ISSUED

Jul 29 2026 4:25pm

Board on Professional Responsibility

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

ADMINISTRATIVE ORDER 2026-2

PLEASE TAKE NOTICE THAT the Board is considering amendments to the Board's Rules, as well as the Trust Account Notification Undertaking for approved depositories. The proposed Board Rule amendments (shown in redline), and brief statements of the reasons therefor, are attached hereto. The proposed amendments to the Trust Account Notification Undertaking are intended to make it easier for Disciplinary Counsel to communicate with financial institutions who have agreed to the terms for serving as approved depositories for trust accounts, which include the requirement to notify Disciplinary Counsel of any trust account overdrafts.

Interested parties may submit written comments concerning the proposed amendments. Comments must be submitted electronically to DCBoard@dcbpr.org by August 31, 2026. All comments submitted pursuant to this notice will be available to the public.

It is so ORDERED.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: ______________________________
Robert L. Walker, Chair

Rule 1.2: Definitions

Disabling condition means a physical or mental condition that an attorney alleges to have been the substantial cause of misconduct under *In re Kersey*, 520 A.2d 321 (D.C. 1987) and its progeny. *See, e.g.*, *In re Zakroff*, 934 A.2d 409, 423 (D.C. 2007).

- Reason for Proposed Amendment: The Court of Appeals has recently used the term "disabling condition" to describe the range of conditions that may qualify for *Kersey* mitigation. The Board believes "disabling condition" is a more accurate term than "disability" or "disability or addiction," which are currently used in Rules 7.6 and 11.13. Therefore, the Board proposes defining "disabling condition," then referring back to it in Rules 7.6 and 11.13 (see proposed edits to those Rules below).

Rule 2.4: Preliminary Screening of Complaints

After receiving a complaint, Disciplinary Counsel shall conduct a preliminary screening to determine whether to docket the complaint. Except as provided in Rule 5.1, Disciplinary Counsel shall docket a complaint if it determines that the complaint: (1) is not unfounded on its face; (2) contains allegations which, if true, would constitute a violation of the Attorney's Oath of Office or the Rules of Professional Conduct that would merit discipline; and (3) is within the jurisdiction of the Board.

If Disciplinary Counsel receives additional complaints against an attorney involving materially identical factual allegations of misconduct as those in a complaint previously received and screened against the same attorney, Disciplinary Counsel may rely on its docketing determination regarding the previously received complaint. Disciplinary Counsel's decision as to whether a complaint is to be docketed is not subject to review.

If Disciplinary Counsel receives multiple complaints from the same complainant against the same attorney, the Board Chair may, upon request, relieve Disciplinary Counsel of its obligation to screen and make docketing determinations as to future complaints from that complainant against the same attorney for good cause shown.

- Reason for Proposed Amendment: Rule 2.4 requires Disciplinary Counsel to docket for investigation all complaints that satisfy the docketing criteria, regardless of whether the complainant has personal knowledge of the facts in question. Disciplinary Counsel has expressed concern that this requirement allows complainants to use the complaint process as a means of harassing lawyers, requiring them to respond to meritless complaints that technically meet the docketing criteria. The Board understands that such situations are rare, but believes that Disciplinary Counsel should be able to seek permission to ignore repeated complaints from the same complainant that appear to be filed for purposes of harassment.

Rule 4.1: Requests for Deferral Before a Petition Has Been Filed

Before a petition has been filed, a Contact Member may approve a request by Disciplinary Counsel for deferral of an investigation for good cause shown. Good cause includes, but is not limited to: (1) the pendency of a disciplinary investigation or proceeding in another jurisdiction involving materially similar allegations of misconduct; and (2) ~~deferral based upon~~ the pendency of a related ongoing criminal or disciplinary investigation or upon related pending criminal or civil litigation when there is a substantial likelihood that the resolution of the related investigation or litigation will help to resolve material issues involved in the pending disciplinary matter.

- Reason for Proposed Amendment: D.C. Bar Rule XI, § 19 allows Disciplinary Counsel to seek the permission of the Board or a Contact Member to defer processing a complaint "because of substantial similarity to the material allegations of pending criminal, civil, or administrative proceedings," which will be granted for good cause shown. Board Rule 4.1 currently does not mention the "good cause" standard and limits the availability of deferral to situations in which the other matter "will help to resolve material issues involved in the pending disciplinary matter." The Board believes that there may be situations where good cause supports deferral, even without a showing that deferral will help resolve material issues. For example, Disciplinary Counsel may wish to allow a different jurisdiction to complete its own disciplinary investigation before deciding how to proceed.

Rule 7.6: Notice of Intent to Raise ~~Disability~~ Disabling Condition in Mitigation

(a) Respondent's Notice. If respondent intends to raise ~~an~~ one or more alleged ~~disability~~ disabling conditions in mitigation pursuant to Rule 11.13, respondent shall file a notice with the Office of the Executive Attorney on a form provided by the Office of the Executive Attorney. Respondent shall serve a copy on Disciplinary Counsel. The notice is due on the date that the answer to the petition is due. Failure to file a notice of intent to raise an alleged ~~disability~~ disabling condition in mitigation shall operate as a waiver of the right to raise ~~an alleged disability~~ it in mitigation, subject to the provisions of subparagraph (d).

