics committees throughout the state that screen, investigate, prosecute, and hear disciplinary and disability-inactive matters.

Ethics Counsel--an attorney of the Office of Attorney Ethics. See R. 1:20-2(a).

Fee Committee(s)--one or more district fee arbitration committees throughout the state that screen, hear, and decide disputes by clients over legal fees.

Grievance--any allegation of unethical conduct made against an attorney. A grievance, if docketed, is assigned for investigation by the Director or by an Ethics Committee.

Minor Unethical Conduct--minor types of unethical conduct which, if proved, would not warrant discipline greater than an admonition. Minor unethical conduct matters are eligible for diversionary treatment. R. 1:20-3(i)(2).

Presenter--the attorney who is appointed to prosecute a complaint. R. 1:20-4(g)(1).

Respondent--the attorney who is the subject of disciplinary charges.

Trier of Fact--refers to an ethics committee hearing panel or single member adjudicator or special ethics master.

Unethical Conduct--all ethics violations that would subject an attorney to discipline are referred to as unethical conduct. R. 1:20-3(i)(1).

Note: Adopted January 31, 1995 to be effective March 1, 1995; "Agreement In Lieu of Discipline," "Complaint," "Discipline By Consent," "Diversion," "Ethics Counsel," "Grievance," "Minor Misconduct," and "Presenter" modified, "Misconduct" deleted, and "Board or Disciplinary Review Board," "Director," "Disciplinary Oversight Committee," "Ethics Committee(s)," "Fee Committee(s)," "Respondent," and "Unethical Conduct" added July 28, 2004 to be effective September 1, 2004.

Rule 1:20-1. Disciplinary Jurisdiction; Annual Fee and Registration

(a) Generally. Every attorney and business entity authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction of the Supreme Court as set forth in the Constitution of 1947, Article 6, Section 2, Paragraph 3. Attorneys who have resigned without prejudice pursuant to Rule 1:20-22 shall also be subject to such jurisdiction in respect of conduct undertaken prior to the acceptance of the resignation by the Court.

To assist in the administration of its disciplinary function, the Supreme Court shall establish, in accordance with these Rules, district ethics committees (hereinafter referred to as the Ethics Committees or the Ethics Committee), district fee arbitration committees (hereinafter referred to as the Fee Committee or the Fee Committees), a Disciplinary Review Board (hereinafter referred to as the Board or Disciplinary Review Board), a Disciplinary Oversight Committee (hereinafter referred to as the Oversight Committee), and an Office of Attorney Ethics and a Director thereof (hereinafter referred to as the Director).

(b) Annual Fee. Every attorney admitted to practice law in the State of New Jersey, including all persons holding a plenary license, those admitted pro hac vice in accordance with Rule 1:21-2, those holding a limited license as in-house counsel under Rule 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), those certified as

Foreign Legal Consultants under Rule 1:21-9, and those permitted to practice under Rule 1:21-3(c) shall pay annually to the Oversight Committee a sum that shall be determined each year by the Supreme Court. All sums so paid shall be used for the attorney-discipline and fee-arbitration systems. This assessment shall be collected administratively in the same manner as and subject to the same exemptions provided under Rule 1:28-2, except that plenary-licensed attorneys who are in their second calendar year of admission shall pay a partial fee, as determined by the Supreme Court. The names of all persons failing to comply with the provisions of this Rule shall be reported to the Supreme Court for inclusion on its Ineligible to Practice Law List.

(c) Annual Registration Statement. To facilitate the collection of the annual fee provided for in paragraph (b), every attorney admitted to practice law in this state, including all persons holding a plenary license, those admitted pro hac vice, those holding a limited license as in-house counsel, those registered as multijurisdictional practitioners, those certified as Foreign Legal Consultants, and those permitted to practice under Rule 1:21-3(c) shall, on or before February 1 of every year, or such other date as the Court may determine, pay the annual fee and file a registration statement with the New Jersey Lawyers' Fund for Client Protection (hereinafter referred to as the Fund). The registration statement shall be in a form prescribed by the Administrative Director of the Courts with the approval of the Supreme Court. As part of the annual registration process, each attorney shall certify compliance with Rule 1:28A. All registration statements shall be filed by the Fund with the Office of Attorney Ethics, which may destroy the registration statements after one year. Each lawyer shall file with the Fund a supplemental statement of any change in the attorney's billing address and shall file with the Office of Attorney Ethics a supplemental statement of any change in the home address and the address of the primary law office as required by Rule 1:21-1(a), as well as the main law office telephone number previously submitted and the financial institution or the account numbers for the primary trust and business accounts, either prior to such change or within thirty days thereafter. All persons first becoming subject to this rule shall file the statement required by this rule prior to or within thirty days of the date of admission.

The information provided on the registration statement shall be confidential except as otherwise directed by the Supreme Court.

(d) Remedies for Failure to Pay or File. Any person who fails to complete and file the annual registration statement required by paragraph (c) on or before February 1 of each year or such other date as the Court may determine, or to make payment as required by paragraph (b) within 30 days after the due date each year shall be declared to be ineligible to practice law and shall be included on the Ineligible To Practice Law List of the Supreme Court. A person who makes payment after February 1 of the billing year, or such other due date as the Court may establish, but before being placed on the Ineligible List, shall be subject to a late fee of $ 40. These late fees shall be shared equally between the Oversight Committee and the Fund. Such person shall be reinstated automatically to the practice of law without further order of the Court on filing with the Fund the completed annual registration statement for the current year together with the annual payment, the late fee, any arrears due from prior years, and full compliance with the Rule 1:28-2

requirements of the Fund. Pursuant to Rule 1:28-2(c), failure to complete and file the annual registration statement for seven consecutive years shall result in the administrative revocation of the attorney's license to practice in this State.

Note: Adopted February 23, 1978, to be effective April 1, 1978. Any matter pending unheard before a County Ethics Committee as of April 1, 1978 shall be transferred, as appropriate, to the District Ethics Committee or the District Fee Arbitration Committee having jurisdiction. Any matter heard or partially heard by a County Ethics Committee by April 1, 1978 shall be concluded by such Ethics Committee and shall be reported on in accordance with these rules; amended July 16, 1981 to be effective September 14, 1981. Caption amended and first two paragraphs amended and redesignated as paragraph (a); new paragraphs (b), (c) and (d) adopted January 31, 1984 to be effective February 15, 1984; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended September 15, 1992, to be effective January 1, 1993; caption added to all paragraphs and paragraphs (a), (b), (c), and (d) amended February 8, 1993 to be effective immediately; paragraphs (a), (b) and (c) amended January 31, 1995, to be effective March 1, 1995; paragraph (a) amended July 10, 1998, to be effective September 1, 1998; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c) and (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 9, 2008 to be effective September 1, 2008; paragraphs (b) and (c) amended July 23, 2010 to be effective September 1, 2010; paragraph (c) amended July 9, 2013 to be effective September 1, 2013.

Rule 1:20-2. Office of Attorney Ethics

(a) Appointment. The Supreme Court shall appoint a Director of the Office of Attorney Ethics and such assistant and deputy ethics counsel and staff as it may from time to time determine are necessary to perform properly the functions prescribed by these rules. Neither the Director, ethics counsel nor staff shall be permitted to otherwise engage in the practice of law nor to be otherwise employed except as may be provided by the Code of Conduct for Judiciary Employees, these rules and R. 1:17.

(b) Authority. The Director shall have the discretion and the authority to:

(1) exercise exclusive jurisdiction over the investigation and prosecution of the following:

(A) any case in which the Director determines the matter involves serious or complex issues that must be immediately addressed or one that requires emergent action;

(B) all cases in which an attorney is a defendant in any criminal proceedings;

(C) any case in which the Ethics Committee requests intervention;

(D) any case in which an Ethics Committee has not resolved a matter within one year of the filing of a grievance;

(E) any case in which the Board or the Supreme Court determines the matter should be assigned to the Director;

(F) any case involving multijurisdictional practice or practice as in-house counsel.

(2) investigate any information coming to the Director's attention, whether by grievance or otherwise, which, in the Director's judgment, may be grounds for discipline or transfer to disability-inactive status;

(3) dispose of, by investigation or dismissal, all matters involving alleged unethical conduct, by transfer to disability-inactive status, by agreement in lieu of discipline in minor unethical conduct cases, or by the prosecution of formal charges before a duly constituted hearing panel or special ethics master, all in accordance with these Rules;

(4) prosecute ethics proceedings before the Disciplinary Review Board;

(5) prosecute all ethics proceedings before the Supreme Court, unless the Court or the Director requests the assistance of Board Counsel to do so;

(6) seek from the Supreme Court judicial review of any final determination of the Board within the time and in the manner prescribed by the Rules of the Court;

(7) transfer any matter pending before an Ethics Committee or Fee Committee to another district;

(8) maintain records of all ethics and fee arbitration matters;

(9) administer the programs of the Fee Committees in accordance with R. 1:20A-1 et seq., of the Ethics Committees in accordance with R. 1:20-3 et seq., and to render to both of them appropriate legal and administrative advice;

(10) administer the Random Audit Compliance Program in accordance with R. 1:21-6(c);

(11) prepare annually, jointly with Counsel for the Disciplinary Review Board, a proposed budget for the attorney disciplinary system of the state;

(12) hire and discharge secretaries of Ethics Committees and Fee Committees and recommend and pay their compensation;

(13) recommend to the Supreme Court the appointment and replacement of members of Ethics Committees and Fee Committees;

(14) recommend the creation of new Ethics Committees and Fee Committees and the reorganization and termination of existing Ethics Committees and Fee Committees;

(15) recommend to the Supreme Court rules and guidelines governing the procedures to be followed in all ethics and fee arbitration proceedings in this state;

(16) hire and discharge all staff of the Office of Attorney Ethics consistent with personnel policies of the judiciary and subject to the approval of the Chief Justice, and to recommend the hiring of all ethics counsel to the Supreme Court;

(17) select attorneys and non-attorneys from among former Ethics and Fee Committee members to act as hearing panel members; and

(18) approve additional volunteer attorneys who are not members of an Ethics Committee to act as investigators or presenters.

In all actions the Director shall exercise all of the investigative and prosecutorial authority of an Ethics Committee in addition to any authority invested in the Director under these rules.

(c) Advisory Opinions Prohibited. The Office of Attorney Ethics shall not render advisory opinions of any kind, either orally or in writing.

(d) Exemption From Costs. As an agency of the Supreme Court, the Office of Attorney Ethics and any lawfully appointed designee shall be exempt from the payment of any Court costs required by rule of law of the State of New Jersey including, but not limited to, the filing or docketing of any document, deposit for costs or service of process.

Note: Former rule redesignated R. 1:20-3 and new rule adopted January 31, 1984 to be effective February 15, 1984; paragraph (b)(15) amended and new paragraph (16) adopted November 5, 1986 to be effective January 1, 1987; paragraph (b)(8) amended June 29, 1990 to be effective September 4, 1990; paragraphs (a) and (b) amended, subparagraphs (b)(1) (i) (ii) (iii) (iv) (v) amended and redesignated (b)(1) (A) (B) (C) (D) and (E), new subparagraph (b)(17) added, paragraphs (c) and (d) adopted January 31, 1995 to become effective March 1, 1995; paragraph (b)(1) amended, subparagraph (b)(1)(E) amended, new subparagraph (b)(1)(F) adopted, new subparagraph (b)(2) added, former subparagraphs (b)(2) and (b)(3) renumbered as (b)(3) and (b)(4) and amended, former subparagraphs (b)(4) to (b)(9) renumbered as (b)(5) to (b)(10), former subparagraphs (b)(10) and (b)(11) renumbered as (b)(11) and (b)(12) and amended, former subparagraph (b)(12) renumbered as (b)(13), former subparagraph (b)(13) renumbered as (b)(14) and amended, former subparagraphs (b)(14) to (b)(17) renumbered as (b)(15) to (b)(18), and new last sentence added to paragraph (b) July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(16) and (b)(17) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-3. District Ethics Committees; Investigations

(a) Disciplinary Districts. The Supreme Court shall establish, and may from time to time alter, disciplinary districts consisting of defined geographical areas and shall appoint in each such district a District Ethics Committee which shall consist of such number of members, not fewer than eight, as the Court may determine, at least four of whom shall be attorneys of this state, at least two of whom shall not be attorneys, all of whom shall either reside or work in the district or county in which the district is located.

(b) Appointments. Members of Ethics Committees shall be appointed by, and shall serve at the pleasure of the Supreme Court for a term of four years, except that members who are subsequently designated to serve as officers pursuant to paragraph (c) shall serve

for an additional two years from the date of such designation or until the end of their initial appointment term, whichever is longer. With the approval of the Supreme Court, a member or officer who has served a full term may be reappointed to one successive term. A member serving in connection with an investigation pending at the time the member's term expires may continue to serve in such matter until its conclusion. In order that, as nearly as possible, the terms of one-quarter of the members shall expire each year, the Supreme Court may, when establishing a new Ethics Committee, appoint members for terms of less than four years and members so appointed shall be eligible for reappointment to a full successive term.

(c) Officers; Organization. The Supreme Court shall biennially designate a member of each Ethics Committee to serve at its pleasure as chair and another member to serve as vice-chair. Whenever the chair is absent or unable to act or disqualified from acting due to a conflict, the vice-chair shall perform the duties of the chair. The chair shall be responsible for administering the Ethics Committee. Under the chair's direction, the vice-chair, or another Ethics Committee member designated by the chair, shall be responsible for administering all matters where a complaint has been filed.

Each Ethics Committee shall hold an organization meeting in September of each year and shall meet thereafter at least monthly except that, with the approval of the Director, an Ethics Committee may meet less frequently. The Ethics Committee shall also meet at the call of the Supreme Court, the chair, the Board or the Director.

The Director shall, after consultation with the chair, appoint a secretary who shall not be a member of the Ethics Committee but who shall be a member of the bar maintaining an office within the district or county in which the district is located. The secretary shall continue to serve at the pleasure of the Director and shall be paid an amount annually set by the Supreme Court to reimburse the secretary for costs and expenses. The secretary shall keep full and complete records of all Ethics Committee proceedings, shall maintain files with respect to all inquiries and grievances received and investigations undertaken, shall transmit copies of all documents filed immediately on receipt thereof to the Director and shall promptly notify the latter of each final disposition. Reports with respect to the work of the Ethics Committee shall be filed by the secretary with the Director as instructed by the Director.

(d) Office. Each Ethics Committee shall receive grievances at the office of its secretary and at such additional places as shall be designated by the Director.

(e) Screening; Docketing. The secretary shall evaluate inquiries and grievances in accordance with this rule and shall docket, decline, or dismiss the matters within 45 days of their receipt. The secretary shall not conduct an investigation of a grievance.

(1) The secretary shall evaluate all information received by inquiry, grievance or from other sources alleging attorney unethical conduct or incapacity by an attorney maintaining an office in that district. If the attorney is subject to the jurisdiction of the Court and the grievance alleges facts which, if true, would constitute unethical conduct as

defined by the Rules of Professional Conduct, case law or other authority, or incapacity, the matter shall be docketed and investigated.

(2) The secretary shall decline jurisdiction if:

(A) the attorney is not subject to the jurisdiction of the Supreme Court of New Jersey, in which case the matter shall be declined and referred to the appropriate entity in any jurisdiction in which the attorney is admitted;

(B) the matter involves an inquiry or grievance regarding advertising or other related communications within the jurisdiction of the Committee on Attorney Advertising (R. 1:19A-2(a)), in which case the matter shall be sent to that committee unless the matter has been referred by the Advertising Committee in accordance with R. 1:19A-4(e) or (h);

(C) the facts stated in the inquiry or grievance involve circumstances which the Supreme Court has determined through the adoption of court rules or administrative guidelines will not be entertained, in which case the matter shall be declined;

(D) the grievance involves aspects of a substantial fee dispute and a charge of unethical conduct, unless so directed by the Director or unless the matter is referred by the Fee Committee in accordance with Rule 1:20A-4.

(3) The secretary, with concurrence by a designated public member, shall decline jurisdiction if the facts stated in the inquiry or grievance, if true, would not constitute unethical conduct or incapacity.

(4) If a grievance is not in writing and if the secretary concludes that the grievance must be declined under subsection (e)(2) or that the grievant alleges facts that, even if true, would not constitute unethical conduct or incapacity, the secretary shall so advise the grievant and that if the grievant wishes further consideration the secretary will provide a written attorney grievance form for completion. Unless declination is mandatory under subparagraph (e)(2), on receipt of a properly completed attorney grievance form the secretary will have the grievance reviewed by one or more public members of the Ethics Committee designated by the secretary. If a designated public member agrees with the secretary, the matter shall be declined. Otherwise, the matter shall be docketed and assigned for investigation.

(5) If a matter is declined, the secretary shall furnish a concise written statement to the grievant of the reasons therefor and shall enclose a copy of the court rule or written guideline for declination approved by the Supreme Court.

(6) There shall be no appeal from a decision to decline a grievance made in accordance with this rule. An appeal may be taken from dismissal of a grievance after docketing in accordance with R. 1:20-3(h).

(f) Related Pending Litigation. If a grievance alleges facts that, if true, would constitute unethical conduct and if those facts are substantially similar to the material

allegations of pending civil or criminal litigation, the grievance shall be docketed and investigated if, in the opinion of the secretary or Director, the facts alleged clearly demonstrate provable ethical violations or if the facts alleged present a substantial threat of imminent harm to the public. All other grievances involving such related pending civil and criminal litigation may be declined and not docketed. If the matter has already been docketed when the related pending litigation is discovered, the matter may be administratively dismissed, provided the matter is still in the investigative stage. The grievant shall be informed in writing of any decision, together with a brief statement of the reasons therefor and a copy of any Court Rule or written guideline supporting declination. Once a formal complaint has been filed, the matter shall not be dismissed nor held in abeyance pending completion of the related litigation, unless so authorized by the Director. Whenever an attorney is a defendant in any criminal proceeding, the Director shall docket the matter and may, in the Director's discretion, investigate and prosecute the disciplinary case.

