STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8043

FILED
OFFICE OF APPELLATE COURTS
Date: 2026.09.30 16:30:17 -05'00'

ORDER PROMULGATING AMENDMENTS TO THE MINNESOTA RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

In 2022, we asked the Standing Committee on Professional Regulation of the American Bar Association (the ABA) to review and evaluate Minnesota's lawyer discipline system and provide recommendations. The ABA provided its report and recommendations in September 2022. *See* Minnesota Report on the Lawyer Discipline System, No. ADM10-8043 (Sep. 28, 2022) ("ABA Report").

Following a public comment period and a hearing, in August 2023 we issued an order, with attached memorandum, regarding the ABA Report. *See* Order Regarding the Report and Recommendations of the American Bar Association Standing Committee on Professional Regulation on the Minnesota Lawyer Discipline System, No. ADM10-8043 (Minn. filed Aug. 23, 2023) ("Order on the ABA Report" and "Memorandum on ABA Report" or "Memorandum"). In the Order on the ABA Report, we adopted some of the ABA's recommendations, adopted modified versions of other recommendations, referred some recommendations to various stakeholders for further consideration, and declined to implement other recommendations, all as explained in greater detail in the Memorandum. Noting that the adopted recommendations would require amendments to the Rules on

Lawyers Professional Responsibility (RLPR), we referred the recommendations we adopted to an Advisory Committee. Order on ABA Rep. at 3–4; Mem. on ABA Rep. at Table-1 to -2.

We established the Advisory Committee by a separate order filed in August 2023. *See* Order Appointing Advisory Committee on the Rules on Lawyers Professional Responsibility, No. ADM10-8043, Order at 2 (Minn. filed Aug. 23, 2023) ("Appointment Order"). We appointed the Honorable Lucinda Jesson, then-judge of the Minnesota Court of Appeals,[1] as chair of the Advisory Committee. *Id.* at 3. We also appointed Susan Humiston, then-Director of the Office of Lawyers Professional Responsibility[2] ("Director" and "OLPR", respectively), and Benjamin Butler, then-chair of the Lawyers Professional Responsibility Board[3] **(**"Board"), as members. *Id.* Other individuals later applied for and were appointed to the Advisory Committee.

Meanwhile, in February 2023, the Board filed a petition seeking certain other amendments to the RLPR. *See* Petition of the Lawyers Professional Responsibility Board to Amend the Rules of Lawyers Professional Responsibility, No. ADM10-8043 (Feb. 17, 2023) ("Board Petition"). We referred that petition to the Advisory Committee for consideration as well. Appointment Order at 3.

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1 Judge Jesson retired from the court of appeals on September 1, 2023.

2 Director Humiston passed away unexpectedly on August 4, 2026.

3 Benjamin Butler's term as chair of the Board concluded on April 30, 2026.

The Advisory Committee began meetings in October 2023 and met at least monthly thereafter through June 2024. It established two subcommittees, each to work on proposed rules or amendments on an important topic, which also met at least monthly. The Advisory Committee and the subcommittees conducted research, reviewed controlling Minnesota law, sought input from other resources, researched other states' rules, and developed and circulated drafts of proposed language for various rules. In April 2024, the Advisory Committee invited public input and comments regarding Minnesota's lawyer discipline system and the Advisory Committee's work by posting a public notice on the Judicial Branch website. This posting sent an email alert to persons who receive public notifications. The Advisory Committee also forwarded the public notice link to additional stakeholders, including professional organizations, health advocacy groups, and volunteers in Minnesota's attorney discipline system. Over 30 comments were received by the Advisory Committee in this process, and one person appeared before the Advisory Committee and presented remarks.

In June 2024, the Advisory Committee filed its report and proposed amendments. *See* Report and Proposed Amendments to the Minnesota Rules on Lawyers Professional Responsibility, No. ADM10-8043 (June 28, 2024) ("Advisory Committee Report" or "Report"). The Report covers the Advisory Committee's recommendations regarding both the ABA Report and the Board Petition. The Report's structure divides all its proposed changes into eight broad subject-matter areas, with recommendations for amendments to various rules for each of those eight areas. *See* Advisory Comm. Rep. at 6–76. The Report also includes a minority report with respect to two of the

recommendations. The minority report reflects disagreements with the Advisory Committee's recommendations regarding (1) expungement of records after completion of a diversion program, and (2) the imposition of deadlines for case processing. *See id.* at 78–81.

In October 2024, we established a public comment period on the amendments proposed in the Advisory Committee Report. Four comments were submitted, on behalf of (1) the Minnesota State Bar Association, No. ADM10-8043 (Nov. 26, 2024) ("MSBA Comment"); (2) the Board, No. ADM10-8043 (Dec. 2, 2024) ("Board Comment"); (3) the OLPR, No. ADM10-8043 (Dec. 2, 2024) ("OLPR Comment"); and (4) the Board of Law Examiners, No. ADM10-8043 (Dec. 2, 2024) ("BLE Comment"[4]). Although the comments reflect a great deal of agreement with respect to many of the recommendations in the Advisory Committee Report, there remain points of contention. The MSBA supports all of the recommendations in the Report, and the Board supports all but one—the Report's recommendation regarding a change to the rules governing lawyer resignation. *See* Bd. Cmt. at 2, 14–20. The OLPR likewise supports most of the Report's recommendations, *see* OLPR Cmt. at 2, with the exceptions being the topics of the minority reports (to which the Director was a subscriber)—namely, the Report's

[4] The BLE Comment was submitted by Emily Eschweiler, who is both the Director of the Minnesota Board of Law Examiners ("BLE") and the Director of the Minnesota State Board of Continuing Legal Education ("CLE Board"). In her comments, she states that she has reviewed her proposed comments with the BLE, which support her comments; and that the CLE Board "will not meet before the comments are due, and I submit these comments on behalf of the Board in my administrative capacity." BLE Cmt. at 1.

recommendations regarding expungement of records after completion of a diversion program, and the imposition of deadlines for the Director to complete investigations of alleged misconduct and issue a disposition. *See* OLPR Cmt. at 2–10. The BLE does not take a position on the Report's recommendations overall, but makes technical recommendations regarding reinstatement fees, revocation of conditional admission, good standing for resignation, and disability inactive status. *See* BLE Cmt. at 1–3.

We held a hearing on this matter on April 29, 2025. Three speakers appeared: (1) Judge Jesson as chair of the Advisory Committee, (2) Board Chair Butler to present the Board's petition and comments, and (3) Director Humiston to present the OLPR's comments.

We are grateful to all interested parties who have participated in this process, and we appreciate the assistance and expertise they have provided. In particular, we thank the Advisory Committee and its members for their hard and thorough work.

In addressing the proposals made in the Advisory Committee Report, we will follow that Report's structure, addressing each of the eight subject-matter areas discussed in the Report, and in the same order.

I. Recommendation that Rule 1 should be amended to adopt definitions used in Rule 9 proceedings, and Rule 9 should be amended to streamline the procedures for Panel proceedings.

Under the existing Rules, panel proceedings under Rule 9, RLPR, serve two major functions: (1) determinations as to whether cause exists to believe that public discipline is

warranted ("cause proceedings"), *see* Rule 9(j)(1), RLPR[5]; and (2) appeals of admonitions ("admonition appeals"), *see* Rule 9(j)(2), RLPR. The proposed amendments affect both types of panel proceedings.

The Board's Petition

Under the existing Rules, a number of administrative steps in a cause proceeding under Rule 9, RLPR, are assigned to the Director. In the Board Petition, the Board proposed that Rule 9 be amended to provide that the Panel Chair, rather than the Director, has authority to take these actions. Bd. Pet. at 11 ¶ 32 & App. A. at 11.