(b) Confidentiality of Notice. The Hearing Committee before which the disciplinary matter is pending shall not be informed of the notice by the Office of the Executive Attorney or Disciplinary Counsel until the conclusion of the first phase of the hearing, and ~~the Hearing Committee has determined preliminarily pursuant to Rule 11.11 that Disciplinary Counsel proved some or all of the charges alleged in the petition~~ respondent files a motion for mitigation of sanction under Rule 11.13. Respondent may notify the Hearing Committee of the notice at any time. Upon the filing of such a notice, the parties shall prepare their exhibits and witness lists and exchange them at least one week in advance of the hearing such that they may be filed with the Hearing Committee upon the conclusion of the first phase. If the respondent notifies the Hearing Committee in advance of the prehearing conference, the Chair shall set deadlines ~~for disability-related filings~~ to enable the ~~disability~~ mitigation phase of the hearing to proceed without delay following the conclusion of the violations phase of the hearing.

(c) Conditions of Practice

If a respondent files a notice pursuant to subparagraph (a) hereof, the Board shall issue an order forthwith providing for appropriate conditions under which respondent shall practice law. Said order may include the appointment of monitor(s) depending upon the particular circumstances of the case. The order shall also state whether, and to what extent, respondent shall be required to notify clients of the conditions of practice. The Board hereby delegates authority to the Chair of the Board to enter an order pursuant to this subparagraph.

(d) Late-Filed Notice.

(i) 30 Days Before Scheduled Hearing. If respondent wishes to raise an alleged ~~disability~~ disabling condition in mitigation after the date prescribed in subparagraph (a) but no later than thirty days before the date scheduled by the Office of the Executive Attorney for the hearing on the petition, respondent shall file a motion with the Board, on notice to Disciplinary Counsel, setting forth good cause why respondent should be allowed to raise the plea in mitigation out of time. Disciplinary Counsel may consent in writing to the grant of the motion. The Board may grant or deny the motion, or may refer the matter to a Hearing Committee (other than the Hearing Committee before which the disciplinary matter is pending) for an evidentiary hearing. Leave to assert the plea in mitigation shall be freely granted when justice so requires, and in the absence of a showing of prejudice by Disciplinary Counsel. An order of the Board granting such a motion may include the provisions prescribed in subparagraphs (c), (c)(i) and (c)(ii), and, in circumstances where the Board determines it to be just and appropriate, may further be conditioned upon respondent's consent to an interim suspension pending the disposition of the disciplinary proceeding.

(ii) Within 30 Days of Scheduled Hearing. If a respondent wishes to raise an alleged ~~disability~~ disabling condition in mitigation after the date prescribed in subparagraph (d)(i), respondent shall file a motion with the Board, as prescribed in that subparagraph. Such a motion will be granted only on the condition that respondent consent to an interim suspension pending the disposition of the disciplinary proceeding.

. . .

(f) Motion to Vacate or Modify Suspension. A respondent suspended pursuant to this Rule 7.6 may file a motion at any time requesting that the Board move the Court to vacate or modify the suspension. If respondent's motion presents a prima facie case that respondent is significantly rehabilitated from the alleged ~~disability~~ disabling condition, the matter will be referred promptly by the Board to a Hearing Committee for an evidentiary hearing on the issue of rehabilitation. Reinstatement pursuant to this subparagraph (f) shall be subject to the monitoring and waiver provisions of subparagraphs (c), (c)(i) and (c)(ii). Respondent shall have the burden of proving, by clear and convincing evidence, significant rehabilitation from the alleged ~~disability~~ disabling condition. The Hearing Committee shall file a report with the Board on an expedited basis. The Board shall then consider whether to file a motion in the Court of Appeals under Section 13(f) of D.C. Bar Rule XI to vacate or modify the suspension.

- Reason for Proposed Amendments: See explanation for the proposed amendment to Rule 1.2.

Rule 7.8: Default Upon Respondent's Failure to Answer

. . .

(d) Hearing. As soon as practicable after the entry of an order of default, the Executive Attorney shall schedule a hearing regarding the sufficiency of the ex parte proof submitted by Disciplinary Counsel and the appropriate sanction. No later than seven days before the scheduled hearing date, Disciplinary Counsel may request that the hearing be held by remote video transmission, subject to the safeguards set forth in Rule 11.4(d). Respondent shall be notified of the date of the hearing. If Disciplinary Counsel has requested an opportunity to present testimony, or if the Hearing Committee orders that testimony be presented, that testimony shall be heard at this hearing. If no testimony is to be presented, then the Hearing Committee shall proceed in executive session.

- Reason for Proposed Amendment: Under Administrative Order 2023-1 and the proposed amendment to Rule 11.4(f) below, a respondent may request to hold a hearing entirely via Zoom. If a respondent does not participate in a disciplinary proceeding, Disciplinary Counsel should be able to request whichever hearing method would be more efficient. Default hearings are relatively brief, and in-person appearances are rarely, if ever, necessary.