(g) Investigation.

(1) Generally. Except in those districts in which the Director assigns investigators, the chair of the Ethics Committee shall assign an attorney member to each docketed case to conduct such investigation as may be necessary in order to determine whether unethical conduct has occurred or whether the respondent is disabled or incapacitated from practicing law.

(2) Notice to Respondent. No disposition other than dismissal, declination or designation as untriable shall be taken without first notifying the respondent in writing of the substance of the matter and affording the respondent an opportunity to respond in writing. Notice to the respondent shall be given by mail addressed to the address listed either in the current edition of the New Jersey Lawyer's Diary and Manual or with the Lawyers' Fund for Client Protection.

(3) Duty to Cooperate. Every attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information. Such reply may include the assertion of any available constitutional right, together with the specific factual and legal basis therefor. Attorneys shall also produce the original of any client or other relevant law office file for inspection and review, if requested, as well as all accounting records required to be maintained in accordance with R. 1:21-6. Where an attorney is unable to provide the requested information in writing within ten days, the attorney shall, within that time, inform the investigator in writing of the reason that the information cannot be so provided and give a date certain when it will be provided.

(4) Failure to Cooperate. If a respondent fails to cooperate either by not replying in writing to a request for information or by not producing the attorney's client and/or business file or accounting records for inspection and review, the Office of Attorney Ethics may file and serve a motion for temporary suspension with the Supreme Court, together with proof of service. The failure of a respondent to file a response in opposition to the motion may result in the entry of an order of temporary suspension without oral argument until further order of the Court. An attorney temporarily suspended under this

rule may apply to the Court for reinstatement on proof of compliance with subsection (3) of this paragraph on notice to the Office of Attorney Ethics.

(5) Notice to Grievant. The substance of respondent's written response shall be communicated to the grievant, who shall be afforded an opportunity to respond in writing within 14 days of receipt of the communication.

(6) Investigative Subpoena. During the investigation of any matter, a subpoena may be issued in accordance with R. 1:20-7(i) in the name of the Supreme Court of New Jersey.

(h) Dismissal and Appeal; Administrative Dismissal. The investigator shall report in writing to the chair, providing a copy to the secretary. The report shall set forth the facts, together with a recommendation for action. If the chair concludes that there is no reasonable prospect of proving unethical conduct or incapacity by clear and convincing evidence, the matter shall be dismissed. Written notice of the facts and reasons for dismissal shall be provided to the respondent, the Director, and the grievant, who shall be advised of the right of appeal to the Board within 21 days as provided by Rule 1:20-15(e)(2).

The Director may authorize that a grievance be declined or administratively dismissed where either the attorney has been disciplined and the Director determines that the processing of additional matters against the respondent would not likely result in the imposition of substantially different discipline, or the attorney, although not yet disciplined, is already the subject of disciplinary proceedings and the nature or time periods covered by the additional grievances are similar to other unethical conduct already being pursued, so that the results would be likely to be merely cumulative. If so approved, the secretary shall give notice of declination or administrative dismissal to any grievant, together with an explanation of the reasons supporting the action.

(i) Determination of Unethical Conduct.

(1) Generally. If the chair determines that there is a reasonable prospect of a finding of unethical conduct by clear or convincing evidence, a further determination shall be made as to whether such conduct is either unethical conduct or minor unethical conduct.

(2) Minor Unethical Conduct.

(A) Defined. Minor unethical conduct is conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply: (i) the unethical conduct involves the knowing misappropriation of funds; (ii) the unethical conduct resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made; (iii) the respondent has been disciplined in the previous five years; (iv) the unethical conduct involves dishonesty, fraud or deceit; (v) or the unethical conduct constitutes a crime as defined by the New Jersey Code of Criminal Justice (N.J.S.A. 2C:1-

1 et seq.). Classification of unethical conduct as minor unethical conduct shall be in the sole discretion of the Director.

(B) Agreements in Lieu of Discipline.

(i) If, as a result of investigation, the chair concludes that minor unethical conduct has occurred, the chair may request that the Director, or his designee, divert the matter and approve an agreement in lieu of discipline. Such request shall be accompanied by any initial grievance, the respondent's response, an investigative report, the written agreement signed by the respondent, and a letter to any grievant enclosing a copy of the agreement. The letter shall give ten days notice to the grievant that the Director is being asked to approve the disposition and that any comments must be sent to the Director within that time. Diversion shall not be available subsequent to the filing of a complaint.

(ii) There shall be no appeal from the Director's decision.

(iii) An agreement in lieu of discipline may contain an agreement to meet, within a specified period (usually no more than six months), stated conditions addressed, to the extent practicable, to the remediation of the cause of the unethical conduct. Such conditions may include, but are not limited to, reimbursement of fees or costs, completion of legal work, participation in alcohol or drug rehabilitation program, psychological counseling or satisfactory completion of a course of study and such other programs as are developed. If approved, the Director shall monitor the terms of agreement. If the respondent fulfills the terms, the matter shall be dismissed.

(C) Other Process. If an attorney declines to agree to divert a matter to administrative disposition under subparagraph (B), or if the Director determines, as a matter of exclusive discretion, that the attorney does not qualify for diversion or has failed to comply with the terms of the diversion agreement, the matter shall proceed in accordance with subparagraph (i)(3)(A) of these rules.

(3) Unethical Conduct.

(A) Defined. All ethical violations of the Rules of Professional Conduct, case law, or other authority not determined in accordance with these rules to be minor unethical conduct shall be processed as unethical conduct.

(B) Process. Unethical conduct may be prosecuted by the filing of a complaint under R. 1:20-4 or through Discipline by Consent under R. 1:20-10.

(j) Incapacity. If the Director or the chair conclude that there is a reasonable prospect of proving incapacity by clear and convincing evidence, the matter shall proceed as provided under R. 1:20-12.

Note: Former Rule redesignated as Rule 1:20-4 January 31, 1984 to be effective February 15, 1984. Source-Former Rule 1:20-2 adopted February 23, 1978, to be effective April 1, 1978; paragraphs (a), (h), (l) and (m) amended January 17, 1979, which were superseded on March 2, 1979, to be effective April 1, 1979; and paragraphs (n) and (o) restored on March 22, 1979, to be effective April 1, 1979; subparagraph (l)(3)

deleted and new paragraph (p) adopted June 19, 1981, to be effective immediately; paragraphs (c), (h), (j) and (l)(1)(i) amended July 16, 1981, to be effective September 14, 1981; Rule redesignated as Rule 1:20-3; paragraphs (a) through (e) amended; paragraphs (f), (g) and part of (k) deleted; paragraphs (h), (i), (j), (k), (l), (m), (n), (o) and (p) amended and redesignated (f), (h), (i), (j), (k), (l), (m), (n) and (o) and new paragraphs (g) and (p) adopted January 31, 1984, to be effective February 15, 1984; paragraphs (f), (g), (h), (i), (l), (n), (o) and (p) amended November 5, 1986, to be effective January 1, 1987; paragraphs (e) and (m) amended June 26, 1987 to be effective July 1, 1987; paragraphs (i), (j) and (o) amended November 7, 1988 to be effective January 2, 1989; paragraphs (f) and (i) amended, and paragraph (n)(3) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (g) and (n)(2) captions and text amended August 8, 1994 to be effective immediately; paragraphs (a), (b), (c) and (d) amended, paragraphs (e) through (p) deleted and new paragraphs (e) through (j) adopted January 31, 1995 to be effective March 1, 1995; paragraphs (f), (g)(5), and (h) amended July 5, 2000 to be effective September 5, 2000; paragraph (g)(1) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (c), (e), (f), (g), (h), (i) (text and caption), and (j) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraphs (b) and (c) amended July 22, 2014, to be effective September 1, 2014.

Rule 1:20-4. Formal Pleadings

(a) Complaint Determination. Where the chair or Director, in his or her sole discretion, determines that there is a reasonable prospect of a finding of unethical conduct by clear and convincing evidence and where the matter is not diverted pursuant to R. 1:20-3(i)(2), a complaint shall issue.

(b) Contents of Complaint. Every complaint shall be in writing, designated as such in the caption, and brought against the respondent in the name of either the District Ethics Committee or the Office of Attorney Ethics. The complaint shall be signed by the chair, secretary or any Ethics Committee member, the Director, or the Director's designee. The complaint shall state the name of the grievant, if any, and the name, year of admission, law office or other address, and county of practice of the respondent, and shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated. It shall also state above the caption the name, address and phone number of the presenter assigned to handle the matter.

(c) Consolidation of Charges and Respondents. A complaint may include any number of charges against a respondent. A consolidated complaint may be filed against two or more respondents if they are members of the same law firm or if the allegations are based on the same general conduct or arise out of the same transaction or series of transactions.

(d) Filing and Service. The original complaint shall be filed with the secretary of the Ethics Committee or the designated special ethics master to whom the case is assigned. If the matter will be determined by an Ethics Committee, service of the complaint shall be made by the secretary; otherwise service shall be made by the Director. A copy of the complaint shall be served on the respondent and respondent's attorney, if known, in accordance with R. 1:20-7(h), together with written notice advising the respondent of the

requirements of R. 1:20-4(e) and (f), the name and address of the secretary or the Director as appropriate, as well as the address and telephone number of the vice chair of the Ethics Committee or special ethics master to whom all questions and requests for extension of time to file answers shall be directed. In appropriate circumstances, the secretary or the Director shall forward a copy of every complaint to the respondent's law firm or public agency employer in accordance with R. 1:20-9(k).

(e) Answer. Within twenty-one days after service of the complaint, the respondent shall file with and serve on the secretary the original and one copy of a written, verified answer designated as such in the caption. The respondent shall also file a copy with the presenter, the vice chair or special ethics master and, in cases prosecuted by the Director, two copies with that office. The verification shall be made in the following form:

"Verification of Answer

I, (insert respondent's name), am the respondent in the within disciplinary action and hereby certify as follows:

(1) I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

(2) I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

An answer that has not been verified within ten days after the respondent is given notice of the defect shall be deemed a failure to answer as defined within these Rules.

For good cause shown, the vice chair or the special ethics master, if one has been appointed, may, on written application made within twenty-one days after service of the complaint, extend the time to answer. The Director shall be notified of any extension granted in cases prosecuted by that office. The secretary shall forward one copy of all answers to the Director. The respondent's answer shall set forth (1) a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint; (2) all affirmative defenses, including any claim of mental or physical disability and whether it is alleged to be causally related to the offenses charged; (3) any mitigating circumstances; (4) a request for a hearing either on the charges or in mitigation, and (5) any constitutional challenges to the proceedings. All constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board. Interlocutory relief may be sought only in accordance with R. 1:20-16(f)(1). Failure to request a hearing shall be deemed a waiver thereof. A respondent is required to file an answer even if the respondent does not wish to contest the complaint.

(f) Failure to Answer.

(1) Admission. The failure of a respondent to file a verified answer within the prescribed time shall be deemed an admission that the allegations of the complaint are

true and that they provide a sufficient basis for the imposition of discipline. No further proof hearing shall be required.

(2) Certification to Disciplinary Review Board. If a respondent has been duly served with a complaint, but has failed to file a verified answer within the prescribed time, a certification detailing that failure may be filed with the Director by the secretary or special ethics master, or, in cases prosecuted by the Director, by ethics counsel. The Director may thereafter file that certification with the Board, which shall treat the matter as a default. A copy of the certification shall be mailed to the respondent.

(g) Counsel.

(1) Presenter. All disciplinary and disability proceedings shall be prosecuted by an attorney presenter designated by the Director or chair.

(2) Respondent's Counsel; Assignment for Indigents. A respondent may be represented by counsel admitted to practice law in New Jersey or admitted pro hac vice by the Board, or may appear pro se. A respondent desiring representation but claiming inability to retain counsel by reason of indigency, shall promptly so notify the vice chair and special ethics master, if one is appointed, and shall, within 14 days after service of the complaint, make written application to the Assignment Judge of the vicinage in which respondent practices or formerly practiced, simultaneously serving the application on the vice chair and special ethics master, if one has been assigned, and on the presenter. The application shall be supported by a certification complying with R. 1:4-4(b), which shall contain a current statement of all assets and liabilities, any bankruptcy petition and orders, and copies of the respondent's state and federal income and business tax returns for the prior three-year period. For good cause shown, the Assignment Judge shall assign an attorney to represent the respondent without compensation, so notifying the respondent, the secretary, the vice chair and special ethics master, if one has been assigned, and the Office of Attorney Ethics of any decision.

(3) Grievant's Counsel. A grievant may be represented by a retained attorney. Such attorney shall be limited to consulting with the grievant and may not be designated as the presenter in the matter.

Note: Text and former R. 1:20-4 redesignated R. 1:20-15. New text to R. 1:20-4, adopted January 31, 1995 to be effective March 1, 1995; paragraph (e) amended July 5, 2000 to be effective September 5, 2000; paragraphs (e) and (f)(2) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a), (b), (d), (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (d) amended August 1, 2006 to be effective September 1, 2006; paragraph (b) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-5. Prehearing Procedures

(a) Discovery.

(1) Generally. Discovery shall be available to the presenter. Discovery shall also be available to the respondent, provided that a verified answer in compliance with R. 1:20-4(e) has been filed. All such requests shall be in writing.

(2) Scope. On written request the following information, if relevant to the investigation, prosecution, or defense of a matter, and if within the possession, custody or control of the presenter, the respondent or counsel, is subject to discovery and shall be made available for inspection and copying as set forth in this rule:

(A) a writing as defined by N.J.R.E. 801(e) or any other tangible object, including those obtained from or belonging to the respondent;

(B) written statements, if any, including any memoranda reporting or summarizing oral statements, made by any witness, including the respondent;

(C) results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;

(D) names, addresses and telephone numbers of all persons known to have relevant knowledge or information about the matter, including a designation by the presenter and respondent as to which of those persons will be called as witnesses;

(E) police reports and any investigation reports;

(F) name and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of the facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

(G) any final disciplinary investigative report.

(3) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or that party's attorney or agents in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery of statements, signed or unsigned, made by respondent to respondent's attorney or that attorney's agents. Any materials relating to any matter deemed "confidential" under R. 1:20-9, including dismissals and diversions, are not discoverable. This rule does not authorize discovery of any internal manuals or materials prepared by the Office of Attorney Ethics or the Disciplinary Review Board.

(4) Type of Discovery Not Permitted. Neither written interrogatories, nor requests for admissions, nor oral depositions shall be permitted in any matter, except that depositions to preserve the testimony of a witness likely to be unavailable for hearing due to death, incapacity or otherwise, may be taken in accordance with the procedure (modified as appropriate to disciplinary proceedings) set forth in R. 3:13-2.

(5) Timeliness of Discovery; Continuing Duty. Initial discovery shall be made available within 20 days after receipt of a written request therefor. A party's obligation to provide discovery is a continuing one. If, subsequent to compliance with a request for discovery, a party discovers additional names or statements of witnesses or other information reasonably encompassed by the initial request for discovery, the original discovery response shall be promptly supplemented accordingly.

(6) Failure to Make Discovery. Any discoverable information that is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the presenter or respondent to disclose the name and provide the report or summary of any expert who will be called to testify at least 20 days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown.

(7) Discovery Applications. All discovery applications shall be made on notice to the hearing panel chair or special ethics master, if one has been appointed. An interlocutory appeal may be sought only pursuant to R. 1:20-16(f)(1).

(b) Prehearing Conference.

(1) Attendance. A prehearing conference may be held in standard unethical conduct cases in the discretion of the trier of fact if requested by the presenter, the respondent, or the trier of fact. A prehearing conference shall be held in all complex cases alleging unethical conduct at the request of the presenter, the respondent, or the trier of fact. The prehearing conference shall be held by the hearing panel chair, sitting alone or, if assigned, a special ethics master, within 45 days after the time within which an answer to a complaint is due. At least 14 days written notice of the date of the conference shall be given. Attendance at the conference is mandatory by all parties. A prehearing conference may be held by telephone call where appropriate. No transcript shall be made of the prehearing conference, except in unusual circumstances.

(2) Prehearing Report. At least five business days before the date scheduled for the prehearing conference, both the presenter and the respondent shall file a report with the hearing panel chair or special ethics master, and with the adversary, disclosing the name, address and telephone numbers of each person expected to be called at hearing, including any person who will testify as to the character or reputation of the respondent, and all experts. With respect to an expert witness, the report shall state the person's name, address, qualifications, and the subject matter on which the expert is expected to testify. A copy of the expert's report, if any, or, if no written report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, shall be attached. Every respondent shall also include his or her own office and home address (including a street address) and telephone number where the attorney can be reached at all times. The respondent shall have a continuing duty to promptly advise the hearing panel chair, special ethics master, presenter, secretary of any district committee and the Director of any changes in any of the items required above.

(3) Objectives. At the prehearing conference, the hearing panel chair or special ethics master shall address the following matters:

(A) the formulation and simplification of issues;

(B) admissions and stipulations of the parties with respect to allegations, defenses and any aggravation or mitigation;

(C) the factual and legal contentions of the parties;

(D) the identification and limitation of witnesses, including character and expert witnesses;

(E) deadlines for the completion of discovery, including the timely exchange of expert reports;

(F) the hearing date and its estimated length;

(G) issuance of any subpoenas necessary to presentation of the case;

(H) premarking of all exhibits into evidence to which the parties consent;

(I) the priority of disciplinary proceedings under R. 1:20-8 and any known trial commitments by the presenter, respondent, and respondent's counsel that could conflict with the scheduling of the matter. Counsel shall be under a continuing duty to promptly notify the hearing panel chair or the special ethics master of any such trial dates assigned as soon as known; and

(J) any other matters which may aid in the disposition of the case.