There had been confusion under the existing Rules about whether, when the Director makes allegations of multiple instances of professional misconduct and a panel is conducting a probable cause proceeding under Rule 9, the panel may treat the different allegations of professional misconduct differently. In *In re Review of Panel Decision against Respondent, Panel Case No. 35104*, 851 N.W.2d 620, 625 (Minn. 2014), we addressed that question. We concluded that, under the circumstances of that case, the panel was required to make one decision regarding all the allegations of misconduct. *Id.* at 625. Specifically, we determined that the panel could not issue an admonition with respect to one set of allegations while finding probable cause to believe public discipline was warranted with respect to another set of allegations. *Id.* In the Board Petition, the Board proposed that Rule 9(j)(1) be amended to allow a panel to make a probable cause

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[5] Rule 9 also has a procedure for revoking conditional admission, upon a finding that there is probable cause to do so, *see* Rule 9(j)(1)(iv), RLPR, which is triggered by the Director's determination under Rule 8(d)(4)(iv), RLPR. Proceedings for revocation of conditional admission are conducted in a manner similar to other cause determinations.

determination "separately with respect to each charge," but "[i]f the Panel finds probable cause to believe that public discipline is warranted on any charge, it may not issue an admonition as to any other charge." Bd. Pet. App. A at 14; *see* Bd. Pet. at 11 ¶ 32.

The Proposals in the Advisory Committee Report

The Advisory Committee Report proposes extensive modifications to Rule 9, along with certain modifications to Rule 1. The proposals separate the procedures for the two major types of panel proceedings—determinations whether cause exists to believe that public discipline is warranted and appeals of admonitions—providing procedures for the former in Proposed Rule 9(a) and the latter in Proposed Rule 9(c). *See* Advisory Comm. Rep. at 7 & n.8.[6] The procedures specified in these two paragraphs are considerably different, with the cause proceedings being modified in accordance with our instruction to "streamline the cause proceeding by limiting the adversarial nature of the submissions and presentations to the panel."

Decisions on cause are presumed to be made without discovery, oral argument, or an evidentiary hearing; Proposed Rule 9(a)(2) allows for a hearing only if "exceptional circumstances" exist. Proposed Rule 9(a)(3) explicitly states that the cause determination "is not a decision on the merits." Instead, the panel is instructed to find "reasonable cause" or "no reasonable cause," and to instruct the Director to file a petition for disciplinary action in this court accordingly. *Id.* The panel retains its authority to issue an admonition if it finds clear and convincing evidence that misconduct occurred, but that it

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[6] The procedure for revoking conditional admission is in Proposed Rule 9(b). It largely incorporates the 9(a) procedure by reference. *See* Advisory Comm. Rep. at 7 n.8.

is isolated and non-serious. Prop. Rule 9(a)(4). However, the opportunity for a lawyer to have that admonition reviewed by a second panel, previously found in Rule 9(j)(1)(iii), RLPR, is eliminated. Prop. Rule 9(a)(4). Because reasonable cause proceedings are not a decision on the merits, the rule provides a relatively short disposition timeline.

In contrast with panel proceedings to determine reasonable cause, admonition appeals under the proposed rule are more involved—but still streamlined compared to proceedings under the current rule. Discovery is authorized, but "[a]bsent exceptional circumstances, no interrogatories, requests for admissions, or expert depositions will be allowed." Prop. Rule 9(c)(3). Proposed Rule 9(c) contemplates an evidentiary hearing, but evidence will be received only in the form contemplated for hearings under the current rules. Prop. Rule 9(c)(4). Dispositions under the proposed rule track the existing rule: a panel may affirm or reverse the admonition, or if reasonable cause exists to believe that public discipline is warranted, the panel must instruct the Director to file a petition for disciplinary action. Prop. Rule 9(c)(5); *see* Rule 9(j)(2), RLPR.

We also directed the Advisory Committee to develop a definition of "reasonable cause," based on our prior conclusion that " 'reasonable cause,' rather than 'probable cause,' is a more useful standard for Board panels to use when considering whether to authorize the Director to proceed with public discipline charges." Mem. on ABA Rep. at 12. The Report's proposed definition of "reasonable cause" appears in Rule 1 (Definitions). The proposal defines that term to mean "facts sufficient to allow a person of ordinary care and prudence to believe, or entertain a strong impression, that the alleged misconduct occurred." Prop. Rule 1(12). The language of Proposed Rule 9 refers to that

definition. *See* Prop. Rule 9(a)(2). The Advisory Committee also proposes a comment explaining the change from "probable cause" to "reasonable cause."

The Advisory Committee also proposes a definition of "count," meaning "an alleged course of unprofessional conduct, designated as such in the Director's Charges of Unprofessional Conduct, and alleged to have violated one or more rules of professional conduct." Prop. Rule 1(3). Under Proposed Rule 9(a)(3), the panel "shall issue a written decision setting forth a reasonable cause determination or no reasonable cause determination as to each *count* in the Charges." Prop. Rule 9(a)(3) (emphasis added). The Advisory Committee's proposed rule is aligned with, but provides greater precision and clarity than, the Board's proposal that the rule be amended to provide for a cause determination "separately with respect to each *charge*." Bd. Pet. App A at 14 (emphasis added). Likewise, Proposed Rule 9(a)(4) incorporates the Board's proposal that the rules explicitly state, in line with our decision in *In re Review of Panel Decision against Respondent, Panel Case No. 35104*, that the panel cannot bifurcate proceedings: "[i]f the Panel finds reasonable cause on any count in the Charges, it shall not issue an admonition as to any other count in the Charges." Prop. Rule 9(a)(4); *accord* Bd. Pet. App. A at 14.

The Board's other proposed amendments were related to clarifying that the panel, not the Director, is in charge of assignments to panels and scheduling. The proposals in the Advisory Committee Report make sufficiently significant changes to procedure that some of the specific recommendations in the Board Petition no longer fit precisely within the new structure. The Report's proposals, however, appear to endorse the spirit of those recommendations.

Under current Rule 9, both a complainant and the attorney have the right to seek review of certain decisions made by a panel. A complainant who is not satisfied with the panel's disposition may seek review in this court by filing a petition for review within 14 days. Rule 9(*l*), RLPR. And an attorney may appeal any admonition resulting from the panel process within 30 days. Rule 9(m), RLPR. Under the proposed rules, these time periods are equalized at 30 days. *See* Prop. Rule 9(g)–(h). And the proposed rules also specify when these periods begin to run, requiring the Director to provide the complainant and the attorney with notice, while also amending the definition of "notify" to allow for notice by email. *See* Prop. Rules 9(f), 1(9); Advisory Comm. Rep. at 21, 7 n.9. These proposed changes were not prompted by any particular recommendation in the Order on the ABA Report or request in the Board Petition. Rather, they were authorized by the Appointment Order's instruction to make "housekeeping amendments." *See* Appointment Order at 2.

Finally, the Advisory Committee Report recommends that its proposed changes to these rules be made effective upon adoption and applied to proceedings initiated before a panel, and to complaints received, on or after the effective date. Advisory Comm. Rep. at 23.

Public Comments

None of the submitted public comments object to any of the Advisory Committee Report's proposals related to these recommendations. *See* MSBA Cmt. at 1; Bd. Cmt. at 1–2; OLPR Cmt. at 2; BLE Cmt. at 1–3. The only comment that specifically addresses these proposals is the Board's, stating that it "supports the committee's recommended

amendments concerning the authority of Board Panels to make charge-by-charge reasonable-cause (currently styled 'probable cause') determinations, even though the committee did not wholly adopt the Board's suggestion on the matter." Bd. Cmt. at 3.

