PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW

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PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW

SECTION 1. SCOPE.

A. *Purpose*. These Procedures are promulgated for the purpose of regulating the professional conduct of attorneys at law and shall apply to complaints filed and formal complaints instituted against attorneys after the effective date of these Procedures, and within the purview of the jurisdiction and the authority of the Arkansas Supreme Court Committee on Professional Conduct. From the effective date hereof, these Procedures shall apply to transfers to inactive status, to reinstatements, and to the extent that limitations and special requirements pertain, to attorneys presently suspended, disbarred or who have surrendered their law licenses. Every attorney now or hereafter licensed to practice law in the State of Arkansas shall be a member of the Bar of this State and subject to these Procedures. The jurisdiction of the Supreme Court Committee on Professional Conduct shall extend to lawyers in active, inactive or suspended status.

B. *Rules of professional conduct adopted*. The court has adopted the Model Rules of Professional Conduct of the American Bar Association, as amended, known now as the Arkansas Rules of Professional Conduct (the "Rules"), as the standard of professional conduct of attorneys at law. All attorneys are subject to these Procedures.

C. *Nature of proceedings*. Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

D. *Repealer*. To the extent that former rules or existing provisions of the Arkansas Code Annotated are in conflict with these Procedures, they are hereby overruled and superseded. These Procedures shall not be deemed exclusive of, but supplemental to, those provisions of the Arkansas Code Annotated with which the Procedures are not in conflict.

SECTION 2. DEFINITIONS. As used in these Procedures, unless the context otherwise requires:

A. "CLERK" means the Clerk of the Arkansas Supreme Court.

B. "COMMITTEE" means the Arkansas Supreme Court Committee on Professional Conduct.

C. "COMPLAINANT" means the person(s) initiating a complaint, the Executive Director when acting at his or her own instance, or the Committee when acting at its own instance or on behalf of another in initiating a complaint.

D. "COMPLAINT" means an inquiry, allegation, or information of whatever nature and in whatever form received by, coming to the attention of, or initiated by the Office of

Professional Conduct or the Committee and concerning the conduct of a person subject to the jurisdiction of the Committee.

E. "FORMAL COMPLAINT" means a complaint directed to an attorney by the Office of Professional Conduct setting forth the alleged violation(s) of the Rules and informing the attorney of the right to file a written response.

F. "LESSER MISCONDUCT" is defined in Section 17(C).

G. "OFFICE OF PROFESSIONAL CONDUCT" means the staff office managed and supervised by the Executive Director, which is responsible for receiving and investigating all complaints concerning members of the Arkansas Bar, filing formal complaints, presenting cases in hearings before the Committee panels, and litigating cases from the Committee before any court of this State.

H. "RESPONDENT" or "RESPONDENT ATTORNEY" means an attorney against whom a formal complaint has been initiated, whether or not the attorney has failed to file a written response.

I. "RULES" means the former Model Rules of Professional Conduct of the American Bar Association, as amended, and, after May 1, 2005, the Arkansas Rules of Professional Conduct, and any statutory provisions or rules adopted by the Arkansas Supreme Court regulating the professional conduct of attorneys at law.

J. "SERIOUS CRIME" means (1) any felony, (2) any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or (3) any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy or solicitation of another to commit a "serious crime."

K. "SERIOUS MISCONDUCT" is defined in Section 17(B).

L. "SUBSTANTIAL," when used for the purposes of these Procedures in reference to degree or extent, means beyond mere suspicion or conjecture and of sufficient force and character to compel a conclusion one way or another with reasonable and material certainty and precision.

M. "UNAVOIDABLE CIRCUMSTANCES" means circumstances not attributable to negligence, carelessness, fault, or the lack of diligence on the part of the respondent attorney.

SECTION 3. COMMITTEE ON PROFESSIONAL CONDUCT.

A. *Composition/Term of Office*.

(1) The Supreme Court shall appoint the members of the Committee on Professional Conduct to assist in enforcing these Procedures. The Committee shall consist of two separate seven-member panels, designated Panel A and Panel B. Each panel will include five attorneys, one chosen from the State at large and one from each of the four Congressional Districts. Two non-attorneys will be chosen to serve on each panel, and these four lay members will be chosen from the State at large. Each appointment shall be for a term of six years, unless otherwise designated by the Supreme Court. Members may be reappointed to one successive six-year term. Terms shall be staggered. Vacancies occurring from causes other than expiration of term of office will be filled by the Supreme Court as they occur, and the person so appointed shall serve the remainder of his or her predecessor's term. If the remainder of the vacant term is less than two years, the person appointed is eligible for appointment to two successive six-year terms. Committee members shall serve until their successors are appointed and certified. The Committee shall elect one of its members as Chairperson and another as Secretary. The Committee, consistent with these Procedures, may adopt such internal operating rules and policies as may be necessary to facilitate the performance of its duties, responsibilities, and administrative functions. All such internal operating rules and policies shall be provided to all Committee members.

(2) Members shall refrain from taking part in any disciplinary proceeding in which a judge similarly situated would be required to recuse.

(3) Fourteen reserve members shall be appointed to serve as Panel C and Panel D, a pool from which replacements may be drawn in those instances in which members of the Committee are disqualified or unable to serve. Ten of the reserve members shall be lawyers with at least two from each Congressional District. Four of the reserve members shall not be lawyers and shall be selected from the State at large. In other respects, the terms of service for reserve members shall be the same as provided for the Committee. Reserve members shall possess the authority, powers, immunities, and entitlements provided for the Committee by these Procedures. The Committee Chairperson or Executive Director shall select reserve members from a rotating list to serve, individually or collectively, as the situation requires, in those instances in which members of a panel of the Committee consider themselves disqualified or are unable to serve. Reserve members serving as replacements shall be selected so as to maintain the appropriate lawyer/non-lawyer composition. Reserve members do not have to be selected unless the required quorum of the Committee or a panel thereof is not present. If necessary, the Supreme Court may appoint additional persons to serve as reserve members to permit the Committee to discharge its duties.

B. *Quorum*. A majority of the members of Panels A and B of the Committee shall constitute a quorum for the conduct of Committee business. The Committee shall not sit *en banc* for disciplinary proceedings.

C. *Authority/Powers*.

(1) The Committee, through its panels, shall have, and is hereby granted, authority to impose any sanctions deemed appropriate as provided in Section 7 (Procedure),

Section 17 (Sanctions), and Section 18 (Fines, Costs, and Restitution).

(2) The Committee, through its panels, is authorized to take action by written ballot, subject to the requirements and limitations set out in Section 10 of these Procedures.

(3) The Committee, through its panels, is authorized to conduct hearings at either:

(a) The request of the panel; or

(b) The request of the respondent attorney after written ballots are taken.

(4) The Committee is authorized to hold meetings to conduct the business of the Committee, which consists of, but is not limited to, the election of officers, the determination of pending complaints, and such administrative matters as required.

(5) The Committee, acting through its Chairperson, may temporarily designate from the staff attorneys of the Office of Professional Conduct an acting Executive Director in any case in which the Executive Director or the Deputy Director (pursuant to Section 5(D)(3)) is unable to act, or recuses, or disqualifies.

(6) The Committee shall maintain a permanent office under the supervision of the Executive Director for the conduct of its business and the maintenance of the various records of the Committee.

(7) The seal heretofore adopted by the Committee shall be the official seal for its use in the performance of the duties imposed by these Procedures.

(8) The Executive Director or the Committee, through its panels, shall have the authority to issue summonses for any person(s), or subpoenas for any witness(es), including the production of documents, books, records, or other evidence, in the same manner as is provided for civil process pursuant to the Arkansas Rules of Civil Procedure, requiring the presence of any person, or the attendance of any witness before the Committee for the purpose of testimony, or in furtherance of an investigation. Such process shall be issued under the seal of the Committee provided for in subsection C(7) of this Section and be signed by the Chairperson of the Committee, the Secretary, the chair of a panel of the Committee, or the Executive Director. Any subpoenas issued herein shall clearly indicate that the subpoenas are issued in connection with a confidential investigation under these Procedures and that it is regarded as contempt of the Supreme Court for a person subpoenaed to breach the confidentiality of the investigation. If found to be in contempt of the Supreme Court under these Procedures, a person may be punished by incarceration, imposition of a fine, or both. In addition, it shall be grounds for discipline under these Procedures for a subpoenaed attorney to breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to seek or consult with legal counsel in regard to the subpoena, nor shall the confidentiality apply to subpoenas issued in connection with a public hearing.

(9) The Committee, through the Chairperson or a panel chair, or the Executive Director, may seek immunity from criminal prosecution for a reluctant witness, using the procedure of Ark. Code Ann. §§ 16-43-601 to -606 (1987), as amended, and any successor or other applicable statute.

(10) The Committee may propose changes to these Procedures for promulgation by the Supreme Court and may comment on existing and proposed Rules.

(11) The Committee shall periodically review the operation of the system with the Supreme Court.

(12) The Committee, working with the Office of Professional Conduct, shall inform the public about the existence and operation of the system and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, or a lawyer has been reinstated. Communication options should include toll-free telephone and the Internet.