(4) Case Management Order. Within seven days following the prehearing conference, the hearing panel chair or special ethics master shall issue a case management order, designated as such in the caption, memorializing any agreements by the parties and any determinations made respecting any matters considered at the conference. That order shall set forth the time period within which all discovery shall be completed. The case management order, which constitutes part of the record, shall be served on the presenter and the respondent and filed with the vice chair and the Director.

(5) Setting Hearing Date and Conclusion. At the prehearing conference the hearing panel chair or special ethics master shall schedule dates for the hearing of the case within 60 days after the date of the conference, except in extraordinary circumstances, which hearing dates shall be promptly reported to the vice chair and Director. The hearing shall be concluded within 45 days after its commencement and a hearing report shall be filed with the Board and served on the parties within 60 days after the hearing's conclusion, except in extraordinary circumstances.

(c) Sanctions. The hearing panel chair or special ethics master shall make and enforce all rules and orders necessary to compel compliance with this rule and may

suppress an answer, bar defenses, or bar the admissibility of any evidence offered that is in substantial violation of the case management order, discovery obligations, or any other order.

(d) Motion to Dismiss. No motion to dismiss a complaint shall be entertained except:

(1) a prehearing motion addressed either to the legal sufficiency of a complaint to state a cause of action as a matter of law or to jurisdiction;

(2) a motion to dismiss at the conclusion of the presenter's case in chief; and

(3) a motion by the presenter to dismiss the complaint, in whole or in part, when

(A) an essential witness becomes unavailable or

(B) as a result of newly discovered or newly disclosed evidence, one or more counts of the complaint cannot be proven by clear and convincing evidence. Such motion shall be supported by the presenter's certification of the facts supporting the motion and any relevant exhibits, and shall be decided by the trier of fact.

Note: Former R. 1:20-5 redesignated R. 1:20-16 adopted January 31, 1995 to be effective March 1, 1995; paragraph (b)(6) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(7) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (b) amended, former subparagraph (b)(c) redesignated as paragraph (c), former paragraph (c) redesignated as paragraph (d) and amended July 28, 2004 to be effective September 1, 2004; subparagraphs (a)(3) and (b)(2) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-6. Hearings

(a) Hearing Panels.

(1) Hearing Panel Designations; Oversight. The chair shall annually determine the composition of hearing panels which shall be administered and advised by the vice chair. Each hearing panel shall consist of only three members, one of whom shall be a public member. The chair shall designate an attorney member as the chair of each panel. An additional attorney member and an additional public member may be designated as alternates to remain available but not to sit and hear the matter unless one of the attorney members or the public member is unable to do so. An attorney member involved in the investigation of a matter shall not serve as a hearing panel member on that matter.

The vice chair shall designate a hearing panel to hear the matter after the time prescribed for the filing of an answer and shall notify the presenter and respondent of the designation.

(2) Quorum. A quorum shall consist of two attorney members and one public member. The hearing panel shall act only with the concurrence of two. When by reason of

absence, disability or disqualification the number of members of the hearing panel able to act is fewer than a quorum, the following procedures will apply:

(A) if the hearing has not commenced, the attorney alternate or another attorney member shall be substituted for the absent attorney or the public member alternate or another public member shall be substituted for the absent public member;

(B) if the hearing has commenced but all evidence has not been received, the vice chair shall designate the attorney alternate or another attorney member or the public member alternate or another public member to permit the orderly conclusion of the proceedings, provided that the member so designated shall have the opportunity to review the entire record including the transcript of the proceedings to date;

(C) if all the evidence has been received, the matter may be determined by the remaining two hearing panel members, provided their decision is unanimous. In the event of disagreement, the vice chair shall designate the attorney alternate or another attorney member or the public member alternate or another public member who, on review of the entire record including the transcript of the proceedings, shall be eligible to vote thereon.

(3) Powers and Duties. Hearing panels shall have the following powers and duties:

(A) to conduct hearings on formal charges of unethical conduct and petitions for reinstatement where requested by the Board or the Court;

(B) to submit to the Board written findings or fact, conclusions of law and recommendations, together with the record of the hearing; and

(C) to determine issues of unethical conduct by majority vote, provided a quorum is present.

(4) Powers and Duties of Hearing Panel Chair. Each hearing panel chair shall have the following powers and duties:

(A) to conduct prehearing conferences in accordance with R. 1:20-5(b);

(B) to entertain prehearing motions;

(C) to preside at all hearings; and

(D) to perform such other functions as provided for by these rules or assigned by the Director with the approval of the Supreme Court.

Unless relieved by the Supreme Court, a member serving as a trier of fact where testimony has begun at the time the member's term expires shall continue in such matter until its conclusion and the filing of a report.

(b) Special Ethics Masters.

(1) Qualifications. A retired or recalled judge of this state, a former member of the Disciplinary Review Board, a former member of the Disciplinary Oversight Committee, a former officer of a district ethics committee, or a former chair of a hearing panel may be appointed, with his or her consent, to serve as a special ethics master.

(2) Appointment; Compensation. Special ethics masters shall be appointed by, and shall serve at the pleasure of, the Supreme Court under the administration of the Director. Attorneys shall be paid the per diem rate in effect for single arbitrators under R. 4:21A-2(d)(1). The full per diem rate shall be paid for each day of a prehearing conference or hearing, or part thereof, but shall not be paid for separate days for opinion preparation. A reasonable additional amount may be paid for actual typing expenses. Retired judges may serve pro bono or with compensation or, if they are on recall, shall be paid at the rate in effect for judges on recall service.

(3) Designation; Oversight. When, in the judgment of the Director, a hearing may reasonably be expected to take three days or more, or where the case should be heard continuously from day to day until conclusion, or when the Director believes it is in the interest of justice to do so, the Director may request designation of a special ethics master to try the case. An Ethics Committee chair may request the Director to request the appointment of a special ethics master. The Director shall determine the appropriateness of such an appointment pursuant to the above criteria and other relevant considerations, and shall notify the Clerk of the Supreme Court of that determination. Upon receipt of that notification, the Clerk of the Supreme Court shall select a special ethics master from a list of qualified individuals maintained and approved by the Supreme Court. The Director shall render appropriate administrative and legal services to special ethics masters.

(4) Powers and Authority. A special ethics master shall have the full power and authority of a hearing panel.

(c) Hearings Involving Unethical Conduct; When Required.

(1) When Required. A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

(2) Notice and Conduct of Hearings.

(A) Generally. At least 25 days prior to the initial scheduled hearing date, a written notice of hearing shall be served on the presenter, the respondent, and any counsel of record, stating the date, time and place of hearing. Subsequent days of hearing may be scheduled orally or in writing. Prior to the hearing the respondent will be advised of the right to be represented by counsel, to cross-examine witnesses and to present

evidence. Arrangements for the hearing, including location of hearing, recording, interpreters and transcripts, shall be made by the Ethics Committee or special ethics master, if one has been appointed. A complete stenographic record of the hearing shall be made by an official court reporter or by a court reporter designated by the Director. Each trier of fact shall be obligated to inform every court reporter, witness and party of any protective order that has been issued and the effect thereof. All witnesses shall be duly sworn. If special circumstances dictate, the trier of fact may accept testimony of a witness by telephone and/or video conference.

(B) Standard of Proof. Formal charges of unethical conduct, medical defenses, and reinstatement proceedings shall be established by clear and convincing evidence.

(C) Burden of Proof; Burden of Going Forward. The burden of proof in proceedings seeking discipline or demonstrating aggravating factors relevant to unethical conduct charges is on the presenter. The burden of going forward regarding defenses or demonstrating mitigating factors relevant to charges of unethical conduct shall be on the respondent. The burden of proof in proceedings seeking reinstatement shall be on the petitioner.

(D) Respondent's Presence and Testimony; Presence and Sequestration of Witnesses. Respondent's appearance at all hearings is mandatory. In accordance with R. 1:20-7(l), however, a respondent's absence shall not delay the orderly processing of the case. The grievant, if any, the grievant's attorney, if any, and respondent's attorney, if any, and administrative staff assisting in the prosecution of the matter shall have the right to be present at all times during the hearing. Any other witnesses may be sequestered during their testimony on reasonable terms on timely application and a showing of good cause.

(E) Findings and Report. The trier of fact shall submit to the Board written findings of fact and conclusions of law on each issue presented, together with the record of the hearing, and shall take one of the following actions:

(i) Dismissal. If the trier of fact finds that there has been no unethical conduct, the secretary or special ethics master shall send to the presenter, the respondent, the grievant, if any, the Director and the vice chair, a letter of dismissal in a form approved by the Director, together with a copy of the hearing panel's report. The original report and record shall be filed with the Director. The hearing panel or special ethics master shall not order any transcript without the prior approval of the Director or the Board. Appeals may be taken in accordance with R. 1:20-15(e)(2).

(ii) Admonition Recommendation. If the hearing panel or special ethics master finds that there has been unethical conduct for which an admonition constitutes adequate discipline, the panel chair or special ethics master shall submit the original hearing panel report stating the specific discipline recommended and the record of all proceedings before it to the Director for transmittal to the Board. The hearing panel or special ethics master shall not order any transcript without the prior approval of either the Director or the Board. A copy of the hearing panel's report shall be served on the

presenter, the respondent, the grievant, if any, the vice chair and secretary. The Board shall proceed pursuant to R. 1:20-15(f).

(iii) Reprimand, Censure, Suspension or Disbarment Recommendations. If the hearing panel or special ethics master finds that there has been unethical conduct that requires the imposition of a reprimand, censure, suspension or disbarment, the panel chair or special ethics master shall submit the original hearing panel report stating the specific nature of the discipline recommended and the record of all proceedings, including the original transcript, to the Director for transmittal to the Board. A copy of the hearing panel's report shall be served on the presenter, the respondent, the grievant, if any, the vice chair and secretary. The Board shall proceed pursuant to R. 1:20-15(f).

(F) Public Hearings. Unless a protective order has been issued in accordance with R. 1:20-9(h), all hearings shall be open to the public in accordance with R. 1:20-9(c).

(d) Abstention and Request For Disqualification. A trier of fact shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain under R. 1:12-1. It shall not be cause for disqualification that the trier of fact has heard or decided other cases involving the same respondent. Requests to disqualify a trier of fact shall, where possible, be made in advance of any prehearing conference; otherwise, it shall be made in advance of the initial day of hearing. The request shall be decided initially by the trier of fact, whose decision may be superseded by the vice chair or, in the event of a conflict, the chair, or, in matters handled by the Office of Attorney Ethics, by the Director.

(e) Withdrawal By Respondent's Counsel; When Permitted. After the date of the pretrial conference or fixing of the first trial date, respondent's counsel may withdraw without leave of the trier of fact only upon the filing of the respondent's written consent, a substitution of attorney executed by both the withdrawing respondent's attorney and the substituted respondent's attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing respondent's attorney and the substituted respondent's attorney (or respondent pro se) that the withdrawal and substitution will not cause or result in delay.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraph (c) amended July 25, 1995 to be effective immediately; paragraph (b)(2) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(1), (a)(2), and (c)(2)(E)(i) amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (b) amended, paragraph (c) caption and text amended, former paragraph (d) deleted, and new paragraph (d) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (e) adopted July 27, 2006 to be effective September 1, 2006; subparagraph (c)(2)(F) amended August 1, 2006 to be effective September 1, 2006; subparagraphs (b)(1) and (c)(2)(A) amended July 9, 2008 to be effective September 1, 2008; paragraph (b)(3) amended December 8, 2010 to be effective January 1, 2011.

Rule 1:20-7. Additional Rules of Procedure

(a) Nature of Proceedings. Discipline and disability proceedings are neither civil nor criminal in nature.

(b) Evidence Rules Relaxed. The rules of evidence may be relaxed in all disciplinary proceedings, but the residuum evidence rule shall apply.

(c) Time Limitations. There are no time limitations with respect to the initiation of any discipline or disability matter.

(d) Delay Caused by Grievant. Neither unwillingness nor neglect by the grievant to sign a grievance or prosecute a charge, nor settlement or compromise between the grievant and the respondent or restitution by the respondent, shall, in itself, justify abatement of the processing of any grievance.

(e) Immunity of Disciplinary and Fee Authorities. Members of the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff, shall be absolutely immune from suit, whether legal or equitable in nature, based on their respective conduct in performing their official duties. The Supreme Court shall request the Attorney General to represent disciplinary authorities in all civil or criminal litigation in state or federal courts.

(f) Immunity of Grievants, Witnesses and Others. Grievants in ethics matters, clients in fee arbitration cases and witnesses and potential witnesses in both ethics and fee matters shall be absolutely immune from suit, whether legal or equitable in nature, for all communications, including testimony, only to the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff.

(g) Immunity from Criminal Prosecution. With the consent of the Attorney General, the Director, in a discipline or disability proceeding, may apply to the Supreme Court, or to an Assignment Judge designated by it, for a grant of immunity to a witness from criminal prosecution in accordance with N.J.S.A. 2A:81-17.3.

(h) Service. Service on the respondent of any pleading, motion, or other document required by these rules to be served in a disciplinary or disability proceeding may be made by personal service, or by certified mail (return receipt requested) and regular mail, at the address listed in the New Jersey Lawyers' Diary and Manual or the address shown on the records of the Lawyers' Fund for Client Protection. Service on a respondent may also be made by serving respondent's counsel, if any, by regular mail or by facsimile transmission.

(i) Subpoena Power.

(1) Oaths. In discipline and disability matters, members of a hearing panel, special ethics masters, court reporters or ethics counsel may administer oaths and affirmations.

(2) Investigative and Hearing Subpoenas. During the investigation or hearing of a matter, a subpoena may be issued in the name of the Supreme Court to compel the appearance of any person for questioning or testimony or to compel the production of books, records, documents or other items designated therein. A showing of relevance or materiality may be required before the issuance of any subpoena. The subpoena shall issue in a form approved by the Supreme Court. Investigative and hearing subpoenas may be signed by any Ethics Committee member, the presenter, ethics counsel or by the Board or its legal staff. Hearing subpoenas may also be issued by a hearing panel member, special ethics master or by the Board or its staff.

(3) Service; Fees. Subpoenas shall be served within the State of New Jersey by any person 18 or more years of age by delivering a copy thereof to the person named, except that subpoenas may be served on an attorney who is a witness or a party, by certified mail, return receipt requested. No attendance fee need be paid. Service on a respondent may also be made by serving respondent's counsel, if any, by regular mail.

(4) Enforcement; Contempt. Subpoenas issued under this rule may be enforced pursuant to R. 1:9-6.

(5) Standards; Quashing Subpoena; Appeals.

(A) Generally. The Board chair, during the investigation stage of a matter, or the hearing panel chair or special ethics master, after the filing of a complaint, may, on motion made promptly, quash or modify a subpoena if the subject testimony or documentation is patently irrelevant or if compliance would be unreasonable or oppressive.

(B) Interlocutory Appeals. The determination on a challenge to a subpoena shall not be subject to interlocutory appeal, but any objection thereto will be preserved for review on appeal, if any, or on an authorized review under R. 1:20-15 and 16.

(6) Subpoena Pursuant to Law of Another Jurisdiction. Whenever a subpoena is sought in this state by a foreign disciplinary authority pursuant to the law of that jurisdiction for use in a discipline or disability proceeding, and where the foreign disciplinary counsel certifies that the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Disciplinary Review Board, on petition for good cause, on notice to the Director, may issue a subpoena as provided in this rule to compel the attendance of witnesses and production of documents in this state.

(j) Grievances Against Disciplinary Agency Members.

(1) Grievances Alleging Improper Processing. Any grievance against Ethics Committee or Fee Committee members and secretaries, members of the Office of Attorney Ethics, hearing panels, special ethics masters or the Board, their lawfully appointed

designees and staff, arising out of their processing of an ethics grievance or fee arbitration request shall be filed with and considered exclusively by the Board in connection with any appeal or other authorized review of a matter in the normal course under R. 1:20-15(e). After review, the Board shall make any appropriate direction regarding the grievance. Nothing herein shall preclude introduction of the facts which underlie the grievance in evidence in any ethics proceeding if relevant.

(2) Other Grievances. Except as provided in section (1), if a grievance is filed against the Director, Office of Attorney Ethics, ethics counsel or staff, or a member of the Board or Board Counsel or staff, the matter shall be transmitted to the Clerk of the Supreme Court, who shall make any appropriate direction for processing the matter.

(k) Extension of Time; Adjournments. Reasonable extensions of time and adjournments may be granted for good cause. Such requests shall be made by writing, stating with specificity the facts on which the request is based. Such requests shall be either granted or denied in writing; if granted they shall be only for a definite and reasonably short interval. The vice chair or special ethics master may grant extensions for the filing of an answer to a complaint. After the parties have been notified of the date of hearing, requests for adjournments shall be directed to the hearing panel chair or special ethics master. If such request is based on an attorney's scheduling conflict, the hearing panel chair or special ethics master should communicate with the appropriate assignment judge in order to accommodate the priority accorded disciplinary proceedings by R. 1:20-8(g).

(l) Absent or Non-responding Respondent. A respondent's absence, non-responsiveness or other failure to reply or to file any document or to attend any required conference or hearing shall not delay the orderly processing of a case, provided the respondent has been properly served.