Discussion - General

The amendments to Rules 9 and 1, RLPR, proposed in the Advisory Committee Report, both carry out the instructions we provided in the Order on the ABA Report and address the requests for amendments in the Board Petition. Accordingly, we will adopt them, with certain modifications, as discussed further herein.

The proposed rules significantly streamline panel proceedings by eliminating discovery and an evidentiary hearing in cause-determination matters (except in unusual circumstances) and by limiting discovery in admonition appeals. The proposed rules retain a cause-determination panel's authority to issue an admonition, as instructed, but eliminate the lawyer's right to have that admonition reviewed by a second panel. The Board's requested amendments clarifying that the Board does not act at the direction of the Director in panel proceedings are incorporated into the new streamlined procedures and appear to be satisfactory to both the Board and the Director. And given the different procedures and dispositions that will apply to cause-determination panel proceedings on the one hand, and admonition-appeal panel proceedings on the other hand, it is appropriate to disentangle the rules for the two types of proceedings into separate paragraphs.

We also conclude that the Advisory Committee's definition of "reasonable cause" is generally sensible. But we are concerned about one aspect of that definition. As noted

above, the Advisory Committee proposes defining "reasonable cause" to mean "facts sufficient to allow a person of ordinary care and prudence to believe, or entertain a strong impression, that the alleged misconduct occurred." Prop. Rule 1(12). We are concerned that by providing two possible standards—"believe" and "entertain a strong impression"—the proposed rule may lack clarity and precision. The differences and relationships between these two different types of mental states is unclear from the language of the proposed rule, and asking panels to consider both (combined with the disjunctive "or") may lead to confusion. We think the rule should contain only one standard, to be applied in all cases. And we think that the more appropriate and easily understandable standard is "believe." Accordingly, we will further modify Proposed Rule 1(12), as compared to the Advisory Committee's proposal, as follows:

* * *

(12) "Reasonable Cause" means facts sufficient to allow a person of ordinary care and prudence to believe~~, or entertain a strong impression,~~ that the alleged misconduct occurred.

* * *

In the Memorandum on the ABA Report, we repeatedly emphasized that a cause determination does not involve the panel making a decision on the merits. *See* Mem. on ABA Rep. at 10, 13, 14, 15, 16. We also mentioned, but did not emphasize, that cause determinations involve "no weighing of the evidence." *Id.* at 13. The proposed amendments in the Advisory Committee Report explicitly state that "a determination of reasonable cause or no reasonable cause is not a decision on the merits." Prop. Rule 9(a)(3). But the proposed amendments do not mention that weighing of the evidence

is not appropriate in a reasonable cause determination. Notwithstanding that we did not emphasize it in the Memorandum on the ABA Report, the prohibition on weighing evidence is sufficiently important to merit inclusion in the text of the rule. Accordingly, we will further modify Proposed Rule 9(a)(3), as compared to the Advisory Committee's proposal, as follows:

* * *

(3) The Panel shall issue a written decision setting forth a reasonable cause determination or no reasonable cause determination as to each count in the Charges. A determination of reasonable cause or no reasonable cause is not a decision on the merits and does not involve the weighing of contrary evidence. The Panel shall instruct the Director to file in this Court a petition for disciplinary action for each count on which it finds reasonable cause.

* * *

As to the multiple-allegations problem that we addressed in *In re Review of Panel Decision against Respondent, Panel Case No. 35104*, the Report's proposal to make the unit of determination a "count" rather than a "charge," and to define "count" in part as "an alleged course of unprofessional conduct," Prop. Rule 1(3), is consistent with the guidance we provided in that case. Specifically, it tracks with our observation that "[c]onsidering all of the misconduct together in one proceeding is particularly appropriate in this case because respondent's alleged rule *violations arise from the same course of conduct*." 851 N.W.2d at 625 (emphasis added). The Report's proposed implementation of the Board's other amendment requests is also appropriate. And the Report's justification for making these amendments effective immediately upon enactment is persuasive.

Finally, we note that in both cause determinations and in admonition appeals, a panel may issue at least two different types of decisions. In cause determinations, the primary inquiry is whether there is reasonable cause that misconduct occurred, but the panel may in some circumstances properly issue an admonition. Likewise in admonition appeals, the primary inquiry is whether there is clear and convincing evidence of misconduct, but the panel may in some circumstances properly find reasonable cause that public discipline is warranted and instruct the Director to file a petition for disciplinary action. In both types of proceedings, then, a panel may be required to determine whether there is reasonable cause that misconduct occurred, which, as we have emphasized above, is not a decision on the merits and does not involve the weighing of contrary evidence. And in both types of proceedings, a panel may be required to determine whether to issue or affirm an admonition, which is a decision on the merits and may be imposed only based on clear and convincing evidence of misconduct. We take this opportunity to clarify the relationship between these two types of decisions, and in particular to clarify that although an admonition may be issued or affirmed only based on clear and convincing evidence that misconduct has occurred, clear and convincing evidence is not required for the panel's determination that the misconduct is isolated and non-serious in order to issue an admonition. Accordingly, we will further modify Proposed Rules 9(a)(4) and 9(c)(5), as compared to the Advisory Committee's proposal, as follows:

* * *

RULE 9. PANEL PROCEEDINGS

(a) Public Discipline. If a matter is submitted to a Panel under Rule 8(d)(4)(i) or (iii) of these rules, it shall proceed as follows:

…

(4) If the Panel (i) finds by clear and convincing evidence that misconduct occurred, ~~but~~and (ii)determines that ~~it~~all such misconduct is isolated and non-serious, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel finds reasonable cause ~~on~~that any count in the Charges alleges serious or non-isolated misconduct, it shall not issue an admonition as to any other count in the Charges.

…

(c) Admonition Appeal. When the Director issues an admonition under Rule 8(d)(2) of these rules, and the lawyer makes a demand under Rule 8(d)(2)(iii), the matter shall proceed as follows:

…

(5) The Panel shall affirm the admonition if it (i) finds by~~there is~~ clear and convincing evidence ~~of~~that the lawyer engaged in the alleged unprofessional conduct and (ii) determines that the conduct~~that~~ is isolated and non-serious~~, or~~. If the Panel does not find by clear and convincing evidence that the lawyer engaged in unprofessional conduct, then the Panel shall reverse the admonition ~~if clear and convincing evidence is lacking~~. If the Panel finds~~there is~~ reasonable cause to believe that public discipline is warranted, the Panel shall reverse the admonition and instruct the Director to file a petition for disciplinary action in this Court.

* * *

Summary and Disposition

The amendments to Rules 9 and 1, RLPR, proposed in the Advisory Committee Report, both carry out the instructions we provided in the Order on the ABA Report and address the requests for amendments in the Board Petition. No commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments

effective as soon as practicable after enactment. Accordingly, we will adopt the proposed amendments in part III.1. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to proceedings initiated before a panel, and to complaints received, on or after that date.

II. Recommendation that Rule 18 should be amended to authorize reinstatement by affidavit for suspensions of six months or less and provide guidance on the materials and conditions required for reinstatement.

The process for reinstatement of an attorney who has been suspended or disbarred from the practice of law as a disciplinary sanction is governed by Rule 18, RLPR. Rule 18 governs two methods for reinstatement: by petition, *see* Rule 18(a)–(d), RLPR; and by affidavit, *see* Rule 18(f), RLPR. General requirements applicable to all reinstatement requests are provided in Rule 18(e), RLPR.

When a petition for reinstatement is filed, the Director must investigate the petition and report the conclusions to a panel of the Board appointed for that purpose. Rule 18(b)(2), RLPR. Thereafter the panel may conduct a hearing and shall make findings of fact, conclusions, and recommendations, which will be served upon the petitioner and filed, Rule 18(c), RLPR, for further action including a hearing before this court under Rule 18(d), RLPR. The process for reinstatement by affidavit is much shorter, requiring the suspended attorney merely to file an affidavit indicating that they have met the requirements for reinstatement. Rule 18(f), RLPR.