(13) The Committee shall perform administrative oversight over the Office of Professional Conduct which shall include: reviewing the productivity and efficiency of the office; assessing caseload management; reviewing and making recommendations concerning budgetary matters; making recommendations to the Executive Director; and improving the statistical records of the office. Administrative responsibilities may be delegated to panels of the Committee on a rotating basis, which may include an Executive Committee selected by the Committee.

(14) When so requested by a federal judge under the Uniform Federal Rules of Disciplinary Enforcement adopted by the United States District Courts of Arkansas on May 1, 1980, or successor rules, the Committee may act as the disciplinary agency, and the Executive Director as counsel, in a federal disciplinary action. Any additional expense incurred in the processing of a federal complaint will be paid from the funds arising from the assessments levied pursuant to the Uniform Federal Rules and available for that purpose. When final action is taken under a federal complaint, a report of that action will be made to the federal judge who referred the matter, and the Committee may also furnish to the federal judge any other information from its files necessary to fulfill its duties as disciplinary agency.

D. *Immunity*. The Committee, its individual members, its agents, the Executive Director, and employees and agents of the Office of Professional Conduct are absolutely immune from suit or action for their activities in discharge of their duties under these Procedures, to the full extent of judicial immunity in Arkansas**.**

E. *Expenses*. From the funds established and appropriated by the Arkansas Supreme Court, and in accordance with budgetary limitations, members of the Committee shall be entitled to receive their travel and hotel expenses, reimbursement for postage, stationery, communications, an attendance allowance, other incidental expenses including stenographic bills and court costs chargeable against them**,** and to attend training and continuing education

programs. All such items shall be paid by the Clerk by check on such funds. Accounts must be itemized and certified by the Chairperson of the Committee, the Secretary, or the Executive Director as true and correct and for the official business of the Committee or the Office of Professional Conduct.

SECTION 4. COMMITTEE PANELS.

A. *General*. The Committee may delegate to its panels the power to act for the Committee in discharging its powers and duties. The Committee or the Executive Committee shall establish the method of rotation by which panels are assigned complaints.

B. *Panels*. Each panel shall elect a lawyer member of that panel as its chair. A panel member whose term has expired may continue to serve on any case that was commenced before the expiration of the member's term. Five members shall constitute a quorum. The panel shall act only with the concurrence of at least four members. Reserve members may be appointed to serve on a panel pursuant to Section 3(A)(3).

C. *Powers and Duties*. Panels shall have the following powers and duties:

(1) To conduct proceedings during the ballot phase concerning formal complaints of misconduct, petitions for reinstatement, and petitions for transfer to and from disability inactive status;

(2) To conduct hearings;

(3) To adopt written findings of fact, conclusions of law, and orders prepared with the administrative assistance of the Office of Professional Conduct; and

(4) To discharge other duties imposed by these Procedures.

SECTION 5. OFFICE OF PROFESSIONAL CONDUCT.

A. *General*. The Supreme Court shall employ the Executive Director of the Office of Professional Conduct, who shall be an attorney actively licensed to practice law in the State of Arkansas, shall serve at the will of the Court, and shall devote full time and effort to promptly and efficiently perform the duties stated in this Section, and such other duties as directed by the Court or the Committee.

B. *Duties-Office*.

(1) The Executive Director may attend and, at the request of the Committee, act as counsel in presenting testimony and other evidence at any hearing pursuant to these Procedures.

(2) The Executive Director, or, in his or her absence or disqualification from a

case, the acting Executive Director, shall have power to administer oaths in all matters incident to the duties imposed by these Procedures, and such power and authority shall be coextensive with the State.

(3) The Executive Director shall be responsible for the administration of the business office and the security of the records. As authorized by and upon such terms as the Court shall direct, the Executive Director may employ such personnel, including staff attorneys, investigators, and temporary employees, and may retain independent counsel, as may be required to perform the administrative, investigative, and legal functions of the Committee and the Office of Professional Conduct. The Executive Director and the professional staff of the Office of Professional Conduct shall periodically attend training and continuing education programs.

(4) The Executive Director shall receive reports from financial institutions pursuant to Rule 1.15(d)(1) indicating that a properly payable instrument has been presented against a lawyer's trust account containing insufficient funds, irrespective of whether or not the instrument is honored, and take appropriate action in response to such information.

C. *Duties-Complaints*

(1) It shall be the duty of the Office of Professional Conduct to receive and investigate all complaints against any member of the Bar. Such complaints shall be docketed and assigned a permanent file number. The Office of Professional Conduct and the Committee may accept and treat as a complaint any writing signed by a judge of a court of record in this State regardless of whether such signature is verified or any *per curiam* order or opinion issued by any appellate court. The Executive Director may initiate a complaint at his or her own instance.

(2) In lieu of filing and serving a formal complaint, the Executive Director may refer matters involving lesser misconduct, as defined in Section 17(C), to alternatives-to-discipline programs approved by the Supreme Court. Such programs may include, in addition to the Arkansas Judges and Lawyers Assistance Program, programs for fee arbitration, arbitration, mediation, law office management assistance, psychological counseling, continuing education, and ethics.

(3) Upon a determination by the Executive Director that a complaint sets out allegations falling within the purview of the Committee and that those allegations are supported by sufficient evidence, the Executive Director shall provide any assistance needed in the preparation of the complainant's affidavit and shall process a formal complaint pursuant to these Procedures.

(4) If the Executive Director determines that a complaint does not set forth sufficient grounds to reasonably support preparation of a formal complaint but contains information indicative of a misunderstanding or controversy between an attorney and a client or

a third party who may be aggrieved by the conduct or circumstances and the best interests of the integrity of the profession and the valid concerns of the complainant would be served by reconciliation or communication between the parties, the Executive Director may, at the request of the complainant or in the judgment of the Executive Director, contact the attorney by telephone or letter advising the attorney of the nature of the complaint and may attempt an informal resolution. Such a procedure will not be considered a formal complaint.

(5) Review of the Executive Director's Decision.

(a) A complainant who is not satisfied with the Executive Director's determination that the allegations of the complaint fall outside the purview of the Committee or that the allegations are not supported by sufficient evidence to file a formal complaint may request a review of that determination by Panel C.

(b) The request for review shall be filed with the Executive Director in writing within twenty (20) days from the date of mailing of the letter to the address provided by the complainant in the grievance or other document of initial complaint, unless notified by the complainant in writing of a new address prior to the mailing of the letter, notifying the complainant of the determination of the lack of a basis for filing a formal complaint.

(c) The written request will set out in general terms the complainant's grounds for objection to the Executive Director's decision.

(d) Upon receipt of a request for review, the Executive Director will acknowledge in writing the request and shall forward the complaint information, including the complainant's grounds for objection to the Executive Director's decision, to five members of Panel C, one of whom will be a nonlawyer, directing that they review the Executive Director's disposition of the matter.

(e) The reviewing members, by majority vote, may (1) approve the Executive Director's disposition of the matter, (2) direct that a formal complaint be prepared, or (3) request further investigation of the matter by the Executive Director. Votes may be taken by written ballots on forms supplied by the Office of Professional Conduct or by telephone. With the administrative assistance of the Office of Professional Conduct, the result of the vote will be made known to the Executive Director by the chair of Panel C. If a formal complaint is instituted, members of the five-member reviewing body shall not participate in subsequent proceedings in the matter.

(f) The Executive Director shall then notify the complainant in writing of the results of the review and dismiss the complaint, initiate a formal complaint, or investigate further, as appropriate.

(g) There shall be no further review or appeal of Panel C's final decision on a review.

D. *Staff Attorneys*.

(1) All Staff Attorneys employed by the Executive Director shall be actively licensed to practice law in the State of Arkansas.

(2) Staff Attorneys shall serve at the direction and pleasure of the Executive Director and may perform all duties and possess all authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints and the authority and responsibilities provided in Sections 3(C)(8) (subpoenas) and 5(B)(2) (oaths), which authority may be exercised by the acting Executive Director in the absence of, or upon the disqualification from a case by, the Executive Director.

(3) In the event of the temporary inability of the Executive Director to fully discharge the duties of office, or when a vacancy exists in that office, the Deputy Director shall discharge such duties as the acting Executive Director. If the Executive Director determines that a conflict of interest exists for the Executive Director with regard to a particular complaint, complainant, or respondent, the Executive Director may recuse from the matter, and the Deputy Director shall discharge such duties as the acting Executive Director for that matter.

E. *Compensation/Expenses*. The Executive Director and staff of the Office of Professional Conduct shall be paid such reasonable salary and expenses as deemed necessary and appropriate by the Supreme Court. Employee salaries, benefits, and expenses of the Office shall be payable from funds budgeted to the Committee by the Supreme Court.

SECTION 6. CONFIDENTIALITY/RECORDS.

A. *Communications Confidential*. Subject to the exceptions listed in subsections B and C of this Section:

(1) All communications, complaints, formal complaints, testimony, and evidence filed with, given to, or given before the Committee, or filed with or given to any of the employees and agents of the Office of Professional Conduct during the performance of their duties, that are based upon a complaint alleging an attorney has violated the Rules, shall be absolutely privileged and confidential and exempt from disclosure under the Arkansas Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 *et seq*., pursuant to Ark. Code Ann. § 25-19-105(b)(8), as documents protected from disclosure by order or rule of the Supreme Court of Arkansas; and

(2) All actions and activities arising from or in connection with an alleged violation of the Rules by an attorney licensed to practice law in this State are absolutely privileged and confidential.