(m) Transcripts. Where in a pending matter a respondent is found guilty of unethical conduct warranting reprimand, censure, suspension or disbarment, the trier of fact shall order the original transcript and shall file it, together with its report and the record of the matter, with the Board. If no finding of unethical conduct is made, the trier of fact may order the transcript only with prior permission of the Director or the Board. Where a matter is pending, a respondent may, at personal expense, order a transcript of the hearing, provided that the respondent also directs the reporter to furnish a copy of the transcript to the trier of fact. Where a matter is concluded the respondent may, at personal expense, order a transcript of the hearing. Except where a protective order has been issued pursuant to R. 1:20-9(h), any other person may order all or any part of a transcript at the individual's prepaid expense. Either the Board or the Director shall have the right to order a transcript wherever necessary.

(n) Prior Discipline or Disability. Information concerning prior final discipline or disability of the respondent shall not be a matter for consideration by the trier of fact until a finding of unethical conduct has first been made, unless such information is probative of issues pending before the trier of fact. On a finding of unethical conduct the trier of fact shall request the Office of Attorney Ethics to disclose to it and to the presenter and to the

respondent a summary of any orders, letters or opinions imposing temporary or final discipline or disability on the respondent. Within five days of receipt of the submission of any prior discipline or disability, either the presenter or ethics counsel or respondent may submit written argument on the issue of the effect to be given thereto.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraphs (h), (i), (m), and (n) amended July 28, 2004 to be effective September 1, 2004; paragraph (m) amended August 1, 2006 to be effective September 1, 2006.

Rule 1:20-8. Time goals; accountability; priority

(a) Investigations. The Disciplinary system shall endeavor to complete all investigations of standard matters within six months, and of complex matters within nine months, the time period commencing on the date a written grievance is docketed and concluding on the date a formal complaint is filed, the grievance is dismissed or other authorized disposition is made.

(b) Formal Hearings. The disciplinary system shall endeavor to complete formal hearings within six months from the expiration of the time for filing an answer to a complaint until a report is filed with the Director for transmittal to the Disciplinary Review Board.

(c) Appellate Review. The disciplinary system shall endeavor to complete all recommendations for discipline filed with the Disciplinary Review Board within six months from the date of docketing by the Office of Board Counsel until the issuance of the Board's decision. All ethics and fee arbitration appeals should be completed and a decision issued within three months of docketing the appeal by the Board.

(d) Supreme Court Review. The disciplinary system shall endeavor to complete matters (except emergent actions) filed with the Supreme Court within six months from the date of docketing by the Office of the Clerk of the Court until issuance of the Court's order or opinion.

(e) Effect of Goals. The time periods herein prescribed are not jurisdictional and shall not serve as a bar or defense to any disciplinary investigation or proceeding.

(f) Accountability. Analysis of compliance by the disciplinary system of the time periods herein prescribed shall be made annually and at such intervals as the Disciplinary Oversight Committee may direct, and an analysis published showing how the respective caseloads compare with these goals.

(g) Priority of Disciplinary Matters. Generally, disciplinary matters shall take precedence over administrative, civil and criminal cases. All courts and tribunals shall make reasonable accommodations for the attendance of counsel, witnesses, and other participants. Every participant in a disciplinary proceeding shall be obligated to give reasonable advance notice of potential litigation conflicts to the assignment judge or to the

particular judge or officer in charge of the litigation. The same advance notice also shall be given to the presenter, respondent, counsel, and the panel chair or special ethics master in the disciplinary matter.

Note: Former R. 1:20-8 deleted, new text adopted January 31, 1995 to be effective March 1, 1995; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b), (c), and (g) amended July 28, 2004 to be effective September 1, 2004.

Rule 1:20-9. Confidentiality; Access to and Dissemination of Disciplinary Information

(a) Confidentiality by the Director. Prior to the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the disciplinary matter and all written records gathered and made pursuant to these rules shall be kept confidential by the Director, except that the pendency, subject matter, and status of a grievance may be disclosed by the Director if:

(1) the respondent has waived or breached confidentiality; or

(2) the proceeding is based on allegations of reciprocal discipline, a pending criminal charge, or a guilty plea or conviction of a crime, either before or after sentencing; or

(3) there is a need to notify another person or organization, including the Lawyers' Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession; or

(4) the Supreme Court has granted an emergent disciplinary application for relief; or

(5) the matter has become common knowledge to the public.

(b) Disclosure by Grievant. For grievances pending on, or filed after, October 19, 2005, the grievant may make public statements regarding the disciplinary process, the filing and content of the grievance, and the result, if any, of the grievance. If the grievant makes a public statement, respondent may reply publicly to any matter revealed by the grievant.

(c) Public Proceedings. All proceedings shall be public except:

(1) as otherwise provided by paragraph (a); or

(2) prehearing conferences; or

(3) deliberations of the trier of fact, Board or Supreme Court; or

(4) information subject to a protective order; or

(5) proceedings alleging disability in accordance with paragraph (g).

(d) Public Records.

(1) Subject to paragraphs (a) and (c), on the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline or the approval of a motion for discipline by consent (except for documents submitted in connection with confidential prehearing conferences), those documents, as well as the documents and records filed subsequent thereto, shall be available for public inspection and copying. Inspection and copying shall be available by appointment at the office of the body where the matter is then pending. Transcripts shall be available to the public in accordance with R. 1:20-7(m) at their pre-paid expense. Where, in the opinion of the district secretary or the Director, the documentation to be copied is voluminous, a commercial photocopy service may be used for reproduction at the prepaid expense of the person requesting them.

(2) In the event an attorney has been temporarily suspended for disciplinary reasons, the motion papers, any response and any orders issued by the Board or the Court shall be available to the public by their respective offices. Unless the Court otherwise orders, all other records regarding emergent applications, including but not limited to those for temporary suspension (either for disciplinary reasons, failure to pay disciplinary costs, failure to pay fee arbitration determinations or settlements or otherwise), license restrictions, conditions of practice, transfer to temporary disability-inactive status, shall be confidential, except for orders issued by the Supreme Court.

(3) There shall be no private discipline. Private reprimands issued prior to the effective date of this rule shall remain confidential.

(4) Ethics Committees, Office of Attorney Ethics or the Board may impose a reasonable charge for the actual cost of reproducing public documents.

(5) The following records are also public for purpose of inspection: District Ethics Committee Manual and District Fee Arbitration Manual. These manuals may be inspected at the Office of Attorney Ethics, the Disciplinary Review Board and the secretaries of the respective Ethics Committees and Fee Committees.

(e) Referral to Admissions/Disciplinary Agencies. Whenever an attorney-at-law of this state is also admitted, or has applied for admission, to another jurisdiction, the Director may refer information concerning a pending or completed investigation or proceeding regarding that attorney to such admission or disciplinary agency. Such transmittal by the Director shall be made on notice to the attorney and, if the information submitted is confidential, shall be accompanied by a directive that the information submitted remain confidential and be used solely for admissions or disciplinary purposes in that jurisdiction.

In those cases in which an admission or disciplinary agency in another jurisdiction initiates a request for information, that agency shall certify that its request for information is made in furtherance of an ongoing investigation or proceeding involving that attorney.

(f) Disclosure of Evidence of Criminal Conduct; All Other Disclosure Including Subpoenas.

(1) Subsequent to the filing of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the Director may refer any matter to law enforcement authorities without prior notice to respondent if criminal conduct may be involved. Prior to the filing and service of a complaint, the Director may refer a matter to law enforcement authorities if criminal conduct may be involved and the respondent has been temporarily suspended. In both cases, a copy of the letter of referral shall be sent to the respondent and any known counsel. Where criminal conduct may be involved but where the respondent has not been temporarily suspended or served with a complaint, the Director shall, prior to such referral, give ten days written notice to the respondent and any known counsel of the intention to make a referral. The respondent may, within said period, apply to the Board for a protective order based on good cause shown.

(2) In all other cases, including cases where civil or criminal subpoenas have been issued to disciplinary personnel, the Board may authorize the referral of any confidential documentary information to the appropriate authority only for good cause shown. When a requesting authority shall seek such information, it shall issue its subpoena, which shall be transmitted to the Board or shall file a motion seeking disclosure with the Board, on ten days notice to the respondent and any known counsel, and the Director, both of whom shall be given an opportunity to be heard.

(g) Proceedings Alleging Disability. Proceedings for transfer to or from disability-inactive status are confidential. All orders transferring an attorney to or from disability-inactive status are public.

(h) Protective Orders. In exceptional cases, protective orders may be sought to prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent. The presenter or respondent shall make any application for a protective order. On application or on its own motion, and for good cause shown, the Supreme Court, the Board, or the trier of fact may issue the protective order. A copy of any protective order entered shall be sent promptly to the Director, the secretary of any appropriate Ethics Committee, all parties, Board Counsel and the Clerk of the Supreme Court. The trier of fact or the Board may also direct that implementation of the protective order include a requirement that any hearing on the matter be conducted in such a manner as to preserve the confidentiality of the information that is the subject of the order.

(i) Duty to Maintain Confidentiality. All disciplinary system officials, employees and all participants in a proceeding under these rules shall maintain the confidentiality provided by this rule, including compliance with any protective order.

(j) Records Retention, Expungement and Reporting. The Clerk of the Supreme Court shall maintain permanently all disciplinary and disability files processed by the Supreme Court for decision including, but not limited to, all files resulting in the imposition of final or temporary discipline or the transfer to disability-inactive status, and all applications for reinstatement or restoration. Chief Counsel to the Disciplinary Review Board shall permanently maintain all ethics files previously resulting in private reprimands and admonitions issued by the Board, and shall maintain files of all ethics and fee arbitration appeals processed to the Board for a period of three years after the matter is terminated or for one year after the date of death of the attorney, whichever is earlier. All Ethics Committees shall maintain files for one year after the date a matter is terminated or after the attorney's death. All files maintained by the Office of Attorney Ethics and all other files maintained by the Disciplinary Review Board may be destroyed after five years following the date the matter is terminated or after one year following the date of the attorney's death. However, Chief Counsel to the Disciplinary Review Board and the Director of the Office of Attorney Ethics shall permanently maintain a summary of all docketed matters processed by each office containing the name of the respondent and any grievant or client, a brief summary of the nature and disposition of the matter and the date the case was opened and closed by their respective offices.

Except with respect to any application by an attorney for appointment to or employment by a judicial branch of government or a law enforcement or corrections agency, the matter shall, after the time herein specified for destruction of the file, be deemed expunged and any agency response to an inquiry requiring a reference to such matter shall state that there is no record of the filing of cases that are over five years old where the matter is dismissed or terminated other than by discipline or transfer to disability-inactive status. Except with respect to inquiries by the judicial branch of government, or a law enforcement or corrections agency, the respondent may answer any inquiry requiring a reference to a destroyed file by stating that the grievance was dismissed and thereafter expunged pursuant to court rule.

(k) Law Firm/Public Agency Notice of Public Action. Unless the respondent is the sole proprietor of a law firm, an Ethics Committee or the Office of Attorney Ethics shall send promptly to the law firm of which the respondent is known to be a member or by which the respondent is known to be employed, or the public agency by which the respondent is known to be employed, a copy of every complaint filed and served by that entity, disciplinary stipulation waiving the filing of a formal complaint, motion for final or reciprocal discipline or approved motion for discipline by consent.

(l) Notice to National Lawyer Regulatory Data Bank. The Clerk of the Supreme Court shall transmit promptly notice of all discipline, whether temporary or final, imposed on an attorney, transfers to or from disability-inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(m) Public Notice of Discipline Imposed. The Clerk of the Supreme Court shall cause promptly notices of all discipline, whether temporary or final, imposed against an

attorney, transfers to or from disability-inactive status and reinstatements to be published in the official newspaper designated by the Supreme Court.

(n) Notice to the Courts. The Clerk of the Supreme Court shall promptly transmit a copy of all orders of discipline, whether temporary or final, transfers to or from disability-inactive status and reinstatements to all Assignment Judges, to the Presiding Judge for Administration of the Appellate Division, the Presiding Judge of the Tax Court of New Jersey, and to the Clerk of the United States District Court for the District of New Jersey. If a respondent has been suspended, disbarred or the subject of an equivalent sanction or transferred to disability-inactive status and fails to or is unable to comply with the requirement of R. 1:20-20, the Office of Attorney Ethics or the County Bar Association may, where necessary, request the Assignment Judge of the county in which the respondent practiced law to designate a practicing attorney member of the bar of that county to take such action pursuant to R. 1:20-19 as may be necessary to protect the interests of the respondent and the respondent's clients.

(o) Notice to Disciplinary Agencies. The Office of Attorney Ethics shall promptly transmit notice of final discipline and transfers to disability-inactive status to the disciplinary enforcement agency of every other jurisdiction in which the respondent is known to have been admitted.

(p) Annual Reports. The Office of Attorney Ethics and the Board shall each annually publish reports to the Supreme Court concerning their respective activities.

Note: Former R. 1:20-9 redesignated R. 1:20-12, new text adopted January 31, 1995 to be effective March 1, 1995; paragraph (k) amended July 10, 1998 to be effective September 1, 1998; paragraphs (d) and (g) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a), (b), (c), (f), (g), (i), (k), (l), (m), and (n) amended, and paragraphs (e) and (j) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraphs (b), (c), and (h) amended and redesignated as paragraphs (c), (d), and (i), former paragraphs (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), and (o) redesignated as paragraphs (e), (f), (g), (h), (j), (k), (l), (m), (n), (o), and (p) July 27, 2006 to be effective September 1, 2006; corrective amendment to paragraph (b) adopted September 26, 2006 to be retroactive to September 1, 2006; paragraph (a), subparagraphs (d)(1) and (f)(1), and paragraph (k) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-10. Discipline by Consent

(a) Disbarment by Consent.

(1) General Procedure. An attorney against whom a grievance has been filed may submit a consent to disbarment as a member of the bar to the Supreme Court through the Director, who shall transmit the consent in due form together with a report and recommendation. If accepted, the disbarment by consent shall be equivalent to disbarment, and the order accepting it shall be published as in cases of disbarments.

(2) Affidavit of Consent. Consents to disbarment shall be by affidavit in the form approved by the Supreme Court in which the respondent asserts:

(A) the respondent has consulted with an attorney; and

(B) the respondent's consent is freely and voluntarily given; the respondent has not been subjected to coercion or duress; the respondent is fully aware of the implications of submitting the consent; and

(C) the respondent is not under any disability, mental or physical, nor under the influence of any medication, intoxicants or other substances that would impair the respondent's ability to knowingly and voluntarily execute the disbarment by consent; and

(D) the respondent is aware that there is presently pending an investigation or proceeding involving allegations of unethical conduct, which allegations are set forth in the consent form; and

(E) an acknowledgement that the material facts so alleged are true; and

(F) an acknowledgement that the allegations of unethical conduct could not be successfully defended against; and

(G) the understanding that the disbarment by consent, if accepted by the Supreme Court, is tantamount to disbarment and constitutes an absolute bar to reinstatement to the practice of law; and

(H) the understanding that disciplinary costs will be assessed by the Supreme Court in accordance with R. 1:20-17.

The affidavit of consent to disbarment shall not be received by the Director unless accompanied by a letter from the respondent's attorney certifying that an attorney has consulted with respondent and that, in so far as the attorney is able to determine, respondent's consent is knowingly and voluntarily given and that respondent is not under any disability affecting respondent's capacity knowingly and voluntarily to consent to disbarment.

(3) Action by Supreme Court. The Supreme Court may either reject the tendered consent or accept it and enter an order of disbarment. Otherwise, the Court shall reject the consent. If rejected, the disciplinary proceeding shall resume as if no consent had been submitted, and the consent to disbarment shall not thereafter be admitted into evidence.

(b) Other Discipline by Consent.

(1) Timeliness and Form of Petition. At any time during the investigation or hearing of a disciplinary matter, but prior to the issuance of the hearing report, the respondent may agree with the investigator or presenter to submit an affidavit of discipline by consent in exchange for a specific recommendation for discipline. Following approval by the chair or Director, the matter shall be submitted to the Board as an agreed matter by

way of a motion to impose discipline on consent in accordance with R. 1:20-15(g). A copy of the motion shall be provided to the Director.

(2) Contents of Motion. The motion, which shall be filed by the investigator or presenter shall certify the concurrence of the chair or the Director, and shall be supported by a signed stipulation setting forth in detail the admitted facts regarding the unethical conduct, the specific ethical rules violated, a specific recommendation for, or range of, discipline, together with a brief analysis of the legal precedent therefore. The stipulation shall attach the respondent's affidavit of consent in the form approved by the Supreme Court and containing the assertions set forth in paragraph (a)(2)(B), (C), (E) and (H).

(3) Action by Board. Pursuant to R. 1:20-15(g), the perfected motion shall be submitted to the Board. The Board may allow the motion and accept the discipline recommended. The Board shall either deny the motion in which case the disciplinary proceeding shall resume as if no motion had been made or the Board shall grant the motion. If accepted by the Board, it shall submit the record of the proceedings to the Clerk of the Supreme Court for entry of a consent order of discipline in accordance with R. 1:20-16(e). If the motion is denied, no admissions made therein shall be admitted into evidence.

Note: Former R. 1:20-10 text deleted, new text adopted January 31, 1995 to be effective March 1, 1995; paragraph (a)(2)(H) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (b)(1) amended July 22, 2014, to be effective September 1, 2014.

Rule 1:20-11. Temporary suspension

(a) Standard. An attorney may be subject to immediate temporary suspension by the Supreme Court if it finds that by reason of a violation of the Rules of Professional Conduct, caselaw or other authority, or a disability as defined by R. 1:20-12, the attorney poses a substantial threat of serious harm to an attorney, a client or the public. An attorney may also be immediately temporarily suspended as otherwise authorized by these rules.

(b) Procedure. A temporary suspension proceeding shall be initiated by the Director which shall:

(1) transmit the evidence to the Court by motion for immediate temporary suspension with supporting affidavit, together with proof of service; and

(2) contemporaneously make a reasonable attempt to provide the respondent with notice, including telephone notice, of the transmittal of the motion to the Court.