The Board's Petition

The Board's petition for amendments to the Rules addressed transparency and efficiency in the reinstatement process. Bd. Pet. at 5 ¶ 13. The Board noted that the Rules do not provide a time limit or any guidance to the Director on the investigation of a petition for reinstatement and that "investigations of attorney-reinstatement petitions often take an extended period of time." *Id.* at 6 ¶ 15. The Board also noted that the Rules do not require the Director to provide any information to the attorney petitioning for reinstatement, or to the panel, about the status of investigations. *Id.* at 6 ¶ 16. The Board summarized the purpose of its requested amendments to Rule 18 as to "grant[] the Panel Chair authority to regulate the pre-hearing process," and thereby "provide a mechanism for the Board and the petitioner to learn the status of the OLPR investigation, the OLPR's proposed timeline for completion of that investigation, and the timing of the ensuing reinstatement hearing." *Id.* at 7 ¶ 19.

The Proposals in the Advisory Committee Report

The Advisory Committee Report proposes extensive modifications to Rule 18. To start, the Report proposes extensive restructuring of Rule 18, grouping reinstatements by category (by affidavit or by petition). *See* Prop. Rules 18(a), 18(e)(1) (affidavit); Prop. Rules 18(b), 18(e)(2) (petition). The proposed amendments also break out separate information regarding the requirements for reinstatement following resignation from the bar or transfer to disability inactive status, Prop. Rules 18(c), 18(e)(3); clarify that application for admission following revocation of conditional admission is governed by separate rules, namely the Rules for Admission to the Bar, Prop. Rule 18(d); and

maintain the current requirement for reinstatement that applies only after disbarment—namely, the requirement to pass the bar exam, Prop. Rule 18(e)(4).[7] As we previously directed, *see* Mem. on ABA Rep. at 21–22, the proposed amendments provide that "a lawyer suspended as a result of a disciplinary proceeding for 180 days or less, who has not been previously suspended," is eligible for reinstatement by affidavit, Prop. Rule 18(a), whereas "a lawyer who has been disbarred or who has been suspended as a result of a disciplinary proceeding for longer than 180 days" may only seek reinstatement by petition, Prop. Rule 18(b).

With respect to reinstatement by affidavit, the proposed rules set out the required contents of the affidavit, which are essentially the same as those provided in current Rule 18(f), RLPR. *See* Prop. Rule 18(e)(1). The proposed rule allows the affidavit of reinstatement to be filed no sooner than 14 days before the suspension period ends, *id.*, which is consistent with our current practices. And the proposed rule requires the Director to file and serve, within seven days after service of the affidavit, their position regarding the requested reinstatement, Prop. Rule 18(e)(1), which is consistent with the Director's obligation to "promptly" do so under current Rule 18(f), RLPR.

Likewise, with respect to reinstatement by petition, the proposed rules require the lawyer, along with filing a petition, to pay a reinstatement fee, Prop. Rule 18(b)(2), and to

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[7] As we directed in the Memorandum on the ABA Report, the requirement that a suspended lawyer pass the professional responsibility exam has been removed. *See* Mem. on ABA Rep. at 18 n.11. But as noted below in Part VII.E. of this order, we retain our authority to require that a particular suspended lawyer pass the professional responsibility exam.

indicate in the petition that they have "obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Discipline Matters," Prop. Rule 18(b)(3). The proposed rules allow a petition to be filed no sooner than 60 days before the end of the suspension period, Prop. Rule 18(e)(2), and they require the Director to respond within 30 days with an indication whether the requested reinstatement is opposed. *Id.* The proposed rules make clear that the attorney seeking reinstatement has the burden of proving by clear and convincing evidence the requirements for reinstatement, which are set out in the rule in substantially the same terms as we stated them in *In re Mose*, 993 N.W.2d 251, 257, 261 n.5 (Minn. 2023). *See* Prop. Rule 18(e)(2)(i)–(iv).

With respect to reinstatement following resignation from the bar or transfer to disability inactive status, the proposed rules require the lawyer, along with filing a petition, to pay a reinstatement fee, Prop. Rule 18(c), and to indicate in the petition that they have "obtained, completed, and submitted to the Director" the appropriate reinstatement questionnaire, either for resignation matters or for transfer from disability inactive status, as the case may be. *Id.* An attorney seeking reinstatement under these circumstances "must demonstrate by clear and convincing evidence that the lawyer has the necessary competence, fitness, and character to practice law, and is current in Continuing Legal Education requirements." Prop. Rule 18(e)(3).

The Advisory Committee Report includes in its proposals a version of the Board Petition's requested amendments to Rule 18(c), granting the panel chair authority to conduct pre-hearing scheduling conferences and to issue a scheduling order with a date certain for the hearing to be held before the panel, and limiting modifications to the

schedule to situations in which good cause or, for late modifications, "exceptional circumstances" are shown. Prop. Rule 18(g)(2).

The Advisory Committee Report also proposes technical amendments regarding the parties' obligations to file, with us, exhibits received into evidence at the panel hearing and the Director's report of investigation, as well as the Director's obligation to notify us whether a briefing schedule is needed. *See* Prop. Rule 18(h).

Finally, the Advisory Committee Report recommends that its proposed changes to these rules be made effective upon adoption and applied to lawyers suspended on or after the effective date. Advisory Comm. Rep. at 36.

Public Comments

Most of the submitted public comments fully support the Advisory Committee Report's proposals related to these recommendations. *See* MSBA Cmt. at 1; Bd. Cmt. at 1–2, 3; OLPR Cmt. at 2. But the BLE does identify two rules provisions for which the BLE suggests an alternative to the proposed rules. *See* BLE Cmt. at 1–2.

First, the BLE points out that Proposed Rules 18(b)(2) and 18(c) link the fee assessed for reinstatement to the "same amount as that required by Rule 12(B), Rules for Admission to the Bar, timely filing." BLE Cmt. at 1; *see* Prop. Rules 18(b)(2), 18(c). The BLE points out that the fee assessed under Rule 12(B) is "the lowest application fee under the Board's rules," is typically assessed only against new law school graduates, and "does not cover the true costs of the examination and character and fitness investigation." BLE Cmt. at 1. The BLE also points out that other applicants must pay considerably higher fees, up to $1,150. *Id.*; *see* Rules 12(C), 12(F), Rules for Admission to the Bar.

And the BLE indicates that it anticipates making changes to the Rules of Admission to the Bar prior to July 2027. BLE Cmt. at 1. Accordingly, it would "recommend setting a specific fee amount for reinstatement … instead of tying the amount to the Rules for Admission to the Bar and would recommend that the Court set the fee closer to the admission on motion fee of $1150." *Id.*

In addition, the BLE notes that Proposed Rule 18(d) refers to application for admission to the bar following a revocation of conditional admission and directs that application "shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar." BLE Cmt. at 1–2; *see* Prop. Rule 18(d). But "Rule 16 does not contain a provision for reapplication," and therefore the BLE recommends that the reference to "Rule 16" be stricken. BLE Cmt. at 2.

Discussion - General

In general, the amendments to Rule 18, RLPR, proposed in the Advisory Committee Report, both carry out the instructions we provided in the Order on the ABA Report and address the requests for amendments in the Board Petition. With one exception—the details identified in the BLE Comment—no public commenter has objected to them. Accordingly, we will adopt them, as discussed further herein.