(3) These provisions of privilege and confidentiality shall apply to complainants, except that a complainant may disclose the fact he or she has submitted a complaint to the Office of Professional Conduct and the contents of the complaint.

B. *Exceptions*. (1) Except as expressly provided in these Procedures, proceedings under these Procedures are not subject to the Arkansas Rules of Civil Procedure regarding discovery.

(2) The records of public hearings conducted by the Committee pursuant to Section 11 of these Procedures are public information.

(3) In the case of disbarment, the Committee and the Office of Professional Conduct are authorized to release any information that either deems necessary for that purpose.

(4) The Committee is authorized to release information:

(a) For statistical data purposes;

(b) To a corresponding lawyer disciplinary authority or an authorized agency or body of a foreign jurisdiction engaged in the regulation of the practice of law;

(c) To the State Board of Law Examiners;

(d) To the Committee on the Unauthorized Practice of Law;

(e) To the Arkansas Client Security Fund Committee;

(f) To the Commission on Judicial Discipline and Disability;

(g) To any other committee, commission, agency, or body within the State empowered to investigate, regulate, or adjudicate matters incident to the legal profession, when such information will assist in the performance of those duties;

(h) To any agency, body, or office of the federal government or this State charged with responsibility for investigation and evaluation of a lawyer's qualifications for appointment to a governmental position of trust and responsibility or for the discipline or sanction of any attorney; or,

(i) Pursuant to the provisions of Section 9(A) and Section 15(B) of these Procedures

(5) Any attorney against whom a formal complaint is pending shall have disclosure of all information, excluding attorney work product, research, and materials obtained and intended for use as rebuttal to any witness for the respondent attorney at a hearing, in the possession of the Committee and the Office of Professional Conduct concerning that complaint, including any record of prior complaints about that attorney. Procedures for discovery for formal complaints are set out in Section 8.

(6) The attorney about whom a complaint is made may waive, in writing, the

confidentiality of the information.

(7) In all cases, the complainant shall be provided with a copy of the respondent attorney's affidavit of response and afforded a reasonable opportunity to reply, in accordance with Section 9(B)(3).

C. *Sanctions Made Public*. When a public sanction becomes final under these Procedures or when the Committee decides to initiate disbarment proceedings, a copy shall be forwarded to the Clerk and shall be maintained as a public record by the Clerk. Such information shall also be publicly disseminated, including release to the press and posting on the Arkansas Judiciary website.

SECTION 7. PROCEDURE.

A. *General*. A panel of the Committee shall adjudicate all formal complaints alleging violation of the Rules that may be brought to its attention and shall give the attorney involved an opportunity to explain or refute the charge.

B. *Standard of Proof*. Formal charges of misconduct, petitions for reinstatement, and petitions for transfer to or from inactive status shall be established by a preponderance of the evidence.

C. *Burden of Proof*. The burden of proof in proceedings seeking discipline or involuntary transfer to inactive status is on the Executive Director. The burden of proof in proceedings seeking reinstatement or transfer from involuntary or voluntary inactive status is on the attorney seeking such action.

D. *Limitations on Actions*. The institution of disciplinary actions pursuant to these Procedures shall be exempt from all statutes of limitations.

E. *Evidence and Procedures*. Except as noted in these Procedures, the Arkansas Rules of Evidence and the Arkansas Rules of Civil Procedure shall not generally apply to disciplinary proceedings. The Executive Director and all other attorneys submitting documents in disciplinary proceedings shall quote, highlight, or pinpoint cite the portions of exhibits, transcripts, and other submissions on which they want the Committee members to focus, rather than merely submitting voluminous documents without specific references.

F. *Pleadings*. All pleadings filed before the Committee shall be captioned "Before the Arkansas Supreme Court Committee on Professional Conduct" and be styled "In re _____," to reflect the name of the respondent attorney.

G. *Prior Sanctions*. Information concerning prior discipline of the respondent attorney shall not be divulged to the Committee members hearing or reviewing a complaint until after a finding of misconduct has been made, unless said information is relevant for purposes of impeachment or probative of issues pending in the present matter, including, without limitation,

proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. [See Ark. R. Evid. 404(b).] If a panel is considering a matter by ballot-vote procedure, information concerning prior discipline of the respondent attorney, which is not subject to disclosure as set out above, shall be provided to the panel members in a sealed envelope accompanying the ballot, and shall not be unsealed and reviewed by the voting panel member until and unless the panel member shall mark the ballot finding a violation of a Rule.

H. *Ex Parte Communication*.

(1) Members of the Committee shall not communicate *ex parte* with the Executive Director, the staff of the Office of Professional Conduct, the respondent attorney, or his or her counsel regarding a pending or impending investigation or disciplinary matter, except as explicitly provided for by law or these Procedures, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits.

(2) A violation of this rule may be cause for removal of any member from the panel before which a matter is pending.

SECTION 8. DISCOVERY AND PREHEARING ISSUES.

A. *Scope*. Within ten calendar days following the filing with the Office of Professional Conduct of a request for a public hearing by a respondent attorney after a ballot vote pursuant to Section 10(D)(3), the Executive Director and the respondent attorney shall exchange the names, addresses, and telephone numbers of all persons having knowledge of relevant facts and of all potential witnesses at the public hearing. Within sixty (60) days following the filing of the request for a public hearing, the Executive Director and the respondent attorney may take depositions in accordance with Arkansas Rule of Civil Procedure 30 and shall comply with reasonable requests for (i) non-privileged information and evidence relevant to the charges or the attorney, and (ii) other material upon good cause shown to the chair of the panel before which the matter is pending for hearing.

B. *Resolution of Prehearing Disputes*.

(1) Disputes concerning discovery shall be determined by the chair of the panel to which the matter was assigned. All discovery orders by the chair are interlocutory and may not be appealed prior to the entry of the final order.

(2) Other prehearing disputes or motions, including a motion to dismiss the complaint, shall be decided by the hearing panel chair, unless the panel chair determines that the dispute or motion should be decided by the full hearing panel. If a motion to dismiss the complaint is denied by the hearing panel chair or by the full hearing panel, that denial shall not be grounds for disqualification or recusal of the chair or any member of the hearing panel deciding the motion.

C. *Rules of Civil Procedure Not Applicable*. Proceedings under these Procedures are not

subject to the Arkansas Rules of Civil Procedure regarding discovery, except those rules relating to depositions and subpoenas. Interrogatories, requests for admissions, and other forms of discovery not specifically authorized in these Procedures are not available in proceedings before the Committee.

SECTION 9. SERVICE OF COMPLAINT/ RESPONSE/ FAILURE TO RESPOND/ RECONSIDERATION.

A. *Service of Complaint*.

(1) Upon the filing of a formal complaint, the Executive Director shall furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he or she may file a written response in affidavit form with any supporting evidence desired. The attorney's mailing address on record with the Clerk shall constitute the address for service by mail. Attorneys shall be responsible for informing the Clerk in writing and within a reasonable time of any change of such address. Certified mailing of the formal complaint to said address shall be deemed a waiver of confidentiality for purposes of Section 9 (A)(2)(c).

(2) Service may be effected on a respondent attorney by:

(a) Mailing a copy of the formal complaint to attorney's address of record by certified, restricted delivery, return receipt mail; or,

(b) Personal service, as provided by the Arkansas Rules of Civil Procedure or by an Investigator with the Office of Professional Conduct or by an affidavit of service signed by the respondent attorney; or,

(c) When reasonable attempts to accomplish service by Section 9(A)(2)(a) or Section 9(A)(2)(b) have been unsuccessful, then a warning order, in such form as prescribed by the Committee, shall be published weekly for two consecutive weeks in a newspaper of general circulation within this State or within the locale of the attorney's address of record. In addition, a copy of the formal complaint and warning order shall be sent to the respondent attorney's address of record by regular mail.

(3) An attorney's failure to provide an accurate, current mailing address to the Clerk, as required by Section 9(A)(1), or the failure or refusal to receive certified mailing of a formal complaint, shall be deemed a waiver of confidentiality for the purposes of the issuance of a warning order.

(4) Unless good cause is shown for an attorney's non-receipt of a certified mailing of a formal complaint, the attorney shall be liable for the actual costs and expenses for service or the attempted service of a formal complaint, to include all expenses associated with the effectuation of service. Such sums will be due and payable to the Committee before any

response to a formal complaint will be accepted or considered by the Committee.

(5) After service has been effected by any of the aforementioned means, subsequent mailings by the Committee to the respondent attorney may be by regular mail to the attorney's address of record, to the address at which service was accomplished, or to such address as may have been furnished by the attorney, as the appropriate circumstance may dictate, except that notices of hearings and letters of caution, reprimand, suspension, or initiation of disbarment proceedings shall also be sent by certified, return receipt mail.

(6) Service on a non-resident attorney may be accomplished pursuant to Section 9(A)(2)(a), (b), or (c) or in any manner prescribed by the law of the jurisdiction to which the service is directed.