(c) Order. On review of the evidence transmitted by the Director and of rebuttal evidence, if any, which the respondent has filed prior to the Court's ruling, the Court may enter an order immediately suspending the respondent pending final disposition of a disciplinary proceeding or may take such other action as it deems appropriate.

(d) Notice to Clients. A respondent suspended pursuant to paragraph (b) shall comply with the notice requirements in R.1:20-20.

(e) Motion for Reinstatement. On two days notice to the Director, a respondent suspended pursuant to paragraph (b) may move for reinstatement or modification of the order of suspension, and in that event the motion shall be heard and determined as expeditiously as the ends of justice require.

(f) Recommendation by Disciplinary Review Board. The Supreme Court may also order the temporary suspension of any attorney where so recommended by the Disciplinary Review Board in accordance with R.1:20-15(i) and (k).

Note: Former R. 1:20-11 deleted, new text adopted January 31, 1995 to be effective March 1, 1995.

Rule 1:20-11A. Suspension of License to Practice Law for Failure to Support Dependents

(a) Suspension and Reinstatement of License. Upon receipt of an order issued pursuant to R. 5:7-5(b) that calls for the suspension of a license to practice law in New Jersey, the Supreme Court shall enter an order suspending the attorney from the practice of law. The Supreme Court shall enter an order reinstating the license to practice law, without the need for the attorney to file a verified petition for reinstatement or publish a notice as required by R. 1:20-21, upon receipt of an order issued by the Chancery Division, Family Part calling for the reinstatement of the license.

(b) Release of Attorney Information to Probation Division. The Office of Attorney Ethics and the New Jersey Lawyer's Fund for Client Protection shall, upon request, provide the Probation Division of the Superior Court with, if available, an attorney's social security number, home address and primary law office address when the basis for such a request is a license revocation proceeding in accordance with R. 5:7-5(b).

Note: Adopted March 15, 1996, to be effective immediately.

Rule 1:20-11B. Suspension of License to Practice Law for Failure to Repay Student Loans

(a) Certification; Contents. An entity seeking the suspension of an attorney's license to practice law pursuant to N.J.S.A. 2A:13-12 shall file with the Clerk of the Supreme Court and serve on the attorney a certification that (1) identifies the attorney, the attorney's last known home and law office addresses, and the date of the attorney's admission to the New Jersey bar; (2) states the amount currently owed by the attorney on the loan and attests that the loan is in default pursuant to state or federal law; and (3) certifies that the entity has complied with all of the regulations, approved by the Supreme Court, that govern the temporary suspension of attorney licenses for failure to repay student loans. Proof of

service on the attorney at his or her last known home and office addresses, by regular and certified mail, return receipt requested, shall be filed with the entity's certification.

(b) Supreme Court Action. On receipt of the entity's certification pursuant to paragraph (a), the Court shall direct the Clerk to enter an Order temporarily suspending the license of the attorney until the further Order of the Court.

(c) Reinstatement. An attorney temporarily suspended from the practice of law pursuant to this Rule may seek reinstatement by filing a certification with the Supreme Court. The certification must confirm, in detail, that the attorney is meeting all current requirements for the repayment of his or her outstanding loans. The attorney must attach a copy of a repayment agreement to the certification, along with proof either that payments have begun in accordance with the agreement or that there is other evidence sufficient to demonstrate repayment. Proof of service on the entity by regular and certified mail, return receipt requested, shall be filed with the attorney's certification. If the attorney has continued to meet all other requirements for licensing during his or her suspension, the Court shall direct the Clerk to enter an Order reinstating the attorney to the practice of law.

(d) Release of Attorney Information to Lenders or Guarantors. At the request of an entity seeking the suspension of an attorney's license to practice law pursuant to this Rule, the Clerk of the Supreme Court shall provide the entity with an attorney's last known home address and law office address. The information that is provided may be used only in connection with an application pursuant to paragraph (a) of this Rule.

Note: Adopted March 5, 2002 to be effective May 1, 2002.

Rule 1:20-12. Incapacity and disability

(a) Disability Inactive Status; Effect of Judicial Determination of Mental Incapacity or on Involuntary Commitment. When an attorney who is admitted to practice in this state has been judicially declared mentally incapacitated or involuntarily committed to a mental hospital, the Supreme Court, on proof of the fact, shall enter an order transferring the attorney to disability inactive status, effective immediately and until further order of the Court. Such transfer shall stay any pending disciplinary proceedings. When an attorney who has been transferred to disability inactive status is thereafter, in proceedings duly taken, judicially declared to be competent, the Court may dispense with the need for further evidence that the disability has been removed and may direct reinstatement on such terms as are deemed proper and advisable. Any judge sitting in a court in this state who declares an attorney admitted to practice in this state mentally incapacitated, or who commits such attorney to a mental hospital, or who thereafter declares the attorney to be competent shall, on entry of the final order, promptly forward a copy to the Director.

(b) Request for Medical Examination. Whenever the Director presents evidence which reasonably brings into question the capacity of an attorney to practice law, whether by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, the Board shall direct that the attorney submit to such medical examination as

may be appropriate to enable the Director to determine whether the attorney is so incapacitated. Such action shall be taken on an expedited basis. Thereafter the Director may request the Board to recommend to the Supreme Court that the attorney be immediately transferred to Disability Inactive Status. If the Board concludes that the attorney lacks the capacity to practice law, it shall forthwith recommend to the Supreme Court that the attorney be transferred to disability inactive status until the further order of the Court. No pending disciplinary proceeding against the attorney shall be held in abeyance unless the Court shall additionally find that the respondent is incapable of assisting counsel in defense of any ethics proceedings.

(c) Assignment of Counsel; Notice of Proceedings. Either the Court or the Board may order the assignment of counsel for an attorney during any proceeding under this rule if it is in the interest of justice to do so. A copy of all applications and orders made pursuant to this rule shall be served on the attorney or counsel, any guardian, or the director of any institution to which the attorney has been committed.

(d) Proceedings to Determine Incapacity. Information relating to an attorney's physical or mental condition that adversely affects the capacity to practice law may be investigated and, where warranted, shall be the subject of a hearing to determine whether the attorney shall be transferred to disability inactive status. In conjunction with any such investigation the Director may also request the Board to direct the attorney to submit to an appropriate medical examination. All proceedings and any formal hearing shall be conducted in the same manner as disciplinary proceedings. The issue before the hearing panel or special ethics master, the Board and the Court shall be whether the attorney lacks the capacity to practice law. If on due consideration of the matter the Court concludes that the attorney lacks the capacity to practice law, it shall enter an order transferring the attorney to disability inactive status for an indefinite period and until the further order of the Court.

(e) Inability to Properly Defend. If, during the course of a disciplinary proceeding, the respondent is unable to assist counsel in defense of the matter due to mental or physical incapacity, the Court shall immediately transfer the respondent to disability inactive status pending determination of the incapacity.

If the Court determines that the attorney is unable to defend against the charges or complaint because of mental or physical incapacity, the disciplinary proceeding shall be deferred and the respondent retained on "disability inactive" status until the Court subsequently considers a petition for restoration of the respondent to active status. On application of the Director, the Court may also make such order for the perpetuation of testimony in the disciplinary proceedings as may be appropriate. If the Court considering a petition for restoration determines to grant the petition, any deferred disciplinary proceedings shall be reactivated.

If the Court determines that the attorney is able to defend against the charges or complaint, the disciplinary proceeding shall resume.

(f) Transfer to Active Status on Termination of Disability. Any attorney transferred to disability inactive status under the provisions of this rule shall be ineligible to practice law and shall comply with R. 1:20-20 governing suspended attorneys. Such attorney may apply for transfer to active status on notice to the Director. No such attorney shall be eligible to practice law until transferred to active status by order of the Supreme Court. Such application may be granted by the Court or referred by the Court for hearing in accordance with paragraph (d) above.

(g) Burden of Proof. In a proceeding seeking an order of transfer to disability inactive status, the burden of proof by clear and convincing evidence shall rest with the petitioner. In a proceeding seeking an order revoking the disability inactive status, the burden of proof by clear and convincing evidence shall rest with the attorney.

(h) Waiver of Doctor-Patient Privilege. Either the filing of an application by an attorney for transfer to disability inactive status or the filing of an application by an attorney for transfer from disability inactive to active status shall be deemed to constitute a waiver of any doctor-patient privilege. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution or facility by whom or at which the attorney has been examined, evaluated or treated. The attorney shall furnish to the Director written consent to the release of such information and records as requested.

Note: Adopted January 31, 1984 to be effective February 15, 1984; paragraph (g) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) caption and text amended, paragraphs (c) and (d) deleted, new paragraphs (c), (d) and (e) added and former paragraphs (e), (f) and (g) amended and redesignated (f), (g) and (h) November 7, 1988 to be effective January 2, 1989; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; former R. 1:20-9 redesignated as R. 1:20-12, paragraphs (a) through (h) amended January 31, 1995 to be effective March 1, 1995; caption and text of paragraph (a) amended July 12, 2002 to be effective September 3, 2002.

Rule 1:20-13. Attorneys charged with or convicted of crimes

(a) Reporting Criminal Matters.

(1) Duty of Attorney Charged. An attorney who has been charged with an indictable offense in this state or with an equivalent offense in any other state, territory, commonwealth, or possession of the United States or in any federal court of the United States or the District of Columbia shall promptly inform the Director of the Office of Attorney Ethics in writing of the charge. The attorney shall thereafter promptly inform the Director of the disposition of the matter.

(2) Cooperation of Law Enforcement. The Director may request the principal law enforcement officer of every law enforcement agency having jurisdiction within the State of New Jersey (including municipal and county prosecutors, the Attorney General and the United States Attorney) to promptly notify the Director of the Office of Attorney Ethics of any criminal charge filed against a New Jersey attorney, including all disorderly,

petty disorderly or any second or subsequent motor vehicle charges involving the use of drugs or alcohol and to provide relevant information.

(b) Automatic Temporary Suspension.

(1) Procedure. On the filing with the Supreme Court of the Director's certification that any attorney authorized to practice law in the State of New Jersey has been determined to be guilty (whether sentenced or not) in any court of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Supreme Court shall enter an order immediately suspending that attorney from the practice of law until final disposition of a disciplinary proceeding to be commenced at the conclusion of the criminal proceeding, whether the determination resulted from a plea of guilty, no contest, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal. A copy of the order of suspension shall immediately be served on the attorney. On good cause shown, the Supreme Court may set aside the order when it appears in the interest of justice to do so. Nothing herein shall be construed to preclude the application for a temporary suspension otherwise allowable by court rule, of any attorney determined to be guilty of any other crime.

(2) Serious Crimes Defined. The term "serious crime" shall include any crime of the first or second degree as defined by the New Jersey Code of Criminal Justice (N.J.S.A.2C:1-1 et seq.); or any felony of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States; or any other crime of this state or of the United States or the District of Columbia or of any state, territory, commonwealth or possession of the United States, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft; or any attempt or a conspiracy or solicitation of another to commit a "serious crime;" or violations involving criminal drug offenses, excluding solely minor possessory offenses.

(3) Reinstatement. An attorney suspended under the provisions of paragraph (1) may apply to the Court, on notice to the Director, for reinstatement immediately on the filing of a certificate demonstrating that the underlying conviction of or plea to a serious crime has been reversed. An order of reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(c) Final Discipline.

(1) Conclusive Evidence. In any disciplinary proceeding instituted against an attorney based on criminal or quasi-criminal conduct, the conduct shall be deemed to be conclusively established by any of the following: a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

(2) Procedure. At the conclusion of all criminal matters, including disorderly persons offenses, involving findings or admissions of guilt that are not the subject of a direct appeal, or at the conclusion of all direct appeals from all such matters, the Director may file directly with the Board and serve on the respondent or counsel, if any, a motion for final discipline based on a criminal conviction or admission of guilt specifying the sanction requested. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails to file a timely brief or timely files a brief which does not disagree with the sanction requested, no oral argument is required and the Board may decide the matter on the record. In all other cases the Board shall notify the parties of a date for oral argument. Following oral argument, the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. Either the Board or the Court, on the showing of good cause therefore or on its own motion, may remand a case to a trier of fact for a limited evidentiary hearing and report consistent with this subsection.

Nothing in this rule shall be construed to preclude the Office of Attorney Ethics from filing a complaint and proceeding by hearing where the Director determines that procedure to be appropriate.

Note: Source-Former Rule 1:20-6 adopted January 31, 1984 to be effective February 15, 1984; paragraph (a)(1) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a) and (b) amended November 5, 1986 to be effective January 1, 1987; new paragraph (a) adopted and paragraphs (a) and (b) redesignated (b) and (c) November 7, 1988 to be effective January 2, 1989; former R. 1:20-6 redesignated as R. 1:20-13, captions added, former text of paragraph (a) redesignated (a)(1); new paragraph (a)(2) adopted, paragraph (b) and (c) amended January 31, 1995 to be effective March 1, 1995; paragraph (b) amended July 28, 2004 to be effective September 1, 2004.

Rule 1:20-14. Reciprocal discipline and disability proceedings

(a) Reciprocal Attorney Discipline and Disability.

(1) Reporting Duty. An attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall promptly inform the Director in writing on transfer to disability-inactive status or on imposition of discipline as an attorney or otherwise in connection with the practice of law in another jurisdiction, including any federal court of the United States or the District of Columbia, a state or federal administrative agency or other tribunal, a court of any state, territory, commonwealth or possession of the United States.

(2) Procedure. On the filing with the Board and service on the respondent by the Director of a motion for reciprocal discipline or disability attaching a certified or exemplified copy of a judgment or order that demonstrates that an attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, has been transferred to disability-inactive status or disciplined as an attorney or otherwise in connection with the practice of law by another court, agency or tribunal, the respondent shall have 21 days after service of that motion to file and serve any brief containing any claim predicated on the grounds set forth in subsection (4) hereof that the recommendation to the Supreme Court of the imposition of the identical action or discipline by the Board would be unwarranted, together with the reasons therefor. The attorney shall have the burden of establishing by clear and convincing evidence the grounds asserted. The Director shall prosecute these proceedings and may submit a reply brief within 21 days after the expiration of the attorney's time for filing.

(3) Stay of Foreign Proceedings. In the event the discipline or disability imposed in the other jurisdiction has been stayed there, proceedings under this rule shall be deferred until such stay expires unless good cause appears to the contrary.

(4) Board Decision. On the expiration of the time allowed for the Director's filing of a reply brief, the matter shall be set down before the Board. If the respondent either fails to file a timely brief or timely files a brief that does not contest the sanction requested by the Director, no oral argument is required and the Board may decide the matter on the record. The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

When the Board determines that any of said elements exists, it shall make such recommendation to the Court as it deems appropriate. The Director may argue that the law of this state or the facts of the case do or should warrant the imposition of greater discipline than that imposed in other jurisdictions, but in such event the Director shall bear the burden of establishing such contentions by clear and convincing evidence. In the event

that the Board determines that the Director has met the burden in this regard, the Board shall recommend the imposition of such greater discipline as it deems appropriate.

(5) Conclusive Evidence. In all other respects, a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, has been transferred to "disability-inactive" status or is guilty of unethical conduct in another jurisdiction as an attorney or otherwise in connection with the practice of law, shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state.

(b) Reciprocal Judicial Discipline.

(1) Reporting Duty. Any attorney admitted to practice in this state shall promptly inform the Director in writing on being subjected to discipline as a judge in any other jurisdiction including any federal court of the United States or the District of Columbia, a state or federal administrative agency or other tribunal, a court of any state, territory, commonwealth or possession of the United States.

(2) Procedures for Foreign Judicial Determination. On the filing with the Board and service on the respondent by the Director of a motion for final discipline attaching a certified or exemplified copy of a judgment or order that demonstrates that an attorney admitted to practice in this state has been disciplined as a judge by another court, agency or tribunal, the matter shall proceed in accordance with subsections (a)(2) through (5).

(3) Procedure for New Jersey Judicial Determination. If a motion for final discipline is based on a final determination of unethical judicial conduct by the Supreme Court of New Jersey, that determination shall conclusively establish the facts on which it rests for purposes of an attorney disciplinary proceeding. In such case the Director may file directly with the Board and serve on the respondent or counsel, if any, a motion for reciprocal discipline. Within 21 days after service of such motion the respondent shall file with the Board and serve on the Director a brief together with any other permissible filings. The Director may within 21 days thereafter file and serve any responding brief. If the respondent either fails to file a timely brief or timely files a brief that does not disagree with the sanction requested; no oral argument is required and the Board may decide the matter on the record. In all other cases the Board shall notify the parties of a date for oral argument, following which the Board shall issue its decision and recommendation for final discipline to the Supreme Court.

The sole issue to be determined under this section shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation that is not inconsistent with the findings of fact and determinations of the Supreme Court of New Jersey in the judicial proceeding. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. Either the Board or the Court, on the showing of good cause therefore or on its own motion, may remand a

case to a special ethics master for a limited evidentiary hearing and report consistent with this subsection.

(c) Attorney Discipline Based on New Jersey Judicial Discipline. Where a judge has been removed or disciplined pursuant to R. 2:14 or 2:15, respectively, those proceedings shall be conclusive of the conduct on which that discipline was based in any subsequent disciplinary proceeding brought against the judge arising out of the same conduct. Attorney disciplinary proceedings may be taken in accordance with R. 1:20-14(b)(2).

(d) Alternative Procedure; Complaint. Nothing in this rule shall be construed to preclude the Director from filing a complaint pursuant to R. 1:20-4 where the Director determines that procedure to be appropriate.