Specifically, the proposed rules implement our instructions to provide guidance on the specific materials to include with a reinstatement petition or affidavit, in part by explicitly incorporating the relevant legal standards for reinstatement by petition, including the moral change requirement; and in part by reference to the Director's Reinstatement Questionnaires. The amendments proposed in the Advisory Committee

Report also implement our instruction to change the presumption of eligibility for reinstatement by affidavit from 90 days to 180 days, but to exclude previously suspended lawyers from affidavit eligibility. The amendments remove the requirement for suspended lawyers to take the professional responsibility exam as a condition of reinstatement. And they provide timeframes during which an attorney may get a "head start" on reinstatement prior to the end of the suspension period, as well as requirements for the Director to state their position on reinstatement relatively early in the process. Finally, the proposed amendments implement the request in the Board Petition for the panel chair to have scheduling authority regarding reinstatement proceedings. And we agree with the Report that these amendments should be effective as soon as is practicable upon enactment and applied to lawyers suspended (or disbarred) on or after the effective date.

Discussion – BLE Comment

The BLE's suggestion that we revise the language of Proposed Rule 18(d) is well-taken: the BLE is correct that there is no provision in Rule 16, Rules for Admission to the Bar, that specifically addresses reapplication after revocation of conditional admission. Accordingly, we will make the following additional change as compared to the Advisory Committee's Proposed Rule 18(d):

* * *

(d) Application for Admission Following Revocation of Conditional Admission. Application for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to ~~Rule 16,~~the Rules for Admission to the Bar.

* * *

But we disagree with the suggestion by the BLE that we should reformulate the reinstatement fees charged under Proposed Rules 18(b)(2) and 18(c). The BLE's comment appears to provide two justifications to reformulate fees: the existing fee is not high enough, and future amendments to the Rules for Admission to the Bar might call into question a reference to the current rules. We find neither justification persuasive. And we are not willing to change the reinstatement fee based on rule amendments that otherwise have nothing to do with fees, and without meaningful opportunity for notice and comment. Accordingly, we decline to adopt the BLE's suggestion that we reformulate reinstatement fees at this time.

Discussion – Competence to Practice Law

As noted above, the proposed rules explain that an attorney seeking reinstatement by petition has the burden of proving by clear and convincing evidence the requirements for reinstatement. After the Advisory Committee filed its report, we issued our decision in *In re Selmer*, 19 N.W.3d 457 (Minn. 2025). In *Selmer*, we again addressed those requirements. *Id.* at 468–69. Referring to the requirement that an attorney be competent to practice law, we noted that although we had "often referred to this requirement as '*intellectual* competency to practice law[,]' … from this point forward we refer to this

element as 'competence to practice law.' " *id.* at 468 (citation omitted). The Rules should reflect our decision in *Selmer*. Accordingly, we will make the following additional change as compared to the Advisory Committee's Proposed Rule 18(e)(2)(ii):

* * *

(ii) That the lawyer has the ~~intellectual~~ competence to practice law; and

* * *

Discussion - Length of Suspensions and Twice-Suspended Attorneys

The current version of Rule 18 refers to a "fixed" period of suspension, and it uses that "fixed" period as part of the standard for determining whether, by default, an attorney will be able to seek reinstatement by affidavit. *See* Rule 18(f), RLPR (referring to "lawyers who have been suspended for a fixed period of" time as affidavit-eligible). The proposed language the Advisory Committee Report used to set the standard for default affidavit eligibility removes the language relating to "fixed" periods of time, explaining that the eligibility does not really depend upon whether a suspension period is "fixed." *See* Advisory Comm. Rep. at 34 n.17. The reasoning presented in the Advisory Committee Report is sound, and we endorse it. But the language proposed by the Advisory Committee may be ambiguous in certain circumstances, such as if we order an attorney to be suspended for a minimum period of time that would permit them to be affidavit-eligible, but the attorney does not promptly act to seek reinstatement during that time.

In addition, Proposed Rule 18(a) makes reinstatement by affidavit unavailable for attorneys who have previously been suspended. The clear intent of the proposed rules is

that such lawyers be required to petition for reinstatement. *See* Mem. on ABA Rep. at 22 (instructing that "a lawyer who has been suspended previously, for any period, will be required to petition for reinstatement"). But on its face, Proposed Rule 18(b) does not authorize these twice-suspended attorneys to seek reinstatement by petition unless their suspension is more than 180 days, which would mean that these lawyers would have no avenue for reinstatement.

Accordingly, we will make the following additional changes as compared to the Advisory Committee's Proposed Rules 18(a) and 18(b)(1):

* * *

(a) Reinstatement By Affidavit. Unless the Court orders otherwise when imposing discipline, a lawyer who has been ordered to be suspended ~~as a result of a disciplinary proceeding~~ for 180 days or less~~,~~ and who has not previously been subject to a disciplinary suspension ~~previously suspended,~~ may seek reinstatement by filing an affidavit with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(1) of this Rule have been satisfied, and serving a copy of the affidavit for reinstatement on the Director. Serving the affidavit by U.S. Mail or email is sufficient. Proof of service of the affidavit shall be filed with this Court.

(b) Reinstatement By Petition.

(1) Unless the Court orders otherwise when imposing discipline, a lawyer who has been disbarred, ~~or~~ who has been ordered to be suspended ~~as a result of a disciplinary proceeding~~ for longer than 180 days, or who has been subject to a previous disciplinary suspension, may seek reinstatement by filing a petition with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(2) of this Rule have been satisfied, and serving a copy of that petition on the Director. Serving the petition by U.S. Mail or email is sufficient. Proof of service of the petition shall be filed with this Court.

* * *

Discussion – Early Petition Filing for Disbarred Lawyers

Proposed Rule 18(e)(2) is applicable to both disbarred lawyers and to suspended lawyers who are required to petition for reinstatement. *See* Prop. Rule 18(b)(1) (authorizing reinstatement by petition). But Proposed Rule 18(e)(2) also includes provisions authorizing "early" filing of a petition for reinstatement before an applicable suspension period has expired: "A disbarred or suspended lawyer who files a petition for reinstatement under paragraph (b) of this rule may file the petition no sooner than 60 days before the end of the suspension period." Prop. Rule 18(e)(2). By its terms, this provision is applicable to disbarred lawyers; but disbarred lawyers have no "suspension period." Thus, it presents ambiguity whether it authorizes disbarred lawyers to ever file a petition for reinstatement.

Accordingly, we will make the following additional changes as compared to the Advisory Committee's Proposed Rule 18(e)(2):

* * *

(2) Reinstatement by petition. A ~~disbarred or~~ suspended lawyer who files a petition for reinstatement under paragraph (b) of this rule may file the petition no sooner than 60 days before the end of the suspension period. Any ~~The~~ petition for reinstatement filed under paragraph (b) of this rule by either a disbarred or suspended lawyer must state that the lawyer is prepared to demonstrate, by clear and convincing evidence, satisfaction of the requirements in this paragraph for reinstatement. Within 30 days after service of a petition that complies with paragraph (b) of this Rule, the Director shall file, and serve on the lawyer, a statement addressing whether the requested reinstatement is opposed. To be reinstated, a suspended or disbarred lawyer must prove by clear and convincing evidence:

* * *

Discussion – Technical Corrections

Proposed Rule 18(b)(2) refers to "Rule 12(B), Rules for Admission to the Bar," whereas Proposed Rule 18(c) refers to "Rule 12(b), Rules for Admission to the Bar," with a lower-case "(b)." The former is correct, as is reflected in the current version of Rule 18(a), RLPR. Accordingly, we will make the following additional change as compared to the Advisory Committee's Proposed Rule 18(c):

* * *

(c) Reinstatement Following Resignation from the Bar or Transfer to Disability Inactive Status. Application for reinstatement following resignation from the bar or transfer to disability inactive status under Rule 28 of these rules shall be made by petition filed with the Clerk of the Appellate Courts and serving a copy of the petition on the Director. Serving the petition by U.S. Mail is sufficient. Proof of service of the petition shall be filed with this Court. Together with the petition, the lawyer must pay to the Director a fee in the same amount as is required by Rule 12(B~~b~~), Rules for Admission to the Bar, for timely filings. The petition must include a statement confirming that the lawyer has obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Resignation Matters, or the Director's Reinstatement Questionnaire for Transfer from Disability Inactive Status.