B. *Time and Manner of Response*.

(1) Upon service of a formal complaint, pursuant to Section 9(A)(2)(a) or Section 9(A)(2)(b), or the date of the first publication, pursuant to Section 9(A)(2)(c), the attorney shall have thirty (30) days in which to file a written response consisting of an original and eight (8) copies with the Executive Director. In the event that the Executive Director has not received a response within thirty (30) days following the date of service and an extension of time has not been granted, the Executive Director shall proceed to issue ballots as provided in Section 10.

(2) At the request of an attorney, the Executive Director is authorized to grant an extension of reasonable length for the filing of a response. Subsequent requests for extensions must be in written form and will be ruled on by the Chairperson of the Committee or the chair of the panel to which the matter has been assigned.

(3) Within ten (10) calendar days of receiving the attorney's response to the complaint, the Executive Director shall provide a copy of the attorney's response to the complainant and may provide a copy of the attorney's response to any other person who has provided an affidavit that was attached to the complaint and advise that the complainant and others have fifteen (15) calendar days in which to rebut or refute any allegations or information contained in the attorney's response. The Executive Director may include any rebuttal made by the complainant and other affiants as a part of the material submitted to the Committee for decision, and any such rebuttal shall be provided to the respondent attorney for informational purposes only, with no response required. If a response or rebuttal to be submitted to the Committee contains allegations or proof of violation of the Rules not previously alleged, it may be placed in the form of a supplemental complaint, and the respondent attorney shall be provided a copy and permitted to respond in the manner prescribed in subsection B(1) of this Section.

(4) The calculation of the time limitations specified in Section 9(B) shall commence on the day following service upon the respondent. If the due date of a response falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next regular business day.

C. *Failure to Respond/ Reconsideration*.

(1) An attorney's failure to provide, in the prescribed time and manner, a written response to a formal complaint served in compliance with Section 9(A)(2) shall constitute separate and distinct grounds for the imposition of sanctions less than a suspension of license, without regard for the merits of the underlying, substantive allegations of the complaint; or

(2) May be considered for enhancement of sanctions imposed upon a finding of violation of the Rules.

(3) The separate imposition or the enhancement of sanctions for failure to respond may be accomplished by the panel's notation of such failure in the appropriate sanction order and shall not require any separate or additional notice to the respondent attorney.

(4) Failure to respond to a formal complaint shall constitute an admission of the factual allegations of the complaint and shall extinguish a respondent's right to a public hearing.

(a) Provided, however, that a respondent attorney, within the time specified in Section 10(E)(3), may file with the Executive Director an original and eight (8) copies of a petition for reconsideration, stating, on oath, compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to respond. Otherwise, the panel's decision shall be final and will be filed of record with the Clerk. The Office of Professional Conduct may respond to any petition for reconsideration within fifteen (15) days after it is filed.

(b) Upon the filing of a petition for reconsideration and any response, the Executive Director shall provide each member of the panel a copy of the petition and any response for vote by written ballot consistent with provisions of Section 10.

(c) If a majority of the panel, upon a finding of clear and convincing evidence, votes to grant the petition for reconsideration, the panel may:

(i) Permit the attorney to submit a belated affidavit of response to the substantive allegations of the formal complaint and the matter shall proceed as though the response had been made timely; and/or

(ii) Set aside any sanction imposed solely on the basis of the attorney's failure to respond.

(d) If the petition for reconsideration is denied, the panel's original decision and imposition of sanctions become final and will be filed of record with the Clerk. Appeal from the Committee's denial of reconsideration and the imposition of sanctions may be taken in the time and manner prescribed by the applicable provisions of Section 12. Provided, however, that such appeal cannot attack the substantive allegations of the complaint and shall be

limited to the panel's denial of reconsideration.

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 seven-member 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.

SECTION 11. PUBLIC HEARING.

A. If a public hearing is properly requested under Section 10, a seven-member panel of the Committee, no member of which was a member of the original ballot-vote panel, will hear the complaint *de novo* under the rules for public hearings. The ballots and the action of the original panel shall be kept confidential and shall not be made known to the panel which conducts the *de novo* public hearing.

B. The Executive Director shall set a date for the hearing and shall notify the respondent attorney and the complainant of the hearing date. Once a hearing is set, the granting of any request for a continuance shall be at the discretion of the chair of the panel. The chair of the panel may require a prehearing conference. If a respondent attorney who has requested a hearing and who has been notified properly of the hearing date does not appear at the time and place set for the hearing, the action of the original panel by ballot vote shall become final, and the respondent attorney shall not be entitled to any further review of that action.

C. At the end of the hearing, the panel shall hold an executive session to deliberate upon any disciplinary action to be taken. The findings and decision of the panel shall be announced immediately. The votes of the individual members shall be announced if the decision is not unanimous.

D. If a majority of the panel votes to caution, reprimand, or suspend an attorney, the Office of Professional Conduct shall prepare a proposed order, including findings, which shall be provided to the respondent attorney, who shall have fifteen (15) calendar days after service of the proposed order by first class mail within which to file with the Office of Professional Conduct any objections and alternatives to the proposed language. The Office of Professional Conduct shall provide the proposed order and any objections and alternatives to the panel chair, who will determine and sign the final order. The order shall be filed as a public record in the office of the Clerk.

E. If a majority of the panel votes to initiate disbarment proceedings, the Executive Director shall file an action for disbarment as provided in Section 13. Alternatively, if circumstances require, and with the Supreme Court's approval, the panel may retain independent counsel to prosecute the disbarment proceedings. 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 criminally charged or convicted, disbarment proceedings must be initiated.

F. The Committee may refer matters involving lesser misconduct to alternatives-to-discipline programs as provided in Section 5(C)(2).

G. *Doctor-Patient Privilege Waived*. Raising the defense of mental or physical disability or incapacity by one who is the subject of a disciplinary proceeding shall constitute a waiver of the doctor-patient privilege, except as otherwise provided in the rules pertaining to the Arkansas

Judges and Lawyers Assistance Program.

H. A respondent in a disciplinary proceeding who raises the defense or issue of mental or physical disability or incapacity shall be deemed to have consented to undergoing an independent medical examination by a physician or physicians selected by the Committee or the Executive Director, at the expense of the Committee or the Office of Professional Conduct, and the results of any such examination shall be admissible in any disciplinary proceeding under such conditions as the panel chair may establish.

I. *Immunity for Disciplinary Proceedings*. Except for perjury and false swearing, complainants, respondents, and witnesses are absolutely immune from suit or action for all communications with the Office of Professional Conduct and the Committee and for all statements made within the disciplinary proceeding.

SECTION 12. APPEAL.

A. A respondent attorney or the Executive Director aggrieved by an action of a panel taken at a public hearing may appeal to the Arkansas Supreme Court by filing a Notice of Appeal with the Office of Professional Conduct within thirty (30) calendar days after the filing of the panel's final written order with the Clerk or by filing a Notice of Cross-Appeal with the Office of Professional Conduct within ten (10) calendar days after receiving a properly-filed notice of appeal. The appeal shall proceed as an action between the Executive Director and the respondent. The panel may stay the effective date of any order or action, pending appeal to the Arkansas Supreme Court. There shall be no appeal by the respondent attorney of a panel's decision to file an action for disbarment pursuant to Section 13.

B. Appeals from any action by a panel after hearing shall be heard *de novo* on the record made before the Committee panel, and the Arkansas Supreme Court shall pronounce such judgment as, in its opinion, should have been pronounced below.

C. Notice of appeal and lodging of the record on appeal shall be in accordance with the Rules of Appellate Procedure -- Civil and the Rules of the Arkansas Supreme Court governing appeals in civil matters. If no appeal is perfected within the time allowed and in the manner provided, the action of the panel shall be final and binding on all parties.

SECTION 13. DISBARMENT PROCEEDINGS.

A. An action for disbarment shall be filed as an original action with the Clerk of the Supreme Court. Upon such filing, the Arkansas Supreme Court, pursuant to Amendment 28 of the Arkansas Constitution, shall assign a special judge to preside over the disbarment proceedings. The special judge, the Executive Director, or the Clerk shall arrange for a courtroom or other suitable facility in Pulaski County in which the proceedings shall be heard. The special judge may hear preliminary and post-trial matters and take other such actions outside of Pulaski County to the same extent that the law permits judges sitting by assignment or on exchange to do so. With the consent of all the parties, the judge may conduct the proceedings outside of Pulaski County. All allegations of violation(s) of the Rules by the attorney,

notwithstanding the situs of the alleged conduct, shall be heard in this proceeding. In disbarment suits, the action shall proceed as an action between the Executive Director and the respondent. Proceedings shall be held in compliance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence, and trial shall be had without a jury. A disbarment proceeding may be tried on the original petition for disbarment, any amended petitions for disbarment, and such other allegations and charges as to which the respondent has been given adequate notice and opportunity to defend. After a Committee panel votes to initiate disbarment, it shall not be required that any additional charges or allegations in the disbarment proceeding be considered and voted on by a Committee panel.

B. The judge shall first hear all evidence relevant to the alleged misconduct and shall then make and file with the Clerk a written determination as to whether the allegations have been proven. Upon a finding of misconduct, the judge shall then hear all evidence relevant to an appropriate sanction to be imposed, including evidence related to the factors listed in Section 19 and the aggravating and mitigating factors set out in the American Bar Association's Model Standards for Imposing Lawyer Sanctions, §§ 9.22 and 9.32 (1992). *See Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (1998).