Note: Adopted January 31, 1984 to be effective February 15, 1984; paragraphs (a), (b), (d) and (e) amended November 5, 1986 to be effective January 1, 1987; paragraph (d)(5) amended July 13, 1994 to be effective September 1, 1994; former R. 1:20-7 redesignated as R. 1:20-14, captions added, subsections (a)(b)(c)(d) and (e) amended and renumbered (a)(1) through (5), and new subsections (b) and (c) added January 31, 1995 to be effective March 1, 1995; paragraphs (a) and (b) amended and new paragraph (d) adopted July 28, 2004 to be effective September 1, 2004.

Rule 1:20-15. Disciplinary Review Board

(a) Appointment; Officers. The Supreme Court shall appoint a Disciplinary Review Board consisting of nine members, at least five of whom shall be attorneys of this state and at least three of whom shall not be attorneys. Members shall be appointed for three-year terms and may be reappointed in the Supreme Court's discretion. The Supreme Court shall annually designate a chair and vice chair of the Board from among its members.

(b) Office of Counsel. The Supreme Court shall establish an Office of Disciplinary Review Board Counsel and shall, with the advice of the Board, appoint a counsel who shall be a member of the bar of the State of New Jersey. Neither counsel, assistant counsel nor staff shall be permitted to otherwise engage in the practice of law nor to be otherwise employed except as may be provided by these rules and R. 1:17. Counsel for the Board shall have the authority to:

(1) provide legal counsel and advice to the Board;

(2) represent the Board before the Supreme Court when so requested by the Court or the Director;

(3) serve as the secretariat for the Board;

(4) maintain permanent records of all matters considered by the Board;

(5) prepare annually, jointly with the Director, a proposed budget for the attorney disciplinary system of the state;

(6) recommend to the Board, for its adoption, subject to approval of the Supreme Court, regulations governing its own administrative procedures;

(7) hire and discharge all staff of the Office of Disciplinary Review Board Counsel consistent with personnel policies of the judiciary and subject to the approval of the Chief Justice, and recommend the hiring of assistant and deputy counsel subject to the advice of the Board chair and approval of the Supreme Court;

(8) perform such other duties as may be specifically assigned by the Disciplinary Review Board or the Supreme Court.

(c) Quorum; Dissenting Report. Five members of the Board shall constitute a quorum and all determinations shall be made by a majority of a quorum, provided however that a determination that discipline be imposed or a recommendation for temporary suspension shall have the concurrence of at least five members of the Board who have considered the record and briefs, if any; and provided further that at least three of them were present at any oral argument. Any Board member not concurring in a majority decision may file a separate report.

(d) Regulations. The Board may, subject to the prior approval of the Supreme Court, promulgate rules governing proceedings before it.

(e) Review of Final Action.

(1) Ethics Actions Subject to Review. The Board shall review, upon the filing of an ethics appeal by the original grievant or the Director, the following actions taken by an Ethics Committee, a special ethics master or by the Committee on Attorney Advertising:

(i) a determination to dismiss after investigation on the basis that there is no unethical conduct.

(ii) a determination to dismiss made after hearing on the basis that there has been no unethical conduct.

(2) Perfection of Review. The original grievant or the Director may, within 21 days after receipt of notice of the action, file with the Board a notice of appeal in the form prescribed by the Board and shall serve a copy thereof by regular mail upon the respondent, and, where appropriate, the presenter and the secretary of the Ethics Committee, the Director or the Committee on Attorney Advertising. The notice of appeal shall have attached a complete copy of the investigation report. The secretary of the Ethics Committee or of the Committee on Attorney Advertising or the Director, as appropriate, shall provide the record of its proceedings to the Board within ten days after its request. Within 21 days after receipt of the notice of appeal the respondent, the Ethics Committee, the Director, or the Committee on Attorney Advertising, as appropriate, may file a response with the Board.

(3) Review; Disposition. The review by the Board shall be de novo on the record with or without oral argument as it shall in its discretion determine. It shall by written determination affirm, modify, or reverse the action appealed from and may remand the matter for such further proceedings as it may direct. Review by the Board of decisions by the Committee on Attorney Advertising shall be limited as set forth in Rule 1:19A-4(b) and (d).

(f) Recommendations for Discipline.

(1) Generally. All recommendations for discipline received by the Board, except for admonitions and those consent matters that are reviewable only as to the recommended sanction, shall be promptly heard de novo on the record on notice to all parties. Recommendations for discipline filed by the Committee on Attorney Advertising shall be reviewed in accordance with Rule 1:19A-4(f). The Board's review shall include any portion of the charges dismissed by the trier of fact.

(2) Procedure; Waiver of Hearing. The notice of Board hearing shall contain a briefing schedule for the parties. Within ten days after receipt of that notice, the respondent and the presenter shall enter an appearance with the Office of Disciplinary Review Board Counsel. At that time, respondent may agree in writing to proceed on the record and waive oral argument. The waiver shall specify whether or not respondent agrees with the conclusions and recommendation of the trier of fact. Neither the presenter nor assigned ethics counsel may elect to waive oral argument but if respondent has filed a complete waiver, the Board may elect to review the matter without argument.

(3) Disposition. The Board shall render a formal decision including findings of fact and conclusions of law as to each issue presented, and shall make a specific determination as to the appropriate disciplinary sanction, if any, to be imposed, except in those matters in which a reprimand has been recommended and the Board determines to impose an admonition. When the Board determines to impose an admonition rather than a reprimand, it shall promptly issue a letter in accordance with paragraph (4) of this Rule. The letter shall include a statement of reasons for the Board's conclusion that a lesser sanction is warranted. The Board's disposition shall require respondent to make reimbursement of disciplinary costs in accordance with R. 1:20-17. The Board's decision shall be promptly filed with the Clerk of the Supreme Court and served on the Director and the parties by regular mail.

(4) Admonitions. All post-hearing recommendations for admonitions received by the Board shall be considered promptly de novo on the record below on notice to all parties. Admonitions recommended by the Committee on Attorney Advertising shall be reviewed in accordance with Rule 1:19A-4(f). In its discretion the Board may direct that the transcript be produced, briefs be filed, or that oral argument be held. Except in minor unethical conduct matters the Board, in its discretion, may direct that a panel report recommending an admonition be treated as a recommendation for greater discipline. In that event, all proceedings shall be held in conformance with paragraph (1) above. The Board shall have the authority to impose an admonition together with a direction for reimbursement of costs. When the Board determines that an admonition should be

imposed, including admonition by consent, it shall issue the letter of admonition. When the Board determines that no ethics violation has occurred, it shall dismiss the charges. The Board's determination, in letter form, shall be sent promptly to the respondent by certified mail. Copies shall be forwarded by regular mail to the Clerk of the Supreme Court, the Director, the Ethics Committee, the Committee on Attorney Advertising, if applicable, and the original grievant, if any. The Supreme Court may review admonitions in accordance with Rule 1:20-16(b).

(g) Consent Matters. On its review of a motion for imposition of discipline by consent pursuant to R. 1:20-10(b), the Board may either grant the motion and accept the recommendation, or deny the motion. If denied, the disciplinary proceeding shall resume as if no motion had been submitted and no such submission shall be evidentiary.

(h) Constitutional Challenges. Constitutional challenges to the proceedings raised before the trier of fact shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits. Interlocutory relief may be sought only in accordance with Rule 1:20-16(f)(1).

(i) Temporary Suspension. On receipt of evidence demonstrating that an attorney subject to the disciplinary jurisdiction of this state has committed a violation of the Rules of Professional Conduct, caselaw or other authority, or is under a disability as herein defined, and poses a substantial threat of serious harm to the public or, where necessary to protect the interests of an attorney, a client or the public, or where otherwise authorized by these rules, the Board may, on the motion of the Director, or on its own motion, recommend to the Supreme Court that an attorney be suspended temporarily from practice upon such terms and conditions as it deems appropriate.

(j) Imposition of Sanctions. In addition to any other authority granted by these Rules to impose or recommend the imposition of costs incurred in the prosecution of disciplinary proceedings, the Board may impose appropriate sanctions, including monetary sanctions as a form of discipline. The Board shall limit the imposition of such sanctions to those exceptional circumstances in which other forms of discipline are not appropriate to accomplish the purposes of attorney discipline.

(k) Enforcement of Fee Arbitration Committee Determination or Stipulation. When a matter involving a determination by a Fee Committee or a signed Stipulation of Settlement is referred to the Director because of the attorney's failure to comply within 30 days of receipt of the arbitration determination, or of the date set forth in the stipulation, the Board, upon motion of the Director and after affording the attorney an opportunity to be heard, may recommend to the Supreme Court that the attorney be temporarily suspended until compliance with the determination or stipulation.

(l) Fee Arbitration Appeals. The Board shall review an appeal from a determination of a fee arbitration committee in accordance with R. 1:20A-3(c).

(m) Exemption From Costs. As an agency of the Supreme Court, the Disciplinary Review Board and any lawfully appointed designee shall be exempt from the payment of

any court costs required by rule of law of the State of New Jersey including, but not limited to, the filing or docketing of any document, deposit for costs or service of process.

(n) Committee on Disciplinary Decisions; Publication of Disciplinary Dispositions. The Chief Justice shall appoint a Committee on Disciplinary Decisions to review Disciplinary Review Board decisions to determine which should be published. Decisions of the Board shall be published only after entry of a dispositional Supreme Court Order and only if so directed by the Supreme Court or if approved for publication by the Committee on Disciplinary Decisions. Any person or entity may seek publication of a disciplinary decision by submitting to the Committee a written request explaining the basis for the request and identifying in what way the decision: (1) determines a new an important question of professional conduct, or (2) alters an established principle of professional conduct, or (3) establishes or changes a practice or procedure, or (4) is of continuing public or professional interest and importance, or (5) clarifies a principle or procedure.

Note: Former Rule redesignated as Rule 1:20-5 January 31, 1984 to be effective February 15, 1984. Source-Former Rule 1:20-3 adopted February 23, 1978, to be effective April 1, 1978; paragraphs (a), (e), (g), (h) and (I) amended July 16, 1981, to be effective September 14, 1981; paragraph (f) (g), and (h) deleted; paragraph (a) amended; paragraphs (b), (c), (d), (e), (I) and (j) amended and redesignated (c), (d), (e), (f), (g) and (I); new paragraphs (b) and (h) adopted January 31, 1984, to be effective February 15, 1984; paragraph (I) amended November 1, 1985, to be effective January 2, 1986; paragraphs (e) and (f) amended November 5, 1986, to be effective January 1, 1987; paragraphs (e) and (f) amended June 26, 1987, to be effective July 1, 1987; paragraph (I) caption and text amended November 7, 1988 to be effective January 2, 1989; paragraph (f)(2) amended November 6, 1989, to be effective January 2, 1990; paragraph (f) amended June 29, 1990 to be effective September 4, 1990; paragraph (e)(2) amended July 13, 1994 to be effective September 1, 1994; paragraph (f)(2) caption and text amended August 8, 1994 to be effective immediately; R. 1:20-4 redesignated R. 1:20-15, paragraphs (a), (b), (c), (d) and (e) amended, former text of paragraph (f)(1) and (2) amended and incorporated into new (f)(1)(2)(3) and (4), and former paragraphs (f)(3), (g),(h) and (I) amended and redesignated paragraphs (h)(i)(j) and (k), new paragraphs (g), (l) and (m) adopted January 31, 1995 to be effective March 1, 1995; paragraph (j) amended July 10, 1998 to be effective September 1, 1998; paragraph (f)(3) amended and new paragraph (n) adopted March 20, 2003, to be effective immediately; paragraphs (a), (c), (e), (f), (i), and (l) amended July 28, 2004 to be effective September 1, 2004.

Rule 1:20-15A. Final disciplinary determinations; sanctions

(a) Categories of Discipline. The imposition of final discipline may include any of the following sanctions, all of which shall be public:

(1) Disbarment. An attorney who is disbarred shall have his or her name permanently stricken from the roll of attorneys.

(2) Indeterminate Suspension. Unless the Court's Order provides otherwise, an indeterminate suspension shall prohibit the attorney from seeking reinstatement for a minimum of five years.

(3) Term of Suspension. Absent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years.

(4) Censure.

(5) Reprimand.

(6) Admonition.

(b) Conditions. The Supreme Court's Order may provide for one or more of the following, either as a part of a sanction imposed pursuant to paragraph (a) or as a condition to reinstatement:

(1) Financial controls including, but not limited to, a designated co-signatory for all attorney trust and business account checks;

(2) Restrictions on the ability to practice including, but not limited to, the use of a supervising attorney approved by the Office of Attorney Ethics as a prerequisite to engaging in the private practice of law;

(3) Substance abuse control including, but not limited to, requiring abstinence, testing, and an identifiable commitment to appropriate support groups;

(4) Mental health treatment and counseling, together with a finding of fitness to practice by a mental health professional approved by the Office of Attorney Ethics;

(5) Taking and passing the New Jersey bar examination, as well as meeting all other qualifications for admission including, but not limited to, a certification of the attorney's good character by the Supreme Court after review by the Committee on Character; and

(6) Such other conditions as may be deemed appropriate in the light of the circumstances presented including, but not limited to, probation or a suspended suspension.

Note: Adopted July 30, 2002, to be effective September 3, 2002.

Rule 1:20-16. Action by the Supreme Court

(a) Review of Recommendations for Disbarment. The Supreme Court shall review all decisions of the Board that recommend disbarment. The review shall be on the basis of the decision, the transcript of the hearing before the Board, any briefs filed with the Board, and the record of the proceedings before the Ethics Committee, if any. The record shall be supplemented by the filing of briefs and by oral argument before the Supreme Court in accordance with R. 2:5, 2:6 and 2:11, insofar as applicable.

(b) Review of Other Final Disciplinary Determinations. In all matters other than those in which disbarment has been recommended, the Board's decision shall become final on the entry of an appropriate Order by the Clerk of the Supreme Court. Unless the Court otherwise orders, entry of a final Order of discipline shall be stayed by the filing of a

timely petition for review of the Board's decision by the respondent or the Office of Attorney Ethics or by the entry of an Order scheduling the matter for briefing and, where appropriate, oral argument on the Court's own motion.

The Court may, on its own motion, decide to review any determination of the Board where disbarment has not been recommended.

Either respondent or the Office of Attorney Ethics may seek review by filing a notice of petition for review within twenty days of the filing of the Board's decision with the Court. The notice shall be accompanied by nine copies of a petition for review, which shall be a brief that meets the format requirements of Rule 2:12-7(a). The responding party shall serve and file a responding brief within ten days of the filing of the petition for review. A reply brief, if any, shall be served and filed within seven days thereafter.

If the Court grants the petition for review, the record before it shall consist of the briefs filed on the petition and the record developed below, consistent with paragraph (a) of this Rule.

The Court may, in its discretion, elect to determine any matter on the papers submitted to it, without oral argument.

Unless the Court otherwise directs, the entry of its disposition shall vacate any stay in effect.

(c) De Novo Review. Supreme Court review shall be de novo on the record.

(d) Non-appealable Matters. The Board's decision shall be final and not subject to further review by the Court, whether by appeal by leave or in any other manner, in all matters considered by the Board pursuant to R. 1:20-15(e)(1)(i) and R. 1:20A-3(c).

(e) Consent Orders. Except for admonition by consent, on acceptance by the Disciplinary Review Board pursuant to R. 1:20-15(g) of a motion for imposition of discipline by consent, the record of the proceedings shall be filed with the Clerk of the Court for entry of an order of discipline in conformance therewith. The order shall be entered within 30 days after filing of the record.

(f) Constitutional Issues.

(1) Interlocutory Review. An aggrieved party may file with the Supreme Court a motion for leave to appeal to seek interlocutory review of a constitutional challenge to proceedings pending before the trier of fact or the Board. The motion papers shall conform to R. 2:8-1. Leave to appeal may be granted only when necessary to prevent irreparable injury. If leave to appeal is granted, the record below may, in the discretion of the Court, be supplemented by the filing of briefs and oral argument. The filing of any motion to the Supreme Court for interlocutory review authorized by these rules shall not automatically stay disciplinary proceedings unless the Court enters an order specifically granting a stay pending its resolution of the request.

(2) Final Review. In any case in which a constitutional challenge to the proceedings has been properly raised below and preserved pending review of the merits of the disciplinary matter by the Supreme Court, the aggrieved party may seek the review of the Court by proceeding in accordance with the applicable provisions of paragraph (b) of this rule.

(g) Review of Other Matters. All recommendations of the Board other than those otherwise referred to in this rule shall be reviewed by the Supreme Court on the full record below, supplemented as it may order on its own or a party's motion.

(h) Restraint on Attorney Accounts. A Supreme Court order imposing interim or final discipline may include a restraint on the disbursement of funds from accounts maintained by the respondent pursuant to Rule 1:21-6 or from other appropriate accounts. Applications for release of those funds shall be governed by Rule 1:20-23.

(i) Practice of Law Prohibited. No attorney who has been ordered disbarred, suspended, or transferred to disability-inactive status shall practice law after such disbarment or during the period of such suspension or disability, and every order of disbarment shall include a permanent injunction from such practice.

(j) Practicing Law in Violation of Supreme Court Order. Whenever there is reason to believe that an attorney may have violated an Order of the Supreme Court prohibiting that attorney from practicing law in this state, the Director may refer the underlying facts to the appropriate law enforcement agency. The Director also may file and prosecute an action for contempt under R. 1:10-2. Any action under R. 1:10-2 shall be instituted on order to show cause to the Assignment Judge of the vicinage in which the respondent is alleged to have engaged in the prohibited practice of law.

(k) Advice to Suspended and Disbarred Attorneys; Supreme Court Order. An order of the Supreme Court suspending an attorney shall contain a provision specifically advising the attorney of the requirements of R.1:20-20(b)(15) for filing an affidavit of compliance within 30 days with the Director, the Clerk of the Supreme Court, and the Board; and of the serious consequences for failure to fully and timely comply with those requirements as provided in R.1:20-20(c).