* * *

Proposed Rule 18(e)(2)(i) sets out the factors that an attorney seeking reinstatement must prove to demonstrate moral change, and it sets out those factors in a list designated by lower-case Roman numerals: (i), (ii), (iii). But Proposed Rule 18(e)(2)(i) is itself designated by a lower-case Roman numeral. Accordingly, we will make the following additional changes as compared to the Advisory Committee's Proposed Rule 18(e)(2)(i):

* * *

(i) That the lawyer has undergone moral change, meaning that the lawyer must show (A~~i~~) remorse and acceptance of responsibility for the lawyer's misconduct; (B~~ii~~) a change in the lawyer's conduct and state of mind that corrects the underlying misconduct that led to the suspension or disbarment; and (C~~iii~~) a renewed commitment to the ethical practice of law; and

* * *

Finally, Proposed Rule 18(h) makes reference to proceedings "under Rule 14, except subdivision (f) will not apply." Elsewhere the Advisory Committee is recommending the deletion of Rule 14(f), and renumbering Rule 14(g) as 14(f). *See* Advisory Comm. Rep. at 68–69. And as discussed below, we are adopting that recommendation. Therefore, this exception should be deleted. Accordingly, we will make the following additional change as compared to the Advisory Committee's Proposed Rule 18(h):

* * *

(h) Proceedings Before the Court. ….

Unless the Court orders otherwise, a hearing will be held before this Court on the petition. Should this Court determine that further consideration on the petition is necessary, this Court may appoint a referee and the same procedure shall be followed as under Rule 14~~, except subdivision (f) will not apply~~.

* * *

Summary and Disposition

The amendments to Rule 18, RLPR, proposed in the Advisory Committee Report, both carry out the instructions we provided in the Order on the ABA Report and address the requests for amendments in the Board Petition. With the exceptions noted above, no

public commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.2. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to lawyers suspended or disbarred on or after the effective date.

III. Recommendation that a diversion program should be established and a new rule codified in the Rules on Lawyers Professional Responsibility to govern program requirements.

The ABA recommended that we adopt a diversion rule, providing structure for a diversion program that would provide alternatives to discipline for non-serious misconduct. ABA Rep. at 71–74. We adopted the ABA's recommendation to establish a diversion program, Mem. on ABA Rep. at 28, observing that such a program "would address isolated instances of nonserious misconduct, could eliminate the need for private probation, and could serve as an alternative to discipline by educating lawyers on proactively addressing situations to avoid conduct that can lead to misunderstandings or dissatisfaction." *Id.* at 27 (citation omitted).

The Proposals in the Advisory Committee Report

The Advisory Committee Report sets out an entire Proposed Rule 31, RLPR, regarding the diversion program. Proposed Rule 31 makes clear that diversion "is not a form of discipline," but is "intended as an alternative to a disciplinary sanction." Prop. Rule 31(a). It "is designed to primarily address isolated, non-serious, or less harmful misconduct where a lawyer may benefit from guidance to improve the lawyer's skills,

knowledge of the Rules of Professional Conduct, or to manage a behavioral health issue, including a mental health or substance use issue." *Id.* The rule sets forth eligibility standards for diversion that limit it to relatively unserious, less harmful, and non-repeated misconduct. *See* Prop. Rule 31(b). Entry into a diversion program requires participation in a diversion agreement, which must be in writing, and the permissible terms of which are set forth in Proposed Rule 31(c). Any complainant must be notified of a diversion agreement and provided a copy of it, subject to redaction to remove private, sensitive, or personal health information. Prop. Rule 31(c)(4). Entry into a diversion agreement, however, is not appealable by the complainant. Prop. Rule 31(c)(5).

Entry into a diversion agreement is not a finding of misconduct. Prop. Rule 31(d)(1). Entry into a diversion agreement temporarily closes the underlying disciplinary investigation, subject to reopening if the diversion agreement is not successfully completed. Prop. Rule 31(d)(2). Upon successful completion by the lawyer of a diversion agreement program, the Director must issue a determination that discipline is not warranted under Rule 8(d)(1), RLPR. Prop. Rule 31(d)(3). Such a determination by the Director is not appealable by the complainant. Prop. Rule 31(c)(5).

Files and records relating to diversion programs will be kept confidential to the same extent as records relating to advisory opinions and the monitoring of lawyers on probation. Prop. Rule 20(f). Under the Advisory Committee's proposal, records of diversion agreements will be destroyed five years after successful completion of the diversion agreement (as compared to three years for dismissed cases). Prop. Rule 20(e)(1).

The Advisory Committee Report further recommends that Rule 8(d)(3), RLPR, governing private probation, be maintained, at least for now, as an available tool for discipline while the diversion program is being brought up to speed. Advisory Comm. Rep. at 45. And the Report recommends that an effective date of at least six months after adoption be considered, in order to allow adequate time to develop multiple diversion-program options. *Id.* Finally, the Report recommends that the diversion program be subject to a thorough evaluation after two years in order to evaluate and adjust the program and its rules in light of experience. *Id.* at 46.

Public Comments

The public commenters who expressed an opinion unanimously endorse all aspects of the proposed diversion program except the record-retention provisions in Proposed Rule 20(e)(1). *See* MSBA Cmt. at 1; Bd. Cmt. at 1–2, 4–8; OLPR Cmt. at 2. But on those record-retention provisions, the commenters are sharply divided, with the Board supporting the proposal in the Advisory Committee Report for records of diversion agreements to be expunged and destroyed five years after successful completion of a diversion agreement, Bd. Cmt. at 5–8, and the Director advocating for records related to diversion agreements to be kept indefinitely. OLPR Cmt. at 2–5.

The positions of the Board and the Director largely parallel the positions taken in the Advisory Committee Report and the minority report related to diversion records, respectively. *See* Advisory Comm. Rep. at 44–45, 78–79. The OLPR maintains that "to appropriately exercise [the Director's] discretion to enter into a diversion agreement in lieu of discipline, [the Director] should have access to prior instances of diversion if they

exist." OLPR Cmt. at 2. The Director maintains that "it is material if a lawyer has completed diversion and encounters subsequent practice issues, whether the same or different ethics rules are involved, just as it is currently material whether a lawyer has prior discipline when new misconduct is encountered." *Id.* at 3. Generally, the Director takes the position that "[d]iversion is in lieu of discipline, but it is not a dismissal," *id.*, and recommends changes to Proposed Rules 31 and 20 that recharacterize "dismissal … following successful completion of a diversion agreement" as either *completion of a diversion agreement* or *closure of a file with a diversion agreement*. *Id.* at 4–5 (proposing modifications).

For its part, the Board emphasizes that under the proposals in the Advisory Committee Report, the Director will be able to maintain records for five years after the completion of a diversion program. Bd. Cmt. at 6. And it maintains that because diversion is not discipline, "[r]ecords of diversion participation … should not be treated like records of discipline cases." *Id.* In short, "[a] lawyer who successfully completes a diversion program should, at some point, be able to rest assured that the OLPR does not maintain a file on a long-ago alleged transgression that was not a violation of our ethics rules." *Id.*

Discussion - General

The proposal in the Advisory Committee Report to establish a diversion rule carries out the instructions we provided in the Order on the ABA Report. With the exception of the provisions related to record retention, no commenter has objected. Accordingly, we will adopt the proposed diversion rule, with the exceptions detailed

further herein. As to the Report's recommendation that the effective date be delayed by at least six months after adoption of the diversion rule, we agree that at least six months would be appropriate, as we discuss further below. And we agree with the recommendation in the Advisory Committee Report that we should revisit the program after two years of its operation.

