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SECTION 10. VOTE BY BALLOT.

A. At such time as the Executive Director has received from the attorney a written response or the attorney has failed to respond within the period provided in Section (9)(B), the Executive Director shall send a copy of the complaint, the response, any rebuttal, all exhibits, and a separate sealed envelope containing information concerning any prior discipline of the respondent attorney to each member of the seven-member panel to which the matter has been

assigned. Each member of the panel shall vote by written ballot.

B. Each ballot shall contain appropriate spaces for:

- (1) The name and signature of the panel member;
- (2) The date;
- (3) The member's vote on the action to be taken on the formal complaint; and,
- (4) A place for the members to state which Section(s) of the Rules, if any, are found to be violated.

C. Panels shall meet on a regular basis to consider and take final action as a panel in closed session on all cases requiring a ballot vote. The Executive Director, Staff Attorneys, personnel of the Office of Professional Conduct, and any recusing panel members shall not take

part in the deliberations of a panel and shall not attend or participate in panel meetings while the

merits of a case are being discussed.

D. If a majority of the panel votes to cause a respondent attorney, complainant, or other person to appear for the purposes of eliciting testimony, production of records and documents, provision of additional information or evidence, or for any other relevant purposes involved with a matter pending before the panel, a hearing will be scheduled, and summonses or subpoenas may issue, as required. Such evidentiary hearing shall not be public, and no adjudicative decision will be pronounced or rendered at that time. The panel, upon written ballot or voice vote, shall proceed under Section 10(E). Any recorded testimony, records, documents, exhibits,

or other evidence adduced at an evidentiary hearing may be received and made part of the record

at a subsequent public hearing.

E. Results of Ballot Vote.

(1) If a majority of the panel votes to take no disciplinary action against a respondent attorney, the panel shall so advise the Office of Professional Conduct, which shall notify the complainant and the respondent attorney by letter stating the result. The Office of Professional Conduct shall file a monthly report of such cases, by number only, as a public record in the office of the Clerk.

(2) If a majority of the panel votes to warn, the Executive Director shall send an

appropriate letter to the respondent attorney and the complainant after the letter has been approved by the panel chair. The letter shall inform the respondent attorney which rule(s) the panel found the respondent attorney violated and which allegation(s) of the complaint the panel found to be true. The letter shall also inform the respondent attorney that he or she has the right, upon written request filed with the Office of Professional Conduct within twenty (20) days of service of the letter, as defined by Section 9(A)(2), to a public hearing before another sevenmember panel of the Committee, no member of which was a member of the original panel, as provided in Section 11. The letter shall also inform the respondent attorney that a warning is not a sanction available at a public hearing. The letter shall also inform the respondent attorney that, if he or she does not file such a written request for a public hearing by the deadline, the warning shall become final. If a warning is issued, the result shall be non-public. No fine, restitution, or costs shall be assessed against the respondent, unless the warning is the result of a discipline by consent. The Office of Professional Conduct shall file a monthly report of such cases, by number only, as a public record in the office of the Clerk.

(3) If a majority of the panel votes to caution, reprimand, or suspend the attorney, the attorney shall be notified of the findings and decision of the panel by a written order setting out the factual findings of the panel and the rules found to have been violated. The order will be approved and signed by the panel chair, and it may be drafted by the Office of Professional Conduct. The attorney shall be advised in writing that he or she has the right, upon written request filed with the Office of Professional Conduct within twenty (20) days of service of the order, as defined by Section 9(A)(2), to a public hearing before another seven-member panel of the Committee, no member of which was a member of the original panel, as provided in Section 11. The attorney shall also be advised that, if he or she does not file such a written request by the deadline, such findings and order of the Committee shall become final, will be entered in the files of the Committee and will be filed as a public record in the office of the Clerk.

(4) If a majority of the panel votes at the ballot vote stage to initiate disbarment proceedings, the Committee shall proceed as set out in Section 13, and there shall be no public hearing before the Committee pursuant to Section 11. If the panel finds that a lawyer has committed acts against a client which constitute theft of property under Ark. Code Ann. ? 5-36-103 (or its replacement), regardless of whether the attorney has been convicted, disbarment proceedings must be instituted.

(5) If any findings of fact, conclusions of law, or other recommendations are necessary at the conclusion of the ballot process, they shall be approved and signed by the panel chair, and they may be prepared by the Office of Professional Conduct, with the advice and consent of the panel.

(6) The panel may refer matters involving lesser misconduct to alternatives-to-discipline programs as explained in Section 5(C)(2) and may hold action in abeyance until

advised of the outcome of the referral.

Associated Court Rules:

Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

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