Note: Former rule redesignated as R. 1:20-8, R. 1:20-10 and R. 1:20-11. Source-Former Rule 1:20-4 adopted February 23, 1978, to be effective April 1, 1978; paragraph (a) amended January 10, 1979 to be effective immediately; new paragraph (d) adopted and paragraphs (d) and (e) redesignated (e) and (f) July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended; paragraph (c) deleted; paragraphs (d), (e) and (f) amended and redesignated (c), (d) and (e) January 31, 1984 to be effective February 15, 1984; new paragraph (d) adopted and former paragraphs (d) and (e) redesignated (e) and (f) November 6, 1989, to be effective January 2, 1990; paragraph (a) amended June 29, 1990 to be effective September 4, 1990; paragraph (d) amended August 8, 1994 to be effective immediately; former R. 1:20-5 redesignated R. 1:20-16, caption and text of paragraph (a) amended, paragraphs (b) and (d) deleted, new paragraphs (b)(c)(d)(e) and (i) adopted, former paragraphs (c)(e)(f) amended and redesignated (f)(g) and (h) January 31, 1995 to be effective March 1, 1995; paragraph (b) amended March 24, 1995, to be effective immediately; former paragraphs (h) and (i) redesignated as paragraphs (i) and (j) and new paragraph (h) adopted July 10, 1998 to be effective September 1, 1998; paragraphs (f), (i), and (j) amended and new

paragraph (k) adopted July 28, 2004 to be effective September 1, 2004; paragraph (i) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-17. Reimbursement of disciplinary costs

(a) Generally. Except in extraordinary cases, the final order of discipline or final order of transfer to disability-inactive status shall impose costs as recommended by the Disciplinary Review Board.

(b) Amount and Nature of Costs Assessed. In calculating its recommendation the Disciplinary Review Board shall assess both basic administrative costs and disciplinary expenses actually incurred.

(1) Basic Administrative Costs. Basic administrative costs shall be assessed as follows:

(A) For final Discipline by Consent (including Disbarment by Consent, if tendered prior to hearing), $ 650.

(B) For a Motion for Final Discipline or a Motion for Reciprocal Discipline, $ 1,000.

(C) For other final discipline or transfer to disability-inactive status ordered by the Board or the Court, including Admonition, Reprimand, Censure, Suspension, Transfer to Disability-Inactive Status, Disbarment and Disbarment by Consent (if tendered after the commencement of hearing), $ 2,000.

(2) Disciplinary Expenses Actually Incurred. Disciplinary expenses actually incurred shall be separately assessed, including, but not limited to, the following:

(A) Costs of any outside experts, such as accountants, auditors, interpreters, physicians, and other consultants;

(B) Charges for service of process and notice by publication;

(C) Transcript and recording or court reporter costs;

(D) Costs of a special ethics master;

(E) Disciplinary Review Board reproduction costs at 15 cents per page;

(F) Costs and fees paid to witness;

(c) Disputes; Procedure. On the entry of an order imposing final discipline or final transfer to disability-inactive status by the Supreme Court that includes an authorization for imposition of costs, Counsel to the Board shall promptly furnish the respondent with a statement of disciplinary costs. Within 20 days thereafter the respondent shall reimburse in

full all basic administrative costs and such disciplinary expenses actually incurred as to which there is no dispute. A respondent disputing any included actually-incurred disciplinary expense shall, within that time, specifically detail in writing the items disputed and the factual basis for the dispute. The Board shall review a timely filed letter of dispute without oral argument. Board Counsel shall notify respondent of the Board's decision, which shall be final and not subject to appeal. Respondent shall remit full payment of any balance due within 20 days after receipt of said notice.

Interest shall be charged on the unpaid balance of costs assessed beginning ten days after the date the assessment becomes final. The rate of interest charged shall be 10% per annum, or such other rate established by the Supreme Court from time to time.

(d) Claims of Extraordinary Financial Hardship. Service on respondent of the statement of disciplinary costs shall be accompanied by a notice advising that, in the event of inability to make payment by reason of extraordinary financial hardship, an installment payment schedule may be requested in writing. The request shall be made in writing within 20 days after service of the statement on respondent and shall include a proposed payment plan and be supported by a detailed statement of reasons together with such information specified in the notice. Respondent shall certify the truth of the information provided in accordance with R. 1:4-4.

The Board shall review a timely request under this section. The Board's decision shall be final and not subject to appeal. On respondent's failure to comply with the schedule of payments, the entire unpaid balance of disciplinary costs shall become immediately due and payable. Board Counsel may, in the exercise of discretion, decline to enter into further installment agreements with a respondent who has already defaulted on an agreed installment plan.

(e) Failure to Pay Disciplinary Costs.

(1) Temporary Suspension. On a default in payment required by this rule, Board Counsel, on ten days notice to the respondent, may file with the Supreme Court a certification of the default. The Supreme Court shall forthwith enter an order temporarily suspending the attorney from the practice of law until payment is made and until further order of the Court.

(2) Denial of Reinstatement. The Supreme Court shall not consider a recommendation for reinstatement unless accompanied by a Board certification that all assessed disciplinary costs have been paid.

(3) Docketing Judgment. Upon certification of the amount of disciplinary costs assessed and due, the Clerk of the Superior Court shall, without fee, enter on the civil judgment and order docket both the order authorizing costs and Board Counsel's certification of the amount due. Upon payment, Board Counsel shall execute a warrant for satisfaction.

Note: Adopted January 31, 1995 to be effective March 15, 1995; paragraph (f) deleted July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b), (c), (d), and (e) amended July 28, 2004 to be effective September 1, 2004.

Rule 1:20-18. Supervision of disciplined attorney

(a) Generally. An order of discipline or reinstatement entered by the Supreme Court may require the respondent to practice law under supervision by a practicing attorney. Such order shall include the general conditions prescribed by this rule and such specific additional conditions as the Director may require with the approval of the Supreme Court.

(b) Violation of Supervision or RPC's. The supervisor and the respondent shall report promptly to the Director any facts that appear to constitute a violation by the respondent of the Rules of Professional Conduct or the conditions of supervision.

(c) Mental or Physical Disability. The supervisor and the respondent shall report promptly to the Director any facts that appear to demonstrate alcohol or substance abuse by the respondent, or that indicate that the respondent may be incapacitated from practicing law by reason of mental or physical infirmity or illness.

(d) Weekly Conferences. The supervisor shall confer in person with the respondent at least weekly to review the status of all matters being handled.

(e) Time Records. The respondent shall maintain contemporaneous time records on all legal matters, which shall be retained for a minimum of one year after termination of the supervisory period.

(f) New Cases. The respondent shall not accept any cases without the prior approval of the supervisor.

(g) Respondent's Monthly Reports. The respondent shall provide monthly Case Listing Reports to the supervisor by the fifth business day of each month, listing for each case assigned to the respondent: (1) the case caption, (2) the full name and address of the client(s), (3) a brief description of the nature of the case, (4) a brief narrative of its current status, (5) the name of all opposing attorneys, and (6) in all litigated matters, the name of the court and docket number, as well as the names of all judges before whom the attorney appeared during that month. The respondent shall certify all monthly reports in accordance with Rule 1:4-4(b). Reports shall be submitted in a form acceptable to the Director.

(h) Supervisor's Quarterly Reports. The supervisor shall provide to the Director the supervisor's Quarterly Reports in a form acceptable to the Director beginning on the tenth business day of the third month following respondent's order of discipline or of reinstatement by the Supreme Court of New Jersey imposing Conditions of Supervision. Reports shall be made quarterly thereafter on the tenth business day of the month. The quarterly report shall be certified in accordance with Rule 1:4-4(b) and shall have appended to it a copy of each monthly Case Listing Report submitted by the respondent

during the quarter. The quarterly report shall set forth the supervisor's overall analysis of the handling of all legal matters entrusted to the respondent and shall indicate specifically whether, in the supervisor's judgment, the respondent's handling of any matter is unsatisfactory. The supervisor shall support his or her conclusions by a brief statement of facts and reasons.

(i) Financial Record Keeping Instructions. During the term of this supervision, the supervisor shall instruct the respondent as to the proper maintenance of trust and business accounts and records in accordance with RPC 1.15 and Rule 1:21-6.

(j) Selection of Supervisor. The respondent shall submit the name of a proposed supervisor to the Director for approval.

(k) Termination of Supervision. After the expiration of time set forth in the order of discipline or reinstatement imposing the Conditions of Supervision, the respondent shall apply to the Supreme Court for termination of the conditions on notice to the Director, who shall file a report and recommendation with the Court.

(l) Failure to Comply. If during the term of the supervision, the Director becomes aware of facts that should be brought to the Court's attention, such as a respondent's failure to comply with the conditions of supervision or a supervisor's failure to comply therewith or a request to be relieved, the Director shall petition the Court for an appropriate order on notice to the supervisor and the respondent.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraphs (a), (b), (c), (f), (g), (h), (i), (j), (k), and (l) amended July 28, 2004 to be effective September 1, 2004.

Rule 1:20-19. Appointment of Attorney-Trustee to Protect Clients' Interest

(a) Jurisdiction; Appointment.

(1) Regular Attorney-Trustee. If an attorney has been suspended or disbarred or transferred to disability-inactive status and has not complied with R. 1:20-20 (future activities of disciplined or disability-inactive attorneys), or has abandoned the law practice, or cannot be located, or has died, and no partner, shareholder, executor, administrator or other responsible party capable of conducting the respondent's affairs as stated hereinafter is known to exist, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint one or more members of the bar of the vicinage where the law practice is situate as attorney-trustee. Where a responsible party capable of conducting respondent's affairs is known to exist, and where that person is a New Jersey attorney or has retained a New Jersey attorney, that attorney may be appointed and directed to take appropriate action. Notice of an order of appointment shall be given to the Director of the Office of Attorney Ethics and the secretaries of the appropriate Ethics Committee and Fee Committee and county bar association in the vicinage.

(2) Temporary Attorney-Trustee. When, in the opinion of the Assignment Judge, an attorney is otherwise unable to carry on the attorney's practice temporarily so that clients' matters are at risk, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint a temporary attorney-trustee for a period of up to six months following the same conditions and procedures set forth in subparagraph (a)(1) of this Rule. The purposes of the temporary attorney-trustee shall be to preserve, in so far as practical, the practice of the attorney and all attorney-client relationships pending a report to the Assignment Judge at 150 days after appointment as to the attorney's condition and ability to resume the practice. The Assignment Judge may then either dissolve the temporary attorney-trusteeship or convert it to a regular attorney-trusteeship as if created under subparagraph (a)(1) of this Rule.

The temporary attorney-trustee shall have the powers and responsibilities authorized by the Assignment Judge, as well as those specifically granted above and those in paragraphs (c), (e) and (h). The temporary attorney-trustee shall not have the powers granted under paragraphs (d), (f) and (g), except that the reports required by paragraph (d) shall be filed.

The temporary attorney-trustee shall not apply for legal fees within the first thirty days after appointment, but may at any time be awarded reasonable costs and expenses as stated under paragraph (h), including the right to satisfy those costs and expenses from the attorney's business or personal accounts as directed by the Assignment Judge. After thirty days from appointment, the temporary attorney-trustee may apply to the Assignment Judge for reduced legal fees below the normal hourly rate in accordance with paragraph (h).

The attorney whose practice is subjected to a temporary trusteeship shall have the right to make application at any time for an order vacating the temporary trusteeship on notice to all interested parties.

(b) Purposes; Inventory of Files, Trust and Other Assets. The purposes of the appointment shall be (1) to inventory active files and make reasonable efforts to distribute them to clients, (2) to take possession of the attorney trust and business accounts, (3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and (4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court. The attorney-trustee shall have no obligation or liability to the attorney. The attorney-trustee may take possession of the attorney's law practice and, in accordance with R.1:20-20(b)(13), all monies and fees due the attorney for the sole purpose of creating a fund for payment of reasonable fees, costs and expenses of the trusteeship as ordered by the court under paragraph (h).

(c) Protection of Client Information. Any attorney-trustee shall not disclose any information contained in any files under this rule without the consent of the client to whom the file relates, except as necessary to carry out the order of appointment or to comply with any request from an Ethics Committee or the Director.

(d) Reports; Instructions. The attorney-trustee shall file an initial report with the Assignment Judge or designee within 120 days after appointment and a final report prior to being discharged. The reports shall describe the nature and scope of the work accomplished and to be accomplished under this rule and the significant activities of the attorney-trustee in meeting the obligations under the rule. The final report must include accountings for any trust and business accounts, the disposition of active case files and any requests for disposition of remaining files and property. The attorney-trustee may apply to the Assignment Judge, or such other Judge as may be designated, for instructions whenever necessary to carry out or conclude the duties and obligations imposed by this rule.

(e) Immunity. All attorney-trustees appointed pursuant to this rule shall be immune from liability for conduct in the performance of their official duties in accordance with R. 1:20-7(e). This immunity shall not extend to employment under section (f).

(f) Acceptance of Clients. With the consent of any client, the attorney-trustee may, but need not, accept employment to complete any legal matter.

(g) Legal Responsibility of Attorney. The attorney for whom an attorney-trustee has been appointed is liable to the attorney-trustee for all fees, costs, and expenses reasonably incurred by the attorney-trustee as approved by the court under paragraph (h).

(h) Legal Fees, Costs, and Expenses. The attorney-trustee shall be entitled to reimbursement from the attorney for (1) actual expenses incurred by the attorney-trustee for costs, including, but not limited to, reasonable secretarial, paralegal, legal, accounting, telephone, postage, moving and storage expenses, and (2) reasonable hourly attorneys' fees. Application for allowance of fees, costs, and expenses shall be made by affidavit to the appointing judge, or designee, who may enter a judgment in favor of the attorney-trustee against the attorney. The application shall be accompanied by an accounting in a form and substance acceptable to the court. The application shall be made on notice to the attorney or, if deceased, to the attorney's personal representative, or heirs. For good cause shown, an interim application for costs and legal fees may be made. The attorney-trustee shall be accorded a priority as an administrative expense for all attorney fees, costs, and expenses awarded by the court. If, after paying the attorney-trustee, there are funds or assets remaining, the Assignment Judge or designee may make such order of disposition as may be appropriate.

Note: Adopted November 5, 1986 to be effective January 1, 1987; former R. 1:20-12 redesignated 1:20-19, paragraphs (a) and (b) amended and paragraph (f) adopted January 31, 1995 to be effective March 1, 1995; paragraph (a) amended, former paragraphs (b), (c), and (f) redesignated as (c), (d), and (h) and captions and text amended, former paragraphs (d) and (e) redesignated as (e) and (f) and amended, and new paragraphs (b) and (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) text redesignated as subparagraph (a)(1), subparagraph (a)(1) caption adopted, new subparagraph (a)(2) caption and text adopted July 9, 2008 to be effective September 1, 2008.

Rule 1:20-20. Future Activities of Attorney Who Has Been Disciplined or Transferred to Disability-Inactive Status

(a) Prohibited Association. No attorney or other entity authorized to practice law in the State of New Jersey shall, in connection with the practice of law, employ, permit or authorize to perform services for the attorney or other entity, or share or use office space with, another who has been disbarred, resigned with prejudice, transferred to disability-inactive status, or is under suspension from the practice of law in this or any other jurisdiction.