Rule 9.4: Dismissal of Insufficient Petition

On a motion filed by Disciplinary Counsel within the time permitted for its answer to the petition, or sua sponte, the Board may dismiss any petition for reinstatement if the disbarred or suspended attorney is not eligible for reinstatement or the petition on its face is insufficient as a matter of law to support reinstatement, after assuming the attorney would be able to establish by clear and convincing evidence all of the material facts set forth in the petition. The motion must include a certification that Disciplinary Counsel has in good faith conferred or attempted to confer with the petitioner in an effort to narrow any disputes about the sufficiency of the petition on its face.

The Executive Attorney shall refer the motion to the Board for decision. The proceeding before the Hearing Committee shall be held in abeyance pending decision by the Board on Disciplinary Counsel's motion.

Disciplinary Counsel's answer to the petition shall be due twenty days from the issuance of a Board order denying a motion to dismiss.

For purposes of reinstatement, a period of suspension or disbarment is not deemed to begin until the disbarred or suspended attorney has complied with the requirements of Section 14 of Rule XI, including with respect to notice, the delivery of client property, and the filing of an affidavit in compliance with supporting proof, except for good cause shown. A disbarred or suspended attorney shall not be eligible for reinstatement until the completion of the period of suspension or five years, in the case of disbarment.

If Disciplinary Counsel believes that the petitioner has filed an affidavit that fails to comply with all requirements of Section 14 of Rule XI, Disciplinary Counsel must file a Notice of Non-Compliance under Rule 9.9(b) before moving to dismiss a petition for reinstatement. If Disciplinary Counsel files a motion to dismiss a petition on the basis of a non-compliant affidavit, the petitioner shall have 14 days to challenge the Notice of Non-Compliance under Rule 9.9(c) or amend the affidavit. The Board will defer ruling on the motion to dismiss until after any challenge to the Notice of Non-Compliance is resolved.

- Reason for Proposed Amendment: In a recent case, Disciplinary Counsel filed a motion to dismiss a petition for reinstatement based on the petitioner's alleged failure to file an affidavit that complied with the requirements of Rule XI, § 14(g), even though it had not filed a Notice of Non-Compliance pursuant to Board Rule 9.9(b). When the Board granted the motion to dismiss, there was no provision allowing for the petitioner to appeal the decision to the Court of Appeals. By contrast, Board Rule 9.9(c) provides that a petitioner may challenge a Notice of Non-Compliance, and that if the Board finds that the affidavit was non-compliant, it will file a report with the Court asking the Court to enter an appropriate order. Because Board Rule 9.9 contains the most efficient procedure for settling disagreements about the adequacy of a § 14(g) affidavit, the Board believes that Disciplinary Counsel should be required to file a Notice of Non-Compliance—which can be challenged—before filing a motion to dismiss a petition on that basis.

Rule 9.9(c): Review of Notice of Non-Compliance

The attorney may file with the Office of the Executive Attorney, and shall serve on Disciplinary Counsel, a request for the Board to review specified objections to a Notice of Non-Compliance issued under subparagraph (b) of this Rule. Such request shall be submitted within ten days after the Notice of Non-Compliance is served. The matter will be decided by the Board on the papers of the parties unless the Board determines that there are disputed issues of fact and therefore enters an order referring such issues to a Hearing Committee for an evidentiary hearing and report to the Board. ~~If~~ Once the Board decides ~~that~~ whether the attorney has failed to comply with Section 14 of Rule XI, the Board shall file a report with the Court asking the Court to enter an appropriate order.

- Reason for Proposed Amendment: The current Rule does not explain what should happen if the Board agrees with the petitioner that an affidavit complies with Rule XI, § 14(g). In that situation, the Board believes that it would be appropriate to ask the Court to enter an order to make clear that the Notice of Non-Compliance has been successfully challenged.

Rule 10.3: Referral of Matters Involving Serious Crimes to a Hearing Committee

If the Board determines that the crime of which respondent was convicted is not one involving moral turpitude per se and determines that the question of moral turpitude cannot be decided based on summary adjudication, the matter shall be referred to a Hearing Committee to determine if the conduct underlying respondent's offense involves moral turpitude within the meaning of D.C. Code Section 11-2503(a). Disciplinary Counsel may file a petition instituting a proceeding pursuant to Section 8 of Rule XI, or a petition for negotiated discipline under Section 12.1 of Rule XI, based on the conduct underlying respondent's crime. ~~If Disciplinary Counsel files a petition, it be filed w~~Within ~~fifteen~~sixty days of the Board's order referring the matter to a Hearing Committee, Disciplinary Counsel shall notify the Hearing Committee of the status of any such petition. If a petition is filed, ~~T~~the Executive Attorney shall consolidate the matters before the Hearing Committee. ~~Whether or not the Hearing Committee concludes that the offense involves moral turpitude,t~~The Hearing Committee shall determine if respondent's conduct violated the disciplinary rules charged in ~~the~~a Section 8 petition, ~~if Disciplinary Counsel filed a petition~~ and, if so, shall recommend an appropriate sanction so that the Board may have the benefit of the Hearing Committee's views on violation and sanction in the event that the Board finds no moral turpitude is involved. A Section 12.1 petition for negotiated discipline must satisfy the criteria set forth in *In re Rigas*, 9 A.3d 494 (D.C. 2010).