C. The judge shall make findings of fact and conclusions of law with respect to the alleged misconduct of the respondent attorney and the imposition of sanctions, including the factors discussed in Section 13(B). Before filing the findings and conclusions, the judge may solicit proposed findings of fact and conclusions of law from the parties and may submit a draft thereof to the parties or counsel for all parties for the purpose of receiving their objections and suggestions. The judge shall make a recommendation as to the appropriate sanction from those set out in Section 17(D).

D. The findings of fact, conclusions of law, and recommendation of an appropriate sanction shall be filed with the Clerk of the Supreme Court along with a transcript and the record of the proceedings, which shall include all pleadings, orders, and other appropriate materials filed with the Clerk of the Supreme Court. Upon the filing, the parties shall file briefs as in other cases. If any sanction is recommended by the special judge, the respondent attorney shall brief first, as the appellant. The findings of fact filed by the special judge shall be accepted by the Supreme Court unless clearly erroneous. The Supreme Court shall impose the appropriate sanction, if any, as the evidence may warrant. In imposing the sanction of suspension of law license, the attorney may be suspended for a period not exceeding five (5) years. There is no appeal from the decision of the Supreme Court, except as may be available under federal law.

SECTION 14. RECIPROCAL DISBARMENT, SUSPENSION, OR DISABILITY INACTIVE STATUS.

A. *Executive Director's Duty to Obtain Order of Disbarment, Suspension, or Transfer to Disability Inactive Status.* Within fifteen (15) days after any person admitted to practice in Arkansas is disbarred, suspended, or transferred to disability inactive status by a state or federal court or a corresponding disciplinary authority of another jurisdiction, the attorney shall inform the Executive Director of the disbarment, suspension, or transfer. Upon notification from any

source that an attorney licensed to practice in Arkansas has been disbarred, suspended, or transferred to disability inactive status by another state or federal court or a corresponding disciplinary authority of another jurisdiction, the Executive Director shall obtain a certified copy of the order imposing such discipline and file it with the Committee on Professional Conduct.

B. *Notice Served upon Respondent.* Upon receipt of a certified copy of an order imposing a disbarment, suspension, or transfer, the Executive Director shall serve on the attorney, as provided in Section 9, a copy of the order and notice that the attorney has twenty (20) days from the day of service to file with the Executive Director any claim by the attorney predicated upon the grounds set forth in Paragraph F, that the imposition of the identical sanction would be unwarranted and the reasons for that claim.

C. *Effect of Stay in Other Jurisdiction.* In the event the disbarment, suspension, or transfer to disability inactive status imposed in the other jurisdiction has been stayed there, any reciprocal sanction imposed in this jurisdiction shall be deferred until the stay expires.

D. *No Claim Filed.* If no claim is filed within twenty (20) days, the Executive Director shall so inform the Committee, which shall proceed to determine the matter by ballot vote consistent with the requirements of Section 10 of these Procedures, to the extent applicable.

E. *Claim Filed.* If a claim is filed within twenty (20) days, the Executive Director may file and serve a response to the claim within fifteen (15) days after the claim is filed. Within fifteen (15) days after service of any such response, the attorney who filed the claim may file a reply. The claim shall be determined by ballot vote consistent with the requirements of Section 10 of these Procedures, to the extent applicable.

F. *Discipline to Be Imposed.* Upon a ballot vote, a Panel of the Committee shall impose the identical disbarment, suspension, or transfer to disability inactive status, unless the panel finds that:

(1) The procedure before the other state or federal court or corresponding disciplinary authority was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Committee could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The disbarment, suspension, or transfer imposed would result in grave injustice or be offensive to the public policy of Arkansas; or

(4) The reason for the original transfer to disability inactive status no longer exists.

If the Committee determines that any of those elements exists, the Committee shall enter such

other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

G. *Conclusiveness of Adjudication Before Another State or Federal Court or Corresponding Disciplinary Authority.* In all other respects, a final adjudication before another state or federal court or corresponding disciplinary authority determining that a lawyer is guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this jurisdiction.

H. *Appeal.* A respondent attorney or the Executive Director aggrieved by the action of a Committee Panel on a reciprocal discipline or disability matter may appeal to the Arkansas Supreme Court under the provisions of Section 12 (Appeal) of these Procedures. Neither the attorney nor the Executive Director may request or obtain a public hearing before another Committee Panel on a reciprocal disbarment, suspension, or transfer to disability inactive status.

SECTION 15. CRIMINAL ACTIVITY.

A. *Reporting Determinations of Guilt*. All prosecuting attorneys and judges participating in or presiding over a proceeding in which an attorney pleaded guilty to, entered a *nolo contendere* plea to, or has been found guilty of a Serious Crime in any jurisdiction shall have the duty to report such conviction or plea to the Executive Director.

B. *Notification of Possible Criminal Activity.* When, in connection with an investigation or a hearing, either the Office of Professional Conduct or the Committee is presented with any substantial evidence of criminal conduct by any party which would constitute a Serious Crime in any jurisdiction, the Office of Professional Conduct, on its own initiative or at the direction of the Committee, shall notify the appropriate state or federal prosecutorial authority.

C. *Procedures for Disbarment*.

(1) When a complaint against an attorney is based on a conviction in any jurisdiction of, or a plea of guilty or *nolo contendere* in any jurisdiction to, a Serious Crime, or a crime which also violates Rule 8.4 (b) of the Rules, the Committee shall institute disbarment proceedings.

(2) Actions for disbarment based on the conviction of a crime or on a plea of guilty or *nolo contendere* shall proceed in accordance with the procedures in Section 13 of these Procedures.

(3) A certified copy of the judgment of conviction or of evidence of a plea of guilty or *nolo contendere* shall be conclusive evidence of the attorney's guilt.

(4) The attorney may not offer evidence inconsistent with the essential elements of the crime for which he or she was convicted.

SECTION 16. INTERIM SUSPENSION PROCEDURE.

A. An action for the interim suspension of a lawyer is initiated, adjudicated, and imposed in the following manner:

(1) Pursuant to Section 17(E)(3)(a), an interim suspension may be imposed immediately upon a panel's decision to institute disbarment action on any formal complaint pending before it;

(2) Pursuant to Section 17(E)(3)(b), an interim suspension may be imposed upon presentation to a panel of the Committee of satisfactory proof that the attorney has pleaded guilty to, entered a *nolo contendere* plea to, or been found guilty of a Serious Crime in any jurisdiction;

(3) Pursuant to Section 17(E)(3)(c), a panel of the Committee may impose an interim suspension upon presentation of a verified petition by the Executive Director containing sufficient evidence to demonstrate that the attorney poses a substantial threat of serious harm to the public or to the lawyer's clients.

B. The attorney shall be given immediate notice of interim suspension, consistent with the provisions of Section 9(A). Within fifteen (15) calendar days of notice of the imposition of interim suspension, the attorney may submit to the Executive Director an original and eight (8) copies of an affidavit in rebuttal of the evidence before the panel of the Committee and a request for the dissolution or modification of the interim suspension. Within ten (10) calendar days after the submission of any such affidavit and request, the Office of Professional Conduct may file a response. The affidavit, the request, and any response shall be disseminated by mail, e-mail, or facsimile transmission to the panel of the Committee forthwith for its reconsideration and expeditious action. Upon receipt of the panel's decision and order, the Executive Director shall promptly notify the attorney pursuant to Section 9(A)(2).

C. An attorney suspended pursuant to Section 17(E)(3) shall comply with the requirements of Section 21. The imposition of an interim suspension does not abate any pending disciplinary actions against the attorney.

D. An interim suspension imposed pursuant to Section 17(E)(3)(c) shall be dissolved upon the following conditions:

(1) The alleged misconduct did not result in a decision to initiate disbarment or in action by a panel of the Committee pursuant to Sections 9(A)(1), 9(B), and 10(E)(3); and

(2) Ninety (90) days have elapsed from the denial of a request to dissolve or modify the suspension, unless a disbarment proceeding is being pursued; and,

(3) The attorney complied with the requirements of Section 21.

E. Upon the filing of a petition for a writ of certiorari with the Clerk after final action by the Committee or its panel imposing an interim suspension on an attorney, the Arkansas Supreme Court, in its discretion, may decide whether to review the imposition of the interim suspension and may take any action regarding the interim suspension which it determines is appropriate.

SECTION 17. SANCTIONS.

A. *Grounds for Discipline*. It shall be grounds for discipline for a lawyer to:

(1) Violate or attempt to violate the Rules or any other rules of Arkansas regarding professional conduct of lawyers; or

(2) Engage in conduct violating applicable rules of professional conduct of another jurisdiction in which the attorney is licensed or practices.

B. *Serious Misconduct*. Serious misconduct is conduct in violation of the Rules that would warrant a sanction terminating or restricting the lawyer's license to practice law. Conduct will be considered serious misconduct if any of the following considerations apply:

(1) The misconduct involves the misappropriation of funds;

(2) The misconduct results in, or is likely to result in, substantial prejudice to a client or other person;

(3) The misconduct involves dishonesty, deceit, fraud, or misrepresentation by the attorney;

(4) The misconduct is part of a pattern of similar misconduct;

(5) The attorney's prior record of public sanctions demonstrates a substantial disregard of the attorney's professional duties and responsibilities; or

(6) The misconduct constitutes a "Serious Crime," as defined in these Procedures.