Discussion – Record-Retention

As noted above, the Advisory Committee Report and the comments reflect a sharp difference of opinion about the appropriate treatment of records of a completed diversion program. In part, that difference of opinion reflects a disagreement about whether lawyers who have successfully completed a diversion program should be treated as having engaged in misconduct.

Diversion is explicitly intended to address "misconduct," *see* Prop. Rule 31(a)—"isolated, non-serious, or less harmful misconduct" to be sure, but misconduct, nonetheless. *Id.* Accordingly, the Board's position that "[a] lawyer who successfully completes a diversion program has not committed misconduct" is not quite accurate; what is true is that a lawyer who has successfully completed a diversion program has not been *adjudicated* to have committed misconduct, and the Director has (under Proposed Rule 31(d)(3)) issued a determination that discipline is not warranted. At the same time, the first sentence of Proposed Rule 31 states, "Diversion is not a form of discipline." Prop. Rule 31(a). Moreover, "[a]n admission of misconduct is not required as a condition of entry into or as a term of a diversion agreement," Prop. Rule 31(b)(3); "[e]ntry into a diversion agreement is not a finding of misconduct," Prop. Rule 31(d)(1); and a lawyer

subject to a diversion agreement "is not under investigation and is not subject to a disciplinary proceeding while the agreement is in effect." Prop. Rule 31(d)(2).

We agree with the Advisory Committee Report and the Board that it is likely an important goal for lawyers who enter into a diversion program that the conduct that led to their entry into a diversion program not be treated as misconduct—and in particular, that it not be viewed as enhancing the gravity of any future missteps that they may make. Accordingly, we will not adopt the OLPR's suggestions that we recharacterize dismissal following successful completion of a diversion agreement as a non-dismissal. But we likewise agree with the minority report, and the OLPR, that it is appropriate for the OLPR to be able to retain *some* record that a lawyer has entered into a diversion agreement, even following successful completion of that agreement. Specifically, we think it appropriate that the OLPR be able to retain a record of the fact that a lawyer was offered and accepted diversion, and the nature of the charge that led to the diversion agreement. The OLPR should also be able to retain a record that the lawyer successfully completed the diversion agreement. Knowing whether a lawyer previously participated in diversion and completed the program may assist the Director in determining whether diversion is appropriate for any subsequent disciplinary matter involving the same lawyer. To avoid ambiguity about what records may be retained relevant to the nature of the charge, we think it appropriate that the lawyer and OLPR should, by agreement, create a record specifically to be retained for this purpose. Accordingly, we will make the following additional changes as compared to the Advisory Committee's Proposed Rules 31 and 20(e)(1), RLPR:

* * *

RULE 20. CONFIDENTIALITY; EXPUNCTION.

…

(e) Expunction of Records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction Schedule. All records or other evidence of a dismissed complaint shall be destroyed three years after the dismissal, except that records of diversion agreements will be destroyed 5 years after successful completion of the diversion agreement, with the exceptions noted in Rule 31(c)(6);

…

RULE 31. DIVERSION

…

(c) Diversion Agreement.

…

(6) Record of Entry Into Diversion Agreement. At the time of entry into a diversion agreement, the lawyer and the Director together shall create, in a separate document from the diversion agreement, a record stating that the lawyer was offered and accepted diversion and describing the nature of the charge that led to the diversion agreement. This document need not contain all of the details that must be included in the written agreement of the diversion agreement under paragraph 31(c)(2). Upon successful completion by a lawyer of a diversion agreement, the Director shall create a record indicating that the diversion agreement was successfully completed. The records required to be created under this provision shall not be subject to destruction under Rule 20(e)(1).

* * *

Effective Date and Re-Evaluation

As discussed above, the Advisory Committee Report recommends that the effective date for the amendments creating a diversion program be delayed at least six months after adoption of the amendments, in order to allow adequate time to develop

multiple diversion-program options. We agree, but we believe that timeframe may still be insufficient. Accordingly, the amendments discussed herein will be effective 12 months from the date of this order.

The Report recommends that the diversion program be subject to a thorough evaluation after two years in order to evaluate and adjust the program and its rules in light of experience. We agree. Accordingly, we will order the Director and the Board to separately provide reports to us after two years regarding experience under the diversion program and recommendations regarding any modifications that they think advisable.

Summary and Disposition

The amendments adding a new Rule 31, RLPR, and modifying Rules 20(e)(1) and 20(f), RLPR, as proposed in the Advisory Committee Report, carry out the instructions we provided in the Order on the ABA Report. With the exceptions noted above, no commenter has objected to them. Accordingly, we will adopt the proposed amendments in part III.3. of the Advisory Committee Report, as further modified herein. These amendments will be effective on October 1, 2027. We will also order the OLPR and the Board to separately provide reports to us within three years of the date of this order, evaluating experience under the diversion program and making recommendations regarding any proposed changes.

IV. Recommendation that Rules 4 and 5, RLPR, should be amended to codify existing practices at the Board and changes the Board has implemented to its structure or responsibilities.

Rules 4 and 5, RLPR, describe the basic units of the attorney-discipline system in Minnesota: the composition, organization, and role of the Board; and the role of the

Director and the OLPR. The ABA made a number of recommendations regarding these rules, *see* ABA Rep. at 27–41, some of which we adopted. *See* Mem. on ABA Rep. at 3–6. Specifically, we adopted the ABA's recommendation to reduce the number of Board members appointed from MSBA nominees. *Id.* at 6. We also adopted the ABA's recommendation to eliminate a provision requiring the State Court Administrator and the Board to make recommendations concerning the continued service of the Director, and we adopted the ABA's recommendation to eliminate a provision that required the Director to obtain Board approval to hire new employees. *Id.* at 6 n.3. Indeed, we have already notified the Board and the Director that those two changes were effective immediately upon the issuance of our Order on the ABA Report, even prior to the promulgation of these rule amendments. *Id.*

The Board's Petition

The Board Petition requested several modifications to Rules 4 and 5. As to Rule 4, these included: removing the Board's duty to provide recommendations and guidance to the Director, Rule 4(c), RLPR; providing for the Board Chair to assign matters to panels randomly, rather than having the Director assign matters to panels in rotation, Rule 4(f), RLPR; and, in the rule setting forth the standard for recusal of a Board member, updating the cross-reference to the Code of Judicial Conduct, Rule 4(e), RLPR. *See* Bd. Pet. at 10 ¶ 28 & App. A at 3–4. As to Rule 5, the Board's requested amendments included: removing the requirement for input of the Board during evaluation of the Director, Rule 5(a), RLPR; and removing the requirement that the Board make a recommendation

on whether the Director should be reappointed, *id. See* Bd. Pet. at 10 ¶ 29 & App. A at 4. The Board Petition also requested other technical changes to reflect its existing practices.

The Proposals in the Advisory Committee Report

The Advisory Committee Report proposes a number of amendments to Rules 4 and 5, RLPR, implementing both our instructions and the Board's requests for amendments. The Advisory Committee Report recommends that these amendments be effective immediately upon enactment. Advisory Comm. Rep. at 49.

Public Comments

None of the submitted public comments object to any of the Advisory Committee Report's proposals related to these recommendations. *See* MSBA Cmt. at 1; Bd. Cmt. at 1–3; OLPR Cmt. at 2; BLE Cmt. at 1–3. The only comment that specifically addresses these proposals was the Board's, indicating that the adoption of its requested changes to Rules 4 and 5 would be "particularly helpful," and noting that these amendments "will mostly codify existing practice" as well as "further the goals the Court articulated in [previous] amendments to Rules 4 and 5 concerning separation between the Board and the OLPR and its Director." Bd. Cmt. at 2–3.