- Reasons for Proposed Amendments: First, the Board recommends accounting for the fact that the Court allows parties to submit petitions for negotiated discipline in cases resulting from convictions for serious crimes. Second, the Board recognizes that it is difficult to prepare and file a specification of charges—which requires Contact Member approval—or a petition for negotiated discipline within only fifteen days of a Board's order referring a serious crime case to a hearing committee. The Board proposes extending that deadline and requiring an update after sixty days if no specification of charges or petition for negotiated discipline has been filed by that time.

Rule 11.4(f): Remote Hearings

Notwithstanding the restrictions on remote testimony in subsections (a) and (b) of this Rule, respondent may elect that~~The Hearing Committee or Board Chair may issue an order providing that an~~ the entire hearing ~~will~~ be conducted by remote video transmission and ~~requiring~~that all parties and witnesses appear and testify remotely, subject to the safeguards set forth in subsection (d). Such election for a fully remote hearing must be made no later than the date set for a prehearing conference. After an in-person hearing has been scheduled, the parties may jointly elect to hold some or all hearing dates by remote video transmission.

- Reason for Proposed Amendment: This amendment would formalize a procedure that was introduced in Administrative Order 2023-1 and has been followed in every case since then. The Board believes that it is appropriate to give respondents the option to elect a remote hearing when it would be more convenient for them, while preserving their right to an in--person hearing.

Rule 11.13: Mitigation of Sanction for ~~disability~~ Disabling Condition

(a) Respondent's Motion. If respondent desires to present evidence on mitigation of sanctions based on ~~an~~one or more alleged ~~disability~~ disabling condition(s)~~ or addiction (hereinafter "disability-related mitigation evidence")~~, respondent shall file a motion not later than at the beginning of the second part of the bifurcated hearing pursuant to Rule 11.11, and such motion shall set forth a simple narrative statement of the material facts including but not limited to: (i) the alleged facts showing that respondent had ~~a~~ one or more ~~disability or addiction~~ disabling condition(s), all of which facts respondent shall have the burden of establishing by clear and convincing evidence; (ii) the alleged facts showing that respondent's misconduct would not have occurred but for respondent's ~~disability or addiction~~ disabling condition(s), all of which facts respondent shall have the burden of establishing by a preponderance of the evidence; (iii) other alleged facts, written statements and consents required by Rule 15.8(c) to establish significant evidence of rehabilitation or recovery; and (iv) a signed form (available at the Office of the Executive Attorney) wherein respondent acknowledges the alleged ~~disability or addiction~~ disabling condition(s) and stipulates that such acknowledgment may be used by the Board (if relevant and if respondent fails to establish significant evidence of rehabilitation or recovery) in seeking from the Court an order imposing probationary conditions or suspension pursuant to Section 13(c) of Rule XI. With the motion, the parties shall file their exhibits and witness lists and any objections thereto and state their witnesses' availability to appear on any remaining hearing dates and for the next month thereafter; however, the Chair may set a later deadline for Disciplinary Counsel's exhibits and witness lists if further investigation is necessary under Rule 11.13(b). If the respondent disclosed the Rule 7.6 notice to the Hearing Committee in advance of the hearing, the parties shall be prepared to present their ~~disability~~ evidence immediately after the conclusion of the first phase or as directed by the Hearing Committee.

(b) Disciplinary Counsel's Response and Scheduling of Hearing. The Chair of the Hearing Committee may require Disciplinary Counsel to submit a written response to respondent's motion and may reschedule the second part of the bifurcated hearing in order to allow Disciplinary Counsel a reasonable period to investigate and respond to the ~~disability-related~~ mitigation evidence alleged in respondent's motion.

(c) Hearing Committee Report. The Hearing Committee's report to the Board shall include separate findings and conclusions on all material facts related to mitigation of sanctions.

(d) Evidence of Rehabilitation. In determining whether respondent has submitted significant evidence of rehabilitation or recovery that is sufficient for mitigation of sanctions due to ~~disability or addiction~~ disabling condition(s), the Board will generally require substantially the same evidence (including satisfactory completion of an adequate period of rehabilitation or recovery) as would apply, under Section 13(g) of Rule XI, to an application for reinstatement had respondent been suspended by an order of the Court based on the same ~~disability or addiction~~ disabling condition(s) for which mitigation of sanctions is requested.

(e) Inadequate Evidence of Rehabilitation. If the Board concludes that respondent's evidence submitted at the initial bifurcated hearing satisfies all requirements for mitigation of sanctions due to ~~disability or addiction~~ disabling condition(s) except that the duration or other aspects of respondent's rehabilitation or recovery were not then sufficient to constitute significant evidence of rehabilitation, the disciplinary matter shall go forward in the usual manner. Unless otherwise provided in any suspension order or other directive of the Court, respondent shall be entitled, by motion filed at any time within one year of the initial bifurcated hearing, to supplement the record in the disciplinary proceeding by submitting evidence showing that respondent's rehabilitation or recovery is then sufficient to constitute significant evidence of rehabilitation, and if appropriate the Board will thereafter submit a supplement report to the Court with the Board's recommendation concerning mitigation of sanction in light of respondent's supplemental evidence.