(b) Notice to Clients, Adverse Parties and Others. An attorney who is suspended, transferred to disability-inactive status, disbarred, or disbarred by consent or equivalent sanction:

(1) shall not practice law in any form either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency;

(2) shall not occupy, share or use office space in which an attorney practices law;

(3) shall not furnish legal services, give an opinion concerning the law or its application or any advice with relation thereto, or suggest in any way to the public an entitlement to practice law, or draw any legal instrument;

(4) shall not use any stationery, sign or advertisement suggesting that the attorney, either alone or with any other person, has, owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law;

(5) shall, except for the purposes of disbursing trust monies for the 30-day period stated in this subparagraph, cease to use any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or in connection with the words "law office". If the suspension is for a period greater than six months, or involves a temporary suspension that lasts for more than six months, or involves transfer to disability-inactive status, disbarment, disbarment by consent or their equivalent sanction, the attorney shall, within the 30 day period prescribed in subparagraph (15), disburse all attorney trust account monies that are appropriate to be disbursed and shall arrange to transfer the balance of any trust monies to an attorney admitted to practice law in this state and in good standing for appropriate disbursement, on notice to all interested parties, or dispose of the balance of funds in accordance with R. 1:21-6(j), "Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners"; however, it shall not be a violation of this subparagraph for an attorney to take appropriate action to comply after the stated 30-day period;

(6) shall, from the date of the order imposing discipline (regardless of the effective date thereof), not solicit or procure any legal business or retainers for the disciplined attorney or for any other attorney;

(7) shall promptly request the telephone company to remove any listing in the telephone directory indicating that the attorney is a lawyer, or holds a similar title;

(8) shall promptly request the publishers of Martindale-Hubbell Law Directory, the New Jersey Lawyers Diary and Manual, and any other law list in which the attorney's name appears, including all websites on which the attorney's name appears, to remove any listing indicating that that attorney is a member of the New Jersey Bar in good standing;

(9) shall notify the admitting authority in any jurisdiction to whose bar the attorney has been admitted of the disciplinary action taken in the State of New Jersey;

(10) shall, except as otherwise provided by paragraph (d) of this rule, promptly notify all clients in pending matters, other than litigation or administrative proceedings, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent, and of the attorney's consequent inability to act as an attorney due to disbarment, suspension, or disability-inactive status, and shall advise said clients to seek legal advice elsewhere and to obtain another attorney to complete their pending matters. Even if requested by a client, the attorney may not recommend another attorney to complete a matter. When a new attorney is selected by a client, the disciplined or former attorney shall promptly deliver the file and any other paper or property of the client to the new attorney or to the client if no new attorney is selected, without waiving any right to compensation earned as provided in paragraph (13) below;

(11) shall, except as otherwise provided by paragraph (d) of this rule, as to litigated or administrative proceedings pending in any court or administrative agency, promptly give notice of the suspension, transfer to disability-inactive status, disbarment, or disbarment by consent and of the consequent inability to act as an attorney due to disbarment, suspension, or disability-inactive status, to: (1) each client; (2) the attorney for each adverse party in any matter involving any clients; and (3) the Assignment Judge with respect to any action pending in any court in that vicinage, or the clerk of the appropriate appellate court or administrative agency in which a matter is pending. The notice to clients shall advise them to obtain another attorney and promptly to substitute that attorney for the disciplined or former attorney. Even if requested by a client, the disciplined or former attorney may not recommend an attorney to continue the action. The notices to opposing attorneys and the Assignment Judge or Court Clerk shall clearly indicate the caption and docket number of the case or cases and name and place of residence of each client involved. In the event a client involved in litigation or a pending proceeding does not obtain a substitute attorney within 20 days of the mailing of said notice, the disciplined or former attorney shall move pro se in the court or administrative tribunal in which the action or proceeding is pending for leave to withdraw therefrom. When a client selects a new attorney, the disciplined or former attorney shall promptly deliver the file and any other

paper or property of the client to the new attorney or to the client if no attorney is selected, without waiving any right to compensation earned, as provided in paragraph (13), below;

(12) shall, in all cases in which the attorney is then acting, or who thereafter attempts to obtain letters of appointment from a Surrogate to act, in any specified fiduciary capacity, including, but not limited to, executor, administrator, guardian, receiver or conservator, promptly notify in writing all (1) co-fiduciaries, (2) beneficiaries, (3) Assignment Judges and Surrogates of any vicinage and county out of which the matter arose, of the attorney's suspension, transfer to disability-inactive status, disbarment, or disbarment by consent. Such notice shall clearly state the name of the matter, any caption and docket number, and, if applicable, the name and date of death or current residence of the decedent, settlor, individual or entity with respect to whose assets the attorney is acting as a fiduciary;

(13) shall not share in any fee for legal services performed by any other attorney following the disciplined or former attorney's prohibition from practice, but may be compensated for the reasonable value of services rendered and disbursements incurred prior to the effective date of the prohibition, provided the attorney has fully complied with the provisions of this rule and has filed the required affidavit of compliance under subparagraph (b)(15). The reasonable value of services for the disciplined or former attorney and the substituted attorney shall not exceed the amount the client would have had to pay had no substitution been required. If an attorney-trustee has been appointed under R. 1:20-19, all fees for legal services and other compensation due the attorney shall be paid solely to the attorney-trustee for disbursement as directed by the court in accordance with the provisions of that rule. Compensation shall include any monies or other thing of value paid for legal services due or that is related to any agreement, sale, assignment or transfer of any aspect of the attorney's share of a law firm;

(14) shall maintain:

(A) files, documents, and other records relating to any matter that was the subject of a disciplinary investigation or proceeding;

(B) files, documents, and other records relating to all terminated matters in which the disciplined or former attorney represented a client prior to the imposition of discipline;

(C) files, documents, and other records of pending matters in which the disciplined or former attorney had responsibility on the date of, or represented a client during the year prior to, the imposition of discipline or resignation;

(D) all financial records related to the disciplined or former attorney's practice of law during the seven years preceding the imposition of discipline, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports; and

(E) all records relating to compliance with this rule.

(15) shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order. Signed copies of that affidavit shall be provided at the same time to the Clerk of the Supreme Court and to the Disciplinary Review Board. The affidavit shall be accompanied by a copy of all correspondence sent pursuant to this rule and shall also set forth the current residence or other address and telephone number of the disciplined or former attorney to which communications may be directed. The disciplined or former attorney shall thereafter inform the Director of any change in such residence, address, or telephone number. The affidavit shall also set forth whether the attorney maintained malpractice insurance coverage for the past five years and, for each policy maintained, the name of the carrier, the carrier's address, the policy number, and the dates of coverage. The affidavit shall also attach an alphabetical list of the names, addresses, telephone numbers, and file numbers of all clients whom the attorney represented on the date of discipline or transfer to disability-inactive status.

(c) Failure to Comply. Failure to comply fully and timely with the obligations of this rule and file the affidavit of compliance required by paragraph (b)(15) within the 30-day period, unless extended by the Director for good cause, shall, in the case of a suspension, preclude the Board from considering any petition for reinstatement until the expiration of six months from the date of filing proof of compliance in accordance with R.1:20-21(i)(A). Such failure shall also constitute a violation of RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Director also may file and prosecute an action for contempt pursuant to R. 1:10-2.

(d) Definite Suspension of Six Months or Less. A lawyer who has been suspended for a definite period of six months or less is exempt from the requirements of paragraph (b)(7) and (b)(8).

(e) Responsibility of Partners and Shareholders. An attorney who is affiliated with the disciplined or former attorney as a partner, shareholder, or member shall take reasonable actions to ensure that the attorney complies with this rule. In lieu of compliance by the attorney with the requirement of paragraph (b)(10) and (b)(11), the firm, corporation, or limited liability entity may promptly notify all clients represented by the disciplined or former attorney of the attorney's inability to act due to disbarment, suspension, or disability-inactive status and that the firm will continue to represent the client unless the client requests in writing that the firm withdraw from the matter and substitute a new attorney.

If the disciplined or former attorney fails to comply with this rule within 30 days of the date of suspension, transfer, or disbarment, the law firm shall do so. Proof of compliance shall be by verified affidavit of a member of the firm, shareholder, or member filed with the Director within 30 days of the date of suspension, transfer, or disbarment. The affidavit shall be accompanied by a copy of all notices sent to clients pursuant to this paragraph.

Note: Adopted February 23, 1978, to be effective April 1, 1978; amended January 31, 1984 to be effective February 15, 1984; amended July 13, 1994 to be effective September 1, 1994; paragraph (a) was former R. 1:21-8, new paragraphs (b), (c) and (d) adopted January 31, 1995 to be effective March 1, 1995; paragraph (d) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b)(10), (b)(11) and (d) amended, paragraphs (b)(12), (b)(13), and (b)(14) amended and redesignated as paragraphs (b)(13), (b)(14), and (b)(15), and new paragraph (b)(12) adopted July 5, 2000 to be effective September 5, 2000; caption of rule amended, paragraphs (a) and (b) amended, former paragraph (c) redesignated as (d), former paragraph (d) redesignated as (e) and amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; subparagraphs (b)(5), (b)(7), and (b)(8) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-21. Reinstatement after final discipline

(a) Definite Suspension of More Than Six Months and Indefinite Suspensions. After the expiration of a definite suspension of more than six months or at any time after an indefinite suspension has been ordered, an attorney may file a verified petition for reinstatement with the Disciplinary Review Board pursuant to this rule.

(b) Definite Suspension of Six Months or Less. A lawyer who has been suspended for a definite period of six months or less may file a petition for reinstatement and publish notice of reinstatement forty days prior to the expiration of the period of suspension. All other procedures specified by this rule shall apply, except that the petition need not contain responses to paragraphs (f)(6), and (f)(8) to (f)(10), inclusive.

(c) Filing and Service of Petition. The petitioner shall file an original and 12 copies of the verified petition with the Board and shall serve two copies on the Director.

(d) Costs. Petitions for reinstatement shall be accompanied by a non-refundable check payable to the Disciplinary Oversight Committee in the amount of $ 750 to cover the reasonable administrative costs of processing the petition. Either the Board or the Court may also direct the petitioner to pay such additional sum during the processing of a petition as it deems appropriate to meet the cost of actual out-of-pocket expenses, including, but not limited to, medical or psychiatric examinations, transcripts and other investigatory and review expenses deemed necessary to a proper evaluation of the reinstatement petition.

(e) Publication of Notice. Contemporaneously with the filing of the petition for reinstatement, or within twenty-one days prior thereto, the petitioner shall publish a notice of application for reinstatement in bold-faced type in all official newspapers designated by the Supreme Court and in a newspaper of general circulation in each county in which the respondent last maintained a law office and in the county in which respondent resided at the time of the imposition of discipline. Publication of a notice shall be sufficient if in the following language: NOTICE TO THE PUBLIC. John Doe, who was admitted to the bar of the State of New Jersey on _____, 20__ and who was thereafter suspended from the practice of law by the Supreme Court, is applying to be reinstated to the practice. Objections or relevant information concerning this application for reinstatement should be

forwarded immediately to Chief Counsel, Disciplinary Review Board, P.O. Box 962, Trenton, New Jersey 08625-0962.

(f) Contents of Petition. The petitioner shall provide a certified petition for reinstatement setting forth all material facts on which the petitioner relies to establish fitness to resume the practice of law. The petition shall in the discretion of the Board considering the nature of the disciplinary offense contain, in correlatively numbered paragraphs, the following information:

(1) the name of the petitioner and a copy of a current photograph of petitioner, not smaller than three inches by three inches showing front and side views;

(2) the date on which the suspension was imposed and the citation of the reported opinion, if any;

(3) the age, current residence address and telephone number of the petitioner, the address of all residences maintained during the suspension period and the date of each residence;

(4) the nature of petitioner's occupation during the suspension, including the name and address of each employer, the dates of each employment, the positions occupied and titles held, the name, address and telephone of the immediate supervisor, and the reason for leaving the employment;

(5) the case caption, general nature, dates and disposition of every civil, criminal, administrative or disciplinary action which was pending during the period of suspension to which petitioner was either a party or claimed an interest;

(6) petitioner's written consent to the Board and to the Director to examine and secure copies of any records relating to any criminal investigation of or action against petitioner;

(7) a statement of the monthly earnings and other income of the petitioner and the sources from which all earnings and income were derived during the period of suspension;

(8) a statement of assets and financial obligations of the petitioner as of the date of the original suspension and at the time of the reinstatement application, the dates when acquired or incurred, and the names and addresses of all creditors;

(9) the names and addresses of all financial institutions at which petitioner had, or was signatory to, accounts, safety deposit boxes, deposits or loans during the period of suspension, the number of each account, box, deposit or loan; the date each account, box, deposit or loan was opened, approved or made; and the date each account, box, deposit or loan was closed, discharged or paid;

(10) copies of petitioner's federal and state income tax returns and any business tax returns for each of the three years immediately preceding the date the petition is filed and for each year, or part of a year, during the period of suspension and, in an appropriate form, petitioner's written consent to the Board and the Director to secure copies of the original returns;

(11) a statement of restitution made for any and all obligations to all former clients and the Lawyers' Fund for Client Protection and the source and amount of funds used for this purpose;

(12) whether the petitioner, during the period of suspension, sought or obtained assistance, consultation or treatment, whether as an in- or out-patient, for a mental or emotional disorder or for addiction to drugs or alcohol, if such services relate to the disciplinary offenses or the Board determines that such information is relevant to the petitioner's present ability to practice law. The name, address and telephone of each provider of these services, the services rendered, their duration and purpose and a copy of all medical records shall be provided to the Board;

(13) whether the petitioner, during the period of suspension, applied for admission or reinstatement to practice as an attorney in this state or any other state and the caption and details of the application;

(14) whether the petitioner has ever applied for or been granted a license or certificate relating to any business or occupation and whether that license or certificate has ever been the subject of any disciplinary action and the details thereof;

(15) a statement as to whether or not any applications were made during the period of suspension for a license requiring proof of good character, the dates, name, address and telephone of the authority to whom such applications were addressed and the disposition thereof;

(16) whether petitioner, during the period of suspension, engaged in the practice of law in any jurisdiction and all material facts relating thereto;

(17) a statement of any procedure or inquiry during the period of suspension, relating to petitioner's standing as a member of any other profession or organization, or holder of any license or office, which involved the censure, removal, suspension, revocation of license, or discipline of petitioner, and, as to each, the dates, facts, and the disposition thereof and the name, address and telephone of the authority in possession of the record thereof;

(18) a written representation of petitioner's intentions concerning the practice of law, if reinstated;

(19) a newly completed Annual Attorney Registration Statement;

(20) a copy of the detailed affidavit required to be filed in accordance with R. 1:20-20;

(21) such other information as the Director, the Board or the Supreme Court may from time to time require.

(g) Objections by Director; Recommendation by the Board. Within 21 days following receipt of the petition or 14 days if the period of suspension was six months or less, the Director shall file an original and 12 copies of a response with the Board either objecting or not objecting to the petition. The Director shall serve the respondent with a copy of the response. If the Director consents or fails to file objections, the Board may submit its findings and recommendations to the Supreme Court. If the Director files objections, the Board may set the matter down for oral argument on notice to the parties or may, after considering the objections, submit its findings and recommendations as to the attorney's fitness to practice law to the Supreme Court without argument. The Board may recommend and the Court may impose conditions on the attorney's reinstatement deemed necessary to protect the lawyer, clients or the public.

(h) Referral to Trier of Fact. In an appropriate case, the Board may refer specific issues regarding reinstatement to a trier of fact, which shall then hold a hearing and furnish the Board with a report of findings and recommendations.

(i) Consideration of Petition for Reinstatement. No petition for reinstatement shall be considered by the Board unless:

(A) the respondent first affirmatively demonstrates full and timely compliance with R. 1:20-20. If compliance has not occurred, and if the required affidavit of compliance has not been timely filed, the Board shall not consider the petition until the expiration of six months from the date of filing of that proof of compliance.

(B) all disciplinary costs assessed have been paid, unless an extraordinary financial hardship claim has been timely requested and granted and unless respondent is current in the schedule of payments thereunder;

(C) all orders for restitution have been paid;

(D) the respondent has reimbursed or has reached agreement in writing with the Lawyers' Fund for Client Protection to reimburse it in full for all sums paid or authorized to be paid as a result of the respondent's conduct;

(E) all annual registration fees and charges for ethics and the Lawyers' Fund for Client Protection have been paid.

(j) Successive Petitions. Except as otherwise ordered by the Supreme Court, a petitioner may not file a subsequent petition for reinstatement until six months after the Supreme Court has adversely decided the prior petition.

(k) Public Proceedings and Records. All reinstatement records and proceedings shall be considered public in accordance with R. 1:20-9.

(l) Standard of Proof. The standard of proof in reinstatement proceedings shall be by clear and convincing evidence.

(m) Burden of Proof; Burden of Going Forward. The burden of proof in proceedings seeking reinstatement shall be on the petitioner.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; paragraphs (c), (d), (e), (f), (g), (h), and (i) amended and new paragraphs (l) and (m) adopted July 28, 2004 to be effective September 1, 2004.

Rule 1:20-22. Resignation Without Prejudice

(a) Generally. A resignation without prejudice from the bar of this state of a member in good standing shall be submitted through the Director and may be accepted by the Supreme Court, provided that at the time of its submission, the member presents satisfactory proof that no disciplinary or criminal proceedings are pending in any jurisdiction and that, if the attorney has actively engaged in the practice of law in this state in the preceding two years, all clients for whom the attorney has performed any professional services or by whom the attorney has been retained during that time in this state have been notified of the resignation.

(b) Form. A resignation without prejudice submitted pursuant to this rule shall be in a form approved by the Director, Office of Attorney Ethics, and shall set forth the reason for the resignation. It shall be accompanied by an affidavit in the form approved by the Director.

(c) Effect. On acceptance of the resignation, which shall be by order of the Supreme Court, the membership in the bar of this state shall cease, and any subsequent application for membership shall be in accordance with the provisions of R. 1:24. An attorney whose resignation without prejudice from the bar is accepted by the Supreme Court shall cease the practice of law in this state as of the effective date of the order of acceptance. A resignation shall not affect the jurisdiction of the disciplinary system with regard to any unethical conduct that occurred prior to resignation.

Note: Adopted January 31, 1995 to be effective March 1, 1995; paragraphs (a) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 9, 2008 to be effective September 1, 2008.

Rule 1:20-23. Release of Restrained Funds in Attorney Accounts

(a) Petition for Release of Funds. A party claiming a right to attorney trust or business account funds or to other funds that have been restrained from disbursement by Supreme Court Order shall make any application for release of those funds to the

Supreme Court. The petitioning party shall file an original plus eight copies of a verified petition setting forth the standing of the petitioner to make the application and the factual basis for the claim that the funds sought are the property of the petitioner. Relevant documentation shall be appended to the petition. Legal argument, if any, in support of the petitioner's contentions shall be submitted separately in the form of a brief.

(b) Notice. Two copies of the petition shall be served on the disciplined attorney, the Disciplinary Review Board, the Office of Attorney Ethics, the Lawyers' Fund for Client Protection, any attorney-trustee appointed pursuant to Rule 1:20-19, and any other parties in interest. Proof of service shall be filed with the petition.

(c) Response to Petition. Parties served with the petition shall have ten days within which to file and serve nine copies of a response.

(d) Supreme Court Action; Publication. If the Court determines the claimed funds are the property of the petitioner or of any other claimant, it shall enter an appropriate Order directing disbursement. The Court may make the release of funds subject to prior general notice by publication.

(e) Priority Over Remaining Funds. If the actual ownership of the funds cannot be established by clear and convincing evidence, the Lawyers' Fund for Client Protection shall have priority over the funds to the extent it has been subrogated to the rights of claimants against the Fund. If the Fund does not make a claim or if satisfaction of its claim does not exhaust the funds that have been restrained, the Disciplinary Oversight Committee shall have priority over the remaining funds to satisfy unpaid costs assessed against the disciplined attorney.

Note: Adopted July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004.