C. *Lesser Misconduct*. Lesser misconduct is conduct in violation of the Rules that would not warrant a sanction terminating or restricting the lawyer's license to practice law.

D. *Types of Sanctions*. Misconduct shall be grounds for one or more of the following sanctions:

(1) DISBARMENT: The termination of the attorney's privilege to practice law and removal of the attorney's name from the list of licensed attorneys.

(2) SUSPENSION: A limitation for a fixed period of time on the attorney's privilege to engage in the practice of law.

(3) INTERIM SUSPENSION: A temporary suspension for an indeterminate period of time of the attorney's privilege to engage in the practice of law pending the final adjudication of a disciplinary matter.

(4) REPRIMAND: A severe public censure issued against the attorney.

(5) CAUTION: A public warning issued against the attorney.

(6) WARNING: A non-public caution issued against the attorney.

(7) PROBATION: Written conditions imposed for a fixed period of time, and with the attorney's consent, permitting the attorney to engage in the practice of law under the supervision of another attorney.

E. *Imposition of Sanctions*. When a panel of the Committee finds that an attorney has violated any provision of the Rules, the panel is authorized:

(1) To cause a complaint for disbarment to be prepared and filed against the lawyer in accordance with Section 13. Disbarment proceedings are appropriate when mandated by Section 15(C) of the Procedures or upon a finding of "serious misconduct" for which a lesser sanction would be inappropriate. A finding 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 criminally charged or convicted, shall result in the automatic filing of disbarment proceedings. Actions for disbarment address the overall fitness of a lawyer to hold a license to practice law. The Committee's written notice to institute a disbarment proceeding need not state specific findings as to the misconduct or Rule violations.

(2) To suspend the lawyer's privilege to practice law for a fixed period of time not less than thirty (30) days and not in excess of five (5) years. Suspension is appropriate when a panel of the Committee finds that the lawyer has engaged in "serious misconduct," and, consonant with the pertinent factors listed in Section 19, the nature and degree of such misconduct do not warrant disbarment.

(3) To temporarily suspend the lawyer's privilege to practice law pending final adjudication and disposition of a disciplinary matter. Interim suspension shall be appropriate in the following situations:

(a) Immediately on decision to initiate disbarment;

(b) Immediately upon proof that the attorney has been found guilty of a Serious Crime in any jurisdiction, notwithstanding pending post-conviction actions; and,

(c) When a panel of the Committee is in receipt of sufficient evidence demonstrating that the lawyer has engaged or is engaging in misconduct involving:

(i) Misappropriation of funds or property;
(ii) Abandonment of the practice of law; or,

(iii) Substantial threat of serious harm to the public or to the lawyer's clients.

(4) To issue the lawyer a letter of reprimand. A reprimand is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" that, by application of the factors listed in Section 19, warrants a sanction more severe than a caution. Additionally, in certain very limited circumstances, a panel of the Committee may find that a reprimand is appropriate for conduct otherwise falling within the definition of "serious misconduct" when application of the aforementioned factors substantially demonstrates clear and compelling grounds for sanctions less severe than restriction of the privilege to practice law.

(5) To issue the lawyer a letter of caution. A caution is appropriate when a panel of the Committee finds that a lawyer has engaged in "lesser misconduct" and application of the aforementioned factors does not warrant a reprimand.

(6) To issue a letter of warning. Prior to the preparation of an affidavit of complaint, or subsequent to a lawyer's affidavit of response but before a panel of the Committee has issued a formal letter of disposition in a pending matter, the Executive Director, with the written consent of the attorney and with the approval of the chair of a panel, is authorized to issue a non-public letter of warning to the lawyer. Only in cases of "lesser misconduct" of a minor nature, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should a warning be imposed. A warning is not a sanction available to a panel of the Committee when issuing a formal order of disposition following public adjudication of the disciplinary matter.

(7) To impose probationary conditions. Before or after the filing of a formal complaint, a panel of the Committee may, with the written consent of the lawyer, place the lawyer on probation for a period not exceeding two (2) years. Probation shall be used only in cases where there is little likelihood that the lawyer will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised. Probation may be utilized concurrently with imposition of other sanctions not restricting the privilege to practice law or may follow a period of suspension. The probationary conditions shall be in writing and acknowledged, in writing, by the lawyer. A lawyer amenable to probation shall be responsible for obtaining the agreement of another lawyer, acceptable to a panel of the Committee, to supervise, monitor, and assist the lawyer as required to fulfill the conditions of probation, or for obtaining a Monitoring Contract with the Arkansas Judges and Lawyers Assistance Program, acceptable to a panel of the Committee, to accomplish the same things. Assent to undertake supervision shall be acknowledged in writing to a panel of the Committee. Probation shall be terminated upon the filing of an affidavit by the lawyer showing compliance with the conditions

and an affidavit by the supervising lawyer or an authorized representative of the Arkansas Judges and Lawyers Assistance Program stating probation is no longer necessary and summarizing the basis for that statement. Willful or unjustified non-compliance with the conditions of probation will terminate the probation and subject the lawyer to further disciplinary action, to include imposition of a more severe sanction which could have been imposed originally but for the agreement to probation. An attorney subjected to such further disciplinary action may only offer evidence or argument relating to the willful or unjustified nature of the non-compliance. Unsuccessful rehabilitation or non-completion of the probation conditions will subject the lawyer to further disciplinary proceedings consistent with these Procedures. Except as necessary to the Committee's discharge of its responsibilities, terms and conditions of probation and reports related thereto which involve the lawyer's mental, physical, or psychological condition shall be confidential.

SECTION 18. FINES, COSTS, AND RESTITUTION.

In addition to the Committee's authority set forth in Section 17 of these Procedures, a panel of the Committee, in any case where a disciplinary sanction, including a consent warning, is imposed, may:

A. Assess the respondent attorney the costs of the proceedings, including the costs of investigations, witness fees, service of process, depositions, independent medical examinations, and a court reporter's services;

B. Impose a fine of not more than $25,000.00; and

C. Order restitution to persons financially injured by the conduct.

SECTION 19. FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.

A. *General Factors.* In addition to any other considerations permitted by these Procedures, a panel of the Committee and any judge, in imposing or recommending any sanctions, may consider:

(1) The nature and degree of the misconduct for which the lawyer is being sanctioned.

(2) The seriousness and circumstances surrounding the misconduct.

(3) The loss or damage to clients.

(4) The damage to the profession.

(5) The assurance that those who seek legal services in the future will be protected from the type of misconduct found.

(6) The profit to the lawyer.

(7) The avoidance of repetition.

(8) Whether the misconduct was deliberate, intentional, or negligent.

(9) The deterrent effect on others.

(10) The maintenance of respect for the legal profession.

(11) The conduct of the lawyer during the course of the Committee action.

(12) The lawyer's prior disciplinary record, to include warnings.

(13) Matters offered by the lawyer in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the lawyer demonstrates that he or she is successfully pursuing in good faith a program of recovery.

B. *Aggravating Factors.* Any panel or judge may also consider the following aggravating factors identified by the American Bar Association Joint Committee on Professional Standards and recognized by the Arkansas Supreme Court in *Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (1998):

(1) prior disciplinary offenses;

(2) dishonest or selfish motive;

(3) a pattern of misconduct;

(4) multiple offenses;

(5) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with these Procedures or orders of the Committee;

(6) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(7) refusal to acknowledge the wrongful nature of the conduct;

(8) vulnerability of the victim;

(9) substantial experience in the practice of law;

(10) indifference to making restitution; and

(11) illegal conduct, including that involving the use of controlled substances.

C. *Mitigating Factors.* Any panel or judge may also consider the following mitigating factors identified by the American Bar Association Joint Committee on Professional Standards and recognized by the Arkansas Supreme Court in *Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (1998):

(1) absence of a prior disciplinary record;

(2) absence of a dishonest or selfish motive;

(3) personal or emotional problems;

(4) timely good faith effort to make restitution or to rectify the consequences of the misconduct;

(5) full and free disclosure to the disciplinary board or cooperative attitude towards the proceedings;

(6) inexperience in the practice of law;

(7) character or reputation;

(8) physical disability;

(9) mental disability or chemical dependency including alcoholism or drug abuse when:

(a) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;

(b) the chemical dependency or mental disability caused the misconduct;

(c) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(d) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

(10) delay in [the] disciplinary proceedings;

(11) impositions of other penalties or sanctions;

(12) remorse;

(13) remoteness of prior offenses.

SECTION 20. SURRENDER OF LICENSE, DISCIPLINE BY CONSENT.

A. *Surrender of License*. An attorney may surrender his or her license upon the conditions agreed to by the attorney, the Executive Director, and a panel of the Committee. An attorney may offer or consent to the voluntary surrender of his or her license at any stage of the proceedings. No petition to the Supreme Court for voluntary surrender of license by an attorney shall be granted until it is referred to a panel of the Committee and the recommendations of the panel are received by the Supreme Court. (See Section 20(E)(2), for the procedure where there is a disciplinary proceeding pending, if Supreme Court does not accept the voluntary offer of surrender.)