- Reason for Proposed Amendment: See explanation for the proposed amendment to Rule 1.2.

Rule 13.1: Submission of Motions

Except as otherwise provided in these rules, (i) an application for an order or other relief shall be made by filing a motion with the Office of the Executive Attorney, and (ii) a response or opposition thereto shall be filed within seven days of the service of the motion, unless the Chair of the Board directs otherwise. A party filing a motion for a procedural order must, before filing the motion, attempt to secure the consent of the opposing party and attempt to determine if an opposition or response will be filed. The movant must state at the beginning of the motion whether the motion is unopposed, whether an opposition will be filed, or whether the opposing party could not be reached despite good-faith efforts to contact them.

- Reason for Proposed Amendment: This amendment would mirror the meet-and-confer provision of Rule 7.13, which applies to motions in matters pending before Hearing Committees. That provision increases efficiency by narrowing issues in dispute and avoiding uncertainty as to whether an opposition will be filed, and the same reasoning supports a similar provision for motions filed in matters pending before the Board.

Rule 13.12: Recusal of Board Member

A Board member shall be recused from participating in the Board's consideration of any matter in which the Board Member previously served as a member of the Hearing Committee.

- Reason for Proposed Amendment: Rule 17.13 already requires recusal of a Board member who served on a Hearing Committee in a negotiated discipline matter. The same reasoning would apply to Board members who previously served on a Hearing Committee in any case, and Board members already routinely recuse under those circumstances.

Rule 17.3 Documentation Required for Negotiated Discipline

(a) The Required Petition. The petition for negotiated discipline shall be prepared by Disciplinary Counsel and signed by Disciplinary Counsel, respondent and, if applicable, respondent's counsel. It shall contain: (i) a statement of the nature of the matter that was brought to Disciplinary Counsel's attention; (ii) a stipulation of facts and charges, including citation to the Rules of Professional Conduct that respondent has violated; (iii) a statement of any promises or inducements that have been made by Disciplinary Counsel to respondent, including, but not limited to, any agreement not to pursue specific charges or investigations of possible misconduct, whether in the present proceedings or in future proceedings, including an agreement not to present evidence of unadjudicated acts of misconduct under Board Rule 9.8(a) if the respondent seeks reinstatement; (iv) an agreed upon sanction, with an explanation of the basis for the proposed sanction, a statement of relevant precedent and any circumstances in aggravation or mitigation of sanction that the parties agree should be considered and any other factors that are relevant to whether the proposed sanction is justified; and (v) the justification for imposing a fitness requirement, if included in the agreed sanction. Any amended petition for negotiated discipline shall be accompanied by a document showing the changes that were made to the previous version(s).

(b) The Required Affidavit. Respondent shall submit to Disciplinary Counsel, in support of the petition for negotiated discipline, an affidavit that includes the following averments: (i) that respondent has either conferred with counsel or is aware of his right to do so and is proceeding pro se; (ii) that respondent is entering into the negotiated discipline freely and voluntarily and is not being subjected to coercion or duress; (iii) that respondent is fully aware of the implications of the negotiated discipline; (iv) that Disciplinary Counsel has made no promises to respondent other than those contained in the petition for negotiated discipline; (v) that respondent is aware that there is currently pending an investigation into, or a proceeding involving, allegations of misconduct by respondent, the nature of which is set forth in the petition for negotiated discipline; (vi) that respondent acknowledges the truth of the material facts upon which the misconduct stipulated to in the petition for negotiated discipline is predicated; and (vii) that respondent agrees to the negotiated discipline because respondent believes that he or she could not successfully defend against disciplinary proceedings based on the misconduct described in the petition for negotiated discipline. Any amended petition for negotiated discipline shall be accompanied by an affidavit dated and signed no earlier than the date of execution of the amended petition.

Respondent may recite in his or her affidavit any other facts in mitigation that support the agreed upon sanction.

Should the negotiated discipline include a suspension from the practice of law, respondent shall acknowledge that he or she is aware of the requirement to file an affidavit pursuant to Section 14 of Rule XI and Rule 9.9 and shall further acknowledge that the period of suspension will not be deemed to commence for purposes of respondent's eligibility to return to practice until such an affidavit is filed with the Court and Board.

- Reason for Proposed Amendments: The first amendment would expedite a Hearing Committee's review of an amended petition for negotiated discipline by avoiding the need for the Committee to determine on its own what changes have been made. The second amendment would avoid a situation in which the parties submit an amended petition but forget to file an amended affidavit, meaning that the respondent has not "acknowledge[d] the material facts" in the petition actually pending before the Hearing Committee.

Rule 17.4: Procedures for Hearing Committee Review of Petition for Negotiated Discipline

(a) Limited Hearing. A Hearing Committee receiving a proposed negotiated discipline shall hold a limited hearing. Unless otherwise ordered by the Hearing Committee Chair, limited hearings will be held by remote video transmission, subject to the safeguards set forth in Rule 11.4(d). At the limited hearing, the Hearing Committee shall consider the petition for negotiated discipline, the accompanying affidavit, the colloquy with respondent, the presentations by Disciplinary Counsel and respondent, and any unsworn written comment by any complainant in any matter that is the subject of the negotiated discipline. The Hearing Committee may also consider such unsworn oral statements from any complainant as the Chair may permit at the hearing. In exceptional circumstances, the Hearing Committee may also take live testimony or accept sworn affidavits to reach a final disposition on the negotiated discipline. The provisions of ~~Rule 11.4 (Remote Testimony),~~ Rule 11.8 (Recording Hearings)~~,~~ and Rule 11.9 (Transcript Corrections) shall apply.

- Reason for Proposed Amendments: The first amendment would formalize a provision of Administrative Order 2023-1. The Board believes that under normal circumstances, there is no need for parties to appear in person for a non-adversarial hearing. The second amendment would refer to the safeguards for remote testimony in Rule 11.4(d) instead of the entire remote testimony rule, most of which is inapplicable.

Rule 18.3: Probation Revocation Procedures

(g) Where the Hearing Committee finds a violation of the terms or conditions of probation, it may recommend (i) that no additional sanction be imposed, or (ii) revocation of the probation and imposition of any sanction authorized by Section 3(a) of Rule XI, including but not limited to modification of the terms or conditions of the probation, but no greater discipline may be recommended than the underlying sanction imposed in the Court's order of probation~~, or (iii) such other disposition as the Hearing Committee concludes is consistent with Section 3(a)(7) of Rule XI and will serve the purposes of justice and the disciplinary system~~. In determining the appropriate sanction, the Hearing Committee may consider the nature or seriousness of the violation, as well as any mitigating or aggravating factors.

- Reason for Proposed Amendment: This amendment would remove language suggesting that a Hearing Committee may recommend a more severe sanction than the underlying sanction that had been stayed in favor of probation. A review of the legislative history of this Rule revealed that a previous amendment to subsection (ii) likely made subsection (iii) redundant and did not intend to empower a Hearing Committee to recommend a more severe sanction.

Rule 19.8: Format of Submissions to Board, Committees and Disciplinary Counsel

(a) Filing Requirements. Any document filed with the Board on Professional Responsibility, or any Hearing Committee, shall be in PDF format and shall be signed with an image of the filer's signature or an "/s" on the signature line. All documents filed publicly with the Board, or any Hearing Committee, shall include a case caption displaying the name of the respondent, their D.C. Bar Number, their date of admission to the D.C. Bar, and all Board and Disciplinary Docket numbers assigned to the matter. All documents filed in confidential matters ~~publicly related to a matter under seal~~ shall be styled "In the Matter of: Confidential ([respondent's initials)]," and the caption shall include the words "Under Seal" and all Board and Disciplinary Docket Numbers, but not the respondent's D.C. Bar number or their date of admission to the D.C. Bar. Information in the body of pleadings and attachments in confidential matters marked "Under Seal" do not need to include redactions. All confidential filings in public matters shall be accompanied by a motion for leave to file under seal and a version for the public record that redacts all confidential information.

…

(f)(1) Unless ordered otherwise, a party must redact, in any filing with a Hearing Committee or the Board, an individual's social-security number, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of a client of the respondent who is not a complainant or witness; the name of an individual other than respondent who has received or is receiving mental-health or substance-use-disorder services; the name of an individual known to be a minor at the time of the conduct at issue; and a financial-account number, except that a party making the filing may include the following

> (a) the acronym "SS#" where the individual's social-security number would have been included;
>
> (b) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
>
> (c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
>
> (d) the year of the individual's birth;
>
> (e) the ~~minor's~~ initials of any individual whose name has been redacted; and
>
> (f) the last four digits of the financial-account number.

- Reason for Proposed Amendments: The first two amendments would resolve confusion that was caused by a recent amendment to the Rule setting forth formatting requirements for confidential pleadings. Specifically, Disciplinary Counsel has pointed out that it was unclear whether the recent amendment called for redactions when filing motions to compel. The second two amendments would expand the scope of individuals whose identities should remain confidential. The existence of an attorney-client relationship might be considered confidential in some situations, and there seems to be little downside to referring to those clients by their initials if they will not be testifying. And redacting the names of individuals receiving mental-health or substance-abuse-disorder services would conform to the Court of Appeals's new redaction checklist. The Court informed the Office of the Executive Attorney that its redaction requirement does not apply to the names of respondents.

Rule 19.10 Confidentiality – Cooperation with Law Enforcement and Other Disciplinary Authorities

Notwithstanding any other provision of Section 17 of Rule XI regarding confidentiality, Disciplinary Counsel may file a written request with the Board for permission to communicate information about any disciplinary matter to law enforcement agencies, the Committee on Admissions, the Committee on Unauthorized Practice, the Clients' Security Trust Fund, or a state or federal attorney disciplinary agency, board or committee that has a legitimate interest in such matter.

(a) The Board, acting through its Chair or a designated Board member may grant Disciplinary Counsel's request upon good cause shown.

(b) The Board may grant the request subject to any limitations or conditions the Board may impose, including appropriate protections of confidentiality.

(c) Communication under this provision may be made either during the course of Disciplinary Counsel's investigation or following such investigation.