B. *Discipline by Consent*.

(1) An attorney against whom a formal complaint has been served may, (a) not less than twenty (20) calendar days before the panel meeting at which the complaint will be on the panel agenda for ballot vote action or (b) not less than twenty (20) calendar days before the commencement of a public hearing before a panel of the Committee, tender a conditional acknowledgment and admission of violation of any of the Rules alleged in the formal complaint, or to particular provisions of Rules so alleged, in exchange for a stated disciplinary sanction in accordance with the following:

(2) With service of a formal complaint, the respondent attorney will be advised that, if a negotiated disposition by consent is contemplated, the respondent attorney should contact the Executive Director to undertake good faith discussion of a proposed disposition. All discipline by consent proposals must be approved in writing by the Executive Director, before they can be submitted to a panel.

(3) Upon a proposed disposition acceptable to the respondent attorney and the Executive Director, the respondent shall execute and submit a discipline by consent on a document prepared by the Executive Director setting out the necessary factual circumstances, admission of violation of the Rules, and the proposed sanction.

(4) The consent proposal, along with copies of the formal complaint, and the recommendations of the Executive Director, shall be presented to a panel of the Committee for their votes by written ballot to accept or reject the proposed disposition. The respondent will be notified immediately in writing of the panel decision. Rejection will result in the continuation of the formal complaint process, using a different panel**,** by a ballot vote pursuant to Section 10 or a public hearing pursuant to Section 11, as the case may be.

C. No appeal may be taken from a disciplinary sanction entered by consent.

D. The panel shall file written evidence of the terms of the discipline by consent with the

Clerk, unless the discipline by consent is a non-public warning.

E. *Serious Misconduct*. If the discipline by consent involves allegations of Serious Misconduct and a suspension of the respondent attorney's license, it shall be presented to the Supreme Court for approval or disapproval.

(1) The Executive Director shall present to the Supreme Court, under such procedures as the Supreme Court may direct, any discipline by consent proposal which the Executive Director has reached with a respondent attorney and which involves allegations of Serious Misconduct and a suspension of license.

(2) If the Supreme Court does not approve of the proposed discipline by consent or the voluntary surrender of license, the matter shall be referred to a panel that has not rendered a decision in the case by ballot vote. The new panel shall resume, as practical, the proceedings at the stage at which they were suspended when the proposal was made and submitted to the Supreme Court. If both regular panels have been used in prior proceedings involving a case, the case shall go to Panel C and then, if necessary, to Panel D for consideration.

(3) The fact that an offer and proposed sanction was agreed to by the Executive Director, the terms of the proposed discipline by consent, and the fact that the Supreme Court rejected the proposal shall not be disclosed to the new panel, except in those instances where disclosure of compromises is permitted under Rule 408 of the Arkansas Rules of Evidence.

SECTION 21. DUTIES OF SANCTIONED ATTORNEY.

In every case in which an attorney is disbarred, suspended, or surrenders the attorney's law license, the attorney shall, within twenty (20) days of the filing of the final order of disbarment, suspension, or surrender:

A. Notify all of the attorney's clients and any counsel of record in pending matters in writing that the attorney has been disbarred or suspended or has surrendered his or her Arkansas law license;

B. In the absence of co-counsel, notify all clients in writing to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another attorney;

C. Deliver to all clients being represented in pending matters any papers or property to which they are entitled, or notify them or co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers and other property;

D. Refund any part of the fees or costs paid in advance that have not been earned or expended;

E. File with the Court, agency, or tribunal before which any litigation is pending a copy of the notice to the opposing counsel, or adverse parties if no opposing counsel;

F. Keep and maintain a record for each client of the steps taken to accomplish the foregoing;

G. File with the Clerk and the Office of Professional Conduct a list of all other state, federal, and administrative jurisdictions to which the attorney is licensed or admitted to practice. Upon such filing, the Clerk shall notify those jurisdictions entitled to notice of the disbarment, suspension, or surrender.

H. The attorney shall, within thirty (30) days of disbarment, suspension, or surrender of license, file an affidavit with the Committee that the attorney has fully complied with the provisions of the order and completely performed the foregoing or provide a full explanation of the reasons for the attorney's noncompliance. Such affidavit shall also set forth the address where communications may thereafter be directed to the respondent. The affidavit shall also include an exemplar copy of each type of notice letter sent to clients, courts, co-counsel, or other or opposing counsel of record. The affidavit shall also include a list of the attorney's clients, with a current mailing address and telephone number(s) for each, for use by the Committee to verify that each client has received actual notice of the attorney's change of status and that the attorney has timely complied with all other obligations imposed by these Procedures.

I. Failure to comply with these Procedures shall subject the attorney to punishment for contempt of the Arkansas Supreme Court.

SECTION 22. RESTRICTIONS ON FORMER ATTORNEYS.

A. For the purposes of this Section, a "former attorney" is any attorney who is disbarred, has surrendered a law license, is on suspension pursuant to these Procedures, or is on inactive status.

B. A former attorney shall not occupy, share, or use office space in any office where the practice of law is conducted.

C. A former attorney shall not engage in the practice of law, nor may a former attorney engage in any employment in, or related to, the practice of law, except as specifically permitted in this Section

D. For legal service provided to a client that was not completed prior to becoming a former attorney, a former attorney may receive compensation only on a *quantum meruit* basis.

E. A former attorney shall promptly take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, attorney, legal assistant, law clerk, or similar title from any association with the name of the former attorney.

F. Consistent with the restrictions in this Section 22**,** a former attorney may provide to attorneys and law firms, whether for or without compensation, services involving legal research and drafting of briefs and research memoranda.

G. A former attorney shall have no contact with clients or prospective clients of any attorney or law firm in person, by telephone, in writing, by e-mail, or by any other form of communication, written, electronic, or in person.

H. A former attorney shall have no contact with client funds or property.

I. Any former attorney providing permitted services may be compensated only for the reasonable value of the services provided and shall not be compensated on a contingency basis or share in any way in any fees for legal services provided by an attorney.

J. A former attorney shall not provide services permitted by this Section to any attorney or law firm with whom the former attorney had any employment, partnership, equity, office-sharing, expense-sharing, or "of counsel" affiliation as an attorney at the time of the activities which resulted in the attorney's becoming a former attorney or at the time of the final action which resulted in the attorney's becoming a former attorney.

K. Any attorney or law firm utilizing the services of a former attorney as permitted in this Section 22 shall be responsible for the actions and work product of the former attorney in the rendering of such services and to ensure that the restrictions on a former attorney set out in this Section 22 are observed.

L. An attorney shall not aid a former attorney in the unauthorized practice of law or in a violation of the restrictions set out in this Section 22 on former attorneys. An attorney shall have an obligation, as under Rule 8.3, to report any violation of this Section 22 by a former attorney.

M. No attorney, firm, professional corporation, or other business entity shall practice law or provide legal services under any name that includes the name of any former attorney, while that attorney is a former attorney, except to the extent that it is entitled to do so independently of any prior or present relationship with the former attorney. This prohibition applies, without limitation, to any name used on any letterhead, written communication, signage, advertising, e-mail, website, or similar means of placing a firm's name before the public, the courts, or other attorneys.

N. The maximum punishment for violation of this Section 22 by an attorney, or any former attorney on suspension or on inactive status, may be disbarment. A former attorney previously disbarred or who has surrendered a law license and who violates this Section 22 may be deemed to be in contempt of the Supreme Court and may be punished accordingly.

SECTION 23. REINSTATEMENT.

A. Following any period of suspension from the practice of law, an attorney desiring

reinstatement shall file with the Executive Director a verified petition requesting reinstatement.

B. The petition for reinstatement shall be accompanied by proof of payment of an application fee of $100.00 to the Clerk.

C. The petition for reinstatement shall state that:

(1) The attorney has fully and promptly complied with the requirements of Section 21;

(2) The attorney has refrained from practicing law during the period of suspension;

(3) The attorney's license fee is current or has been tendered to the Clerk; and

(4) The attorney has fully complied with any requirements imposed by the Committee as conditions for reinstatement.

D. Any knowing misstatement of fact may constitute contempt of the Supreme Court and grounds for denial or revocation of reinstatement.

E. Failure to comply with the provisions of Section 21(G) and (H) shall preclude consideration for reinstatement.

F. Within ten (10) calendar days after the filing of the petition for reinstatement, the Office of Professional Conduct may file a response.

G. Within ten (10) calendar days after service of the response, the petitioning attorney may file a reply.

H. The Office of Professional Conduct shall promptly submit the petition, any response, and any reply to a panel of the Committee for ballot vote.

I. No attorney shall be reinstated to the practice of law in this State until the Arkansas Supreme Court has received an affirmative vote by a majority of a panel of the Committee.

SECTION 24. READMISSION TO THE BAR.

A. No attorney who has been disbarred or who has surrendered his or her law license in this State shall thereafter be readmitted to the Bar of Arkansas except upon application made to the State Board of Law Examiners in accordance with the Rules Governing Admission To The Bar, or any successor rules, and the approval of the Arkansas Supreme Court.

B. Provided, however, that application for readmission to the Bar of Arkansas shall not be allowed in any of the following circumstances:

(1) A period of less than five (5) years has elapsed since the effective date of the order of disbarment or surrender;

(2) The disbarment or surrender resulted from conviction of a Serious Crime in any jurisdiction, unless the Serious Crime was an offense for which the culpable mental state was that of negligence or recklessness; or

(3) Any of the grounds found to be the basis of a disbarment or any grounds presented in a voluntary surrender of law license are of the character and nature of conduct that reflects adversely on the individual's honesty or trustworthiness, whether or not the conviction of any criminal offense occurred.