(d) The Chair or the designated Board member shall have the discretion to solicit a response to Disciplinary Counsel's request from respondent.

Pursuant to Rule 2.9, Disciplinary Counsel need not seek the Board's permission to contact any individual who may have personal knowledge of pertinent facts concerning matters under investigation.

- Reason for Proposed Amendment: Out of an abundance of caution, Disciplinary Counsel has begun asking the Board for permission to contact law enforcement officials even when they are witnesses to possible misconduct. This amendment would clarify the Board's position that Rule 2.9 overrides Rule 19.10 and allows Disciplinary Counsel to contact *any* person with personal knowledge of pertinent facts.

TRUST ACCOUNT NOTIFICATION UNDERTAKING

This Undertaking is given, effective this _______ day of ____________ 20__, by ____, a Financial Institution that wishes to serve as a depository for lawyer or law firm trust and/or escrow accounts (hereafter "Trust Accounts") for lawyers who are members of the District of Columbia Bar and for law firms any of whose lawyers are members of the District of Columbia Bar, including if applicable, Trust Accounts maintained in connection with the District of Columbia Interest on Lawyers Trust Account program (such Trust Accounts hereinafter referred to as "IOLTA Trust Accounts"), as indicated below:

☐ The Financial Institution seeks to serve as a depository of Trust Accounts, including IOLTA Trust Accounts; or

☐ The Financial Institution seeks to serve as a depository of Trust Accounts, but NOT IOLTA Trust Accounts.

Recitals:

A. On April 8, 1992, the District of Columbia Court of Appeals adopted Rule 1.17 (subsequently renumbered as Rule 1.19), as an amendment to the District of Columbia Rules of Professional Conduct, imposing certain reporting requirements on depositories of Trust Accounts. By Order of March 22, 2010, effective August 1, 2010, the District of Columbia Court of Appeals deleted Rule 1.19, moved the reporting requirement to a new Section 20 of Rule XI of the Rules Governing the Bar of the District of Columbia Court of Appeals, and imposed additional requirements for Financial Institutions electing to participate in the IOLTA program.

B. D.C. Bar R. XI, § 20 requires, in general, that Trust Accounts be maintained only in Financial Institutions approved by the Board on Professional Responsibility (the "Board") of the District of Columbia Court of Appeals and that, as a condition to obtaining such approval, the Financial Institution must undertake to report to the Office of Disciplinary Counsel overdrafts or similar irregularities respecting such Trust Accounts. The Rule further requires that Financial Institutions electing to offer and maintain IOLTA Trust Accounts must, in addition to complying with the rules applicable to Trust Accounts generally, undertake to pay interest or dividends and charge fees on IOLTA Trust Accounts that comply with D.C. Bar R. XI, § 20(f), and to periodically remit interest and submit reports on IOLTA Trust Accounts to the D.C. Bar Foundation in accordance with D.C. Bar R. XI, § 20(g).

C. The undersigned Financial Institution seeks to be deemed an approved depository for Trust Accounts and, accordingly, does duly undertake, as a condition of such approval, to take the following actions:

Undertakings:

1. Notification to Lawyers or Law Firm. The Financial Institution will notify the lawyer or law firm promptly of an overdraft in any Trust Account or the dishonor for insufficient funds of any instrument drawn on any Trust Account held by it.

2. Notification to Disciplinary Counsel. The Financial Institution will promptly report the overdraft or dishonor to Disciplinary Counsel, as follows:

(a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and shall include a copy of the dishonored instrument, if such copy is normally provided to the depositor. The report shall be made simultaneously with, and within the time period, if any, provided by law for notice of dishonor.

(b) In the case of an instrument that was presented against insufficient funds but was honored, the report shall identify the financial institution, the lawyer or law firm maintaining the account, the account name, the account number, the date of presentation for payment and the date paid, as well as the amount of the overdraft created thereby. The Financial Institution shall file a report irrespective of any overdraft privileges that may attach to such account. The report shall be mailed to Disciplinary Counsel within five (5) business days of payment of the instrument.

All notifications to Disciplinary Counsel shall identify the signatory or signatories for the account in question.

3. Response to Disciplinary Counsel Subpoena. The Financial Institution will respond promptly and fully to subpoenas from the Office of Disciplinary Counsel that seek a lawyer's or law firm's Trust Account records, notwithstanding any objections that might be raised based upon the territorial limits on the effectiveness of such subpoenas or upon the jurisdiction of the District of Columbia Court of Appeals to enforce them.

4. IOLTA Trust Accounts. A Financial Institution electing to offer and maintain IOLTA Trust Accounts agrees to comply with all of the requirements applicable to Trust Accounts generally, and further agrees

to: (i) pay comparable interest or dividend rates and assess only allowable reasonable fees (as approved by the D.C. Bar Foundation) on such IOLTA Trust accounts, and (ii) remit such interest and dividends to the D.C. Bar Foundation, all as more specifically set forth below:

(a) The Financial Institution will pay no less on its IOLTA Trust Accounts than the interest rate or dividend rate in (i) or (ii):

(i) The highest interest rate or dividend rate generally available from the Financial Institution to its non-IOLTA customers when the IOLTA Trust Account meets or exceeds the same minimum balance or other eligibility qualification on its non-IOLTA accounts, if any.

(ii) A "benchmark" rate set periodically by the D.C. Bar Foundation that reflects the D.C. Bar Foundation's estimate of an overall comparability rate for accounts in the IOLTA program and that is net of allowable reasonable fees.

(b) The Financial Institution will deduct only allowable reasonable fees from interest or dividends earned on an IOLTA Trust Account. Allowable reasonable fees will be deducted from interest or dividends on an IOLTA Trust Account only at the rates and in accordance with the customary practices of the Financial Institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees will be assessed against the accrued interest or dividends on an IOLTA Trust Account. Any fees and service charges other than allowable reasonable fees will be the sole responsibility of, and will only be charged to, the lawyer or law firm maintaining the IOLTA Trust Account. Allowable reasonable fees in excess of the interest or dividends earned on one IOLTA Trust Account for any period will not be taken from interest or dividends earned on any other IOLTA Trust Account or Accounts or from the principal of any IOLTA Trust Account.

(c) On forms approved by the D.C. Bar Foundation, the Financial Institution will:

(i) at least quarterly, remit to the D.C. Bar Foundation all interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in each IOLTA Trust Account, or as otherwise computed in accordance with the Financial Institution's standard accounting practice;

(ii) transmit with each remittance to the D.C. Bar Foundation a report showing the name of the lawyer or law firm in whose name the account is registered, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any allowable reasonable fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the remittance period, and such other information as is reasonably required by the D.C. Bar Foundation; and

(iii) transmit to the lawyer or law firm in whose name the account is registered a periodic statement in accordance with normal procedures for reporting to depositors.

5. Duration of Undertaking. This Undertaking shall remain in effect ~~so long as the Financial Institution shall maintain any Trust Accounts subject to D.C. Bar R. XI, § 20~~for two years from the effective date indicated above. If the Financial Institution wishes to continue to serve as an approved depository, it must resubmit this form before the two-year validity period has expired. In the event that the Financial Institution no longer wishes to serve as an approved depository of Trust Accounts before the two-year validity period has expired, it shall give thirty-days advance written notice of its intent to terminate to Disciplinary Counsel, the Board, and Trust Account holders. The failure of the Financial Institution to comply with any of the undertakings hereunder, including the requirement to resubmit this form every two years, shall be grounds for immediate removal of the Financial Institution from the list of approved depositories, in which event the Financial Institution shall promptly give notice to all Trust Account holders. Any Financial Institution that terminates this Undertaking or is removed from the list of approved depositories shall promptly thereafter comply with the Trust Account holder's instructions regarding the disposition of Trust Account funds remaining in the care of the Financial Institution, including transferring any Trust Accounts remaining in the care of the Financial Institution to another approved Financial Institution to be selected by the lawyer or law firm.

6. Waiver of Claims. The Financial Institution hereby waives any and all claims of any kind for damages or for any other compensation from or against the District of Columbia Government or any branch thereof, the District of Columbia Court of Appeals, the District of Columbia Bar, the ~~D.C.~~ Board~~ on Professional Responsibility~~, the Office of Disciplinary Counsel, the D.C. Bar Foundation and/or any individual

associated with such entities, in connection with this Undertaking or any related actions.

7. Reports and Notices to Disciplinary Counsel. Reports and notices to the Office of Disciplinary Counsel shall be sent by email to odcinfo@dcodc.org~~to Office of Disciplinary Counsel, Room 117, 515 5th Street, N.W., Washington, D.C. 20001, or electronically, as directed by the Office of Disciplinary Counsel~~.

8. Notices to the Board~~ on Professional Responsibility~~. All notices and correspondence to the Board on Professional Responsibility shall be sent by email to boardgeneral@dcbpr.org~~ to Board on Professional Responsibility, 430 E Street, N.W., Suite 138, Washington, D.C. 20001, or electronically, as directed by the Board on Professional Responsibility~~.

9. Reports and Remittances to the D.C. Bar Foundation. Reports and remittances to the D.C. Bar Foundation shall be sent either in hard copy to D.C. Bar Foundation, 200 Massachusetts Ave. NW, Suite 700, Washington, D.C. 20001, or electronically, as directed by the D.C. Bar Foundation.

10. Binding Effect. This Undertaking shall be binding upon the Financial Institution and any branch thereof that receives or holds Trust Accounts.

11. Inclusion of Rules by Reference. The rules adopted by the District of Columbia Court of Appeals governing the approval and termination of approved status for depositories are included herein by reference and made a part of this Undertaking. In addition, to the extent feasible, the Financial Institution shall notify all lawyers or law firms for whom it maintains Trust Accounts pursuant to D.C. Bar R. XI, § 20, of the requirements of this Undertaking.

IN WITNESS WHEREOF, the Financial Institution has executed this Undertaking on the date and year written above.

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Financial Institution

By: ___________________________

Name: _________________________

Title: _________________________

Email address: ______________________

Phone number: ______________________

SUBSCRIBED and SWORN to before me this ____ day of ______,20___.

[Stamp/Seal] ___________________________________

Notary Public

My Commission expires on _____________