SECTION 25. INACTIVE STATUS.

A. *Temporary Transfer to Inactive Status*. The Committee is authorized to temporarily transfer an attorney to inactive status in the event that:

(1) The attorney has been judicially declared incompetent; or

(2) The attorney has been involuntarily committed due to incapacity or disability; or

(3) The attorney has alleged incapacity during the course of a disciplinary proceeding against him or her; or

(4) The attorney is found by the Committee to be culpable of habitual drunkenness or drug use substantially affecting the attorney's fitness to practice law; or

(5) The attorney is found by the Committee to have appeared in Court while under the influence of alcohol or drugs; or

(6) The attorney is found by the Committee to be unfit to practice law due to mental infirmity whether or not he or she has been judicially declared incompetent; or

(7) Without cause, the attorney requests to be transferred to a voluntary inactive status.

B. All judges have the duty to, and shall report to the Committee any attorney appearing before them who, in the judge's opinion, is under the influence of alcohol or drugs.

C. The Committee may vote by ballot as provided in Section 10 of these Procedures, on the issue of temporary transfer to inactive status or reinstatement due to an event described in subsections A (1), (2), (3) or (7) of this Section.

D. All other temporary transfers of an attorney to inactive status shall be made only after hearings initiated by the Executive Director or others and conducted in the same manner, where applicable, as provided in Section 11 of these Procedures. Provided further, however, the Committee may in its sound discretion hold a closed hearing and seal the record thereof.

E. For good cause shown, the Committee may order the attorney to submit to a medical, psychiatric, or psychological examination by a Committee-appointed expert.

F. No attorney shall be entitled to practice in Arkansas while on inactive status in this State. Upon a transfer to inactive status the attorney, or his or her counsel as may be appropriate, shall comply with Section 21 of these Procedures.

G. The Committee may reinstate an attorney to active status upon a showing that any disability has been removed and the attorney is fit to resume the practice of law.

H. Reinstatement shall be accomplished in accordance with the provisions of Section 23.

I. The filing of a petition for reinstatement shall be deemed a waiver of the doctor-patient privilege regarding the disability.

SECTION 26. EXPUNGEMENT OF DISMISSALS.

After three years, the Committee shall expunge all records or other evidence of the existence of complaints terminated by dismissals or referrals to alternative programs pursuant to Section 5(C)(2), except that, upon the Executive Director's application, notice to respondent, and a showing of good cause, the Committee may permit the Executive Director to retain such records for one additional period of time not to exceed three years.

A. *Notice to Respondent*. If the respondent was contacted by the Executive Director or Committee concerning the complaint, or the Executive Director or Committee otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the expungement.

B. *Effect of Expungement*. After a file has been expunged, any response by the Executive Director or Committee to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no complaint was made.

SECTION 27. CONTEMPT. The following shall be regarded as contempt of the Arkansas Supreme Court:

A. Willful disobedience of any Committee or panel order, summons, or subpoena;

B. The refusal to testify on matters not privileged by law;

C. Knowingly testifying falsely before a panel of the Committee;

D. Engaging in the practice of law during a period of suspension;

E. Engaging in the practice of law after a disbarment or surrender of license; or,

F. Violation of these Procedures by any person.

SECTION 28. ATTORNEY TRUST ACCOUNT AND AUTOMATIC "OVERDRAFT" NOTIFICATION PROCEDURE.

A. *Consent By Lawyers*. Every lawyer practicing or admitted to practice in Arkansas shall, as a condition thereof, be conclusively deemed to have consented to the trust account overdraft reporting and production requirements mandated by this Section.

B. *Overdraft Notification Agreement Required*. A financial institution shall be approved as a depository for lawyer trust accounts only if it files with the Arkansas Supreme Court Office of Professional Conduct (the "Office") an agreement, in a form provided by the Office, to report to that Office whenever any properly payable instrument is presented against any lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Office may establish additional procedures, to be approved by the Supreme Court, governing approval and revocation of approved status for financial institutions. The Office shall annually file with the Supreme Court Clerk and the Arkansas IOLTA Foundation, and post on the Court's website, not later than January 1, a current list of approved financial institutions. No attorney or law firm trust account shall be maintained in any financial institution that does not agree to so report and is not approved by the Office. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days written notice to the Office.

C. *Overdraft Reports*. The overdraft notification agreement shall provide that all reports made by the financial institution to the Office shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

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

D. *Timing of Reports*. Reports under subsection 28(C) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

E. *Costs*. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Section.

F. *Trust Accounts*. Lawyers who practice law in Arkansas shall deposit all funds held in trust in Arkansas in accordance with Rule 1.15(a) of the Arkansas Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise. Lawyer trust accounts shall be maintained only in financial institutions approved by the Office.

G. *Account Records*. Every lawyer engaged in the practice of law in Arkansas shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings, or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

H. *Definitions*. For purposes of this Section:

(1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of Arkansas.

(3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under Arkansas law, upon presentation of an instrument, that the institution dishonors.

(4) "Office" means the Office of Professional Conduct of the Arkansas Supreme Court.

I. *Form of Overdraft Reporting Agreement*. The form of the "Attorney Trust Account Overdraft Reporting Agreement" attached hereto, and as may be subsequently revised, is approved for use.

J. *Disapproval or Revocation of Approval of Financial Institutions.*

(1) Refusal of the Office to approve a financial institution due to failure of the financial institution to timely submit an initial properly executed written agreement on the form approved by the Court or the Office is not appealable or otherwise subject to challenge, including

by civil action in any court.

(2) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found by the Executive Director to have engaged in a pattern of neglect or to have acted in bad faith in not complying with its obligations under the written agreement.

(3) The Executive Director shall communicate any decision to revoke approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for the revocation decision and advise of any right to reconsideration or review. The financial institution shall have thirty (30) days from the date of receipt of the written notice to file a written request with the Executive Director seeking reconsideration of the Executive Director's decision or a review of that decision by a panel of the Committee on Professional Conduct. The financial institution may request a review by either ballot vote of a panel or a public hearing before a panel, following the Procedures. The decision of the panel shall be final and not subject to any review. The approved status of the financial institution shall continue until such time as this review process is final.

(4) Once the approval of the financial institution has been finally revoked, the institution shall not thereafter be approved as a depository for attorney trust accounts until such time as the financial institution petitions the Office for new approval, including in the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future, and approval is granted.

(5) Within fifteen (15) days of receipt of the notice of revocation, or final order of revocation if reviewed by a panel, of its approved status, a financial institution shall give written notification of the revocation action to all holders of attorney trust accounts on deposit with the financial institution, and file a report with the Office of all such attorney notification contacts within thirty (30) days of the date of receipt by the financial institution of the notice or final order of revocation.

(6) Any attorney or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked shall remove all trust accounts from the financial institution within thirty (30) days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the Office, including the name and address of the new trust account depository institution.

(7) Failure of any financial institution, attorney, or law firm to comply with the provisions of Section 28 may be treated as contempt of the Arkansas Supreme Court upon petition by the Office, and punished as such upon a finding of contempt.

ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING AGREEMENT

To: Arkansas Supreme Court Office of Professional Conduct (the "Office")
Justice Building, Room 110
625 Marshall Street
Little Rock, AR 72201-1054

The undersigned, being a duly authorized officer of (name of institution)

_____,

a financial institution doing business in the State of Arkansas, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to receive attorney trust accounts in the State of Arkansas. In consideration of approval by the Office of this financial institution, the financial institution agrees to comply with the overdraft reporting requirements for such financial institutions as set forth in Section 28 of the Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2011) (the "Procedures"), which is incorporated herein by reference, and any other rules or procedures for overdraft reporting promulgated by the Arkansas Supreme Court or the Office, and any later amendments to such rules or procedures.

Specifically, the named financial institution agrees to report to the Office all events involving trust account instruments, and to report in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

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

All reports shall be made within the following time periods:

(1) In the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;

(2) In the case of an instrument that is presented against insufficient funds but which

instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

This agreement shall apply to all branches of the named financial institution and shall not be cancelled except upon thirty (30) days written notice to the Executive Director of the Office at the address listed above.

Name and address of financial institution:

_____

_____

Date: _____ _____

Signature of Authorized Official

(Corporate Seal)

Printed or Typed Name of Authorized Official

_____

Title or Position of Authorized Official

_____

ACKNOWLEDGMENT

On this ____ day of _____, 2____, before me, a Notary Public for the State of Arkansas, appeared the above-named individual, known to me to the person executing this instrument, and acknowledged and executed this instrument as his/her free and voluntary act.

_____

Notary Public (signature)

My Commission Expires: _____

ACCEPTANCE

The above-named financial institution is hereby approved by the Arkansas Supreme Court Office of Professional Conduct as a depository for attorney trust accounts in the State of Arkansas until such time as this agreement is cancelled by the financial institution upon thirty (30) days written notice to the Office, or is revoked by action of the Executive Director of the Office.

Date _____ _____

Executive Director, Office of Professional Conduct