Discussion and Disposition

The amendments to Rules 4 and 5, RLPR, proposed in the Advisory Committee Report, both carry out the instructions we provided in the Order on the ABA Report and address the requests for amendments in the Board Petition. No commenter has objected to them. Accordingly, we will adopt the proposed amendments in part III.4. of the Advisory Committee Report. These amendments will be effective November 1, 2026.

V. Recommendation that Rules 6, 7, and 8, RLPR, should be amended to promote transparency and efficiency in the investigation process.

Rule 6, RLPR, addresses complaints of alleged attorney misconduct or disability, and Rules 7 and 8, RLPR, address investigations by a district ethics committee (DEC) and the Director. Under current rules, if a DEC investigates a complaint, it makes a report to the Director that contains a recommendation for the disposition of the complaint. Rule 7(b)–(c), RLPR. The Director is authorized to investigate, with or without a complaint. Rule 8(a), RLPR. Following every investigation, the Director determines a disposition. Rule 8(d), RLPR. The current dispositions are: (1) determining that discipline is not warranted; (2) issuing an admonition; (3) stipulated probation; (4) submission to a panel because the Director concludes public discipline is warranted; or (5) extending or modifying a conditional admission agreement. *Id*. A lawyer can demand that a panel consider the admonition de novo. Rule 8(d)(2)(iii). And a complainant who does not like the Director's disposition can appeal to a single Board member. Rule 8(e), RLPR.

The Proposals in the Advisory Committee Report

The Advisory Committee requests several modifications to Rules 6, 7, and 8, most of which are supported by all stakeholders. The Advisory Committee Report proposes that Rule 6(d) be modified to expressly give the lawyer an opportunity to respond to a complaint. Advisory Comm. Rep. at 54. The Advisory Committee also proposes that Rule 7(a) be modified, and Rule 8(a)(2) be added, to require that a response from the lawyer and any reply from the complainant be made in 14 days. *See id.* It further proposes the addition of a requirement to Rule 7(c) for the Director to notify the lawyer

of a DEC's recommendation following an investigation within 14 days of receipt of the DEC's report. *Id.* at 54–55. Finally, it proposes that Rules 8(a) and 8(e) be amended to eliminate the current requirement for Board approval of a Director-initiated investigation and to remove the authority of a Board member to require the Director to issue an admonition. *Id.* at 55. The Advisory Committee also proposes technical, non-substantive changes to Rules 6(a) and 8(b). *Id.* at 54.

The Advisory Committee also recommends adding to Rule 8(a) a 270-day deadline for the Director to complete an investigation and issue a disposition. *Id.* at 55–57. That recommendation is incorporated in Proposed Rules 8(a)(3)–(8). Under this proposal, delays caused by a lawyer's non-cooperation would not be included in this 270-day period. Prop. Rule 8(a)(3). In addition, the Board Chair would be authorized to extend the deadline, at up to 90-day intervals, for good cause, and the proposed rule contains a non-exclusive list of reasons that would establish good cause—all of which relate to the matter being investigated and not to the overall workload of the OLPR or the circumstances of a person conducting the investigation. Prop. Rules 8(a)(4), 8(a)(5)–(6). If the Board Chair denies a request for an extension, the Director would have 30 days to issue a disposition. Prop. Rule 8(a)(5)–(6). If the Director does not comply with these provisions, the Director would be required to issue a determination that discipline is not warranted, and the complainant could not appeal that determination. Prop. Rule 8(a)(7).

The Advisory Committee argues that a specific deadline for completing investigations and issuing dispositions should be added to "promote transparency and fairness, while encouraging efficiency and an appropriate allocation of resources."

Advisory Comm. Rep. at 55. It notes that a few states have specific deadlines for a complaint investigation. *Id.* The Advisory Committee acknowledges that "variables outside the Director's control may impact" the ability to meet the 270-day deadline, and for that reason, there is a provision allowing the deadline to be extended. *Id.* at 56. According to the Advisory Committee, "automatic dismissal" of a complaint would be a "rare consequence," occurring only when the Director does not receive an extension to complete the investigation. *Id.* at 56–57.

The Advisory Committee recognizes there are "competing considerations" about this recommendation. *Id.* at 56. For example, the OLPR's available resources impact how long it takes to complete an investigation, and the OLPR has other important responsibilities that are separate from investigating and prosecuting attorney discipline. *Id.* At the same time, the Advisory Committee contends that "open-ended" investigations create stress and uncertainty for both lawyers and complainants and could be seen as unfair. *Id.* In the end, the Advisory Committee believes "the system should change in order to attempt a better balance of these considerations." *Id.*

The Advisory Committee recommends that the proposed changes to Rules 6, 7, and 8 should go into effect 90 days after we adopt them and that they apply to complaints filed or investigations commenced on or after the effective date.

Public Comments and Minority Report

The commenters who expressed an opinion unanimously endorse these proposed changes, except for the 270-day deadline provisions in Proposed Rule 8(a)(3)-(8). *See*

MSBA Cmt. at 1; Bd. Cmt. at 8–9; OLPR Cmt. at 2. But on those deadline provisions, the commenters are sharply divided.

The Board supports these amendments. It agrees with the reasons provided by the Advisory Committee in support of the changes. Bd. Cmt. at 9. The Board also characterizes investigations of complaints as "open-ended, endless," and "essentially secret," and contends that they are "far outside the norm in other situations" because no statute of limitations applies in attorney discipline cases. *Id.* at 9–10. The Board asserts that "endless investigations" do not protect the public and that they harm lawyers, who can be negatively impacted by the fact they are "under investigation" even if the complaint is ultimately dismissed. *Id.* According to the Board, "[s]oft deadlines" are needed because the Director has never been able to comply with "the Court's goal of reducing the number of lengthy investigations," and instead the number of files that the Director has had open for more than one year without charges has been increasing in recent years. *Id.* at 11–12. The proposed changes, the Board argues, give the Director ample time to complete investigations, in part because periods of lawyer non-cooperation are excluded from the initial 270-day period, and provide flexibility by allowing deadlines to be extended. *Id.* at 13. The timelines should be mandatory to preclude "rogue Directors" who might be tempted to ignore them, the Board claims. *Id.*

The Board acknowledges that its members have divided views on this issue. *Id.* One member with experience as an investigator in another context disagrees "with the need for or wisdom of such timelines"; some members think the proposal does not sufficiently prioritize public protection; some members question the wisdom of having

the Board Chair involved in OLPR investigations; and some members think the lack of a definition of non-cooperation is problematic and could lead to inconsistent applications. *Id.* at 13–14. At the same time, some members strongly support the proposal. *Id.* at 14. And in the end, the Board contends that the "involvement of the Board Chair is not much different than the Chair's longstanding involvement in OLPR investigations via evaluating requests for investigative subpoenas." *Id.*

Two members of the Advisory Committee filed a minority report disagreeing with the proposal to add deadlines to Rule 8(a). Advisory Comm. Rep. at 80–81. In addition, the OLPR opposes these deadlines. OLPR Cmt. at 5–10. The opposition to the deadline proposal provides three primary reasons for its position. First, it argues that creating a deadline for investigations is inconsistent with what the ABA recommended and with what we previously ordered. Advisory Comm. Rep. at 80; OLPR Cmt. at 5–6. The ABA "urge[d] the Court not to incorporate time metrics or guidelines into" the RLPR and expressly disagreed with a rule that would require the dismissal of a complaint based on the failure to meet an investigation deadline. ABA Rep. at 52, 54. And we ordered the Director, along with State Court Administration, to "develop and make recommendations on case processing standards." Mem. on ABA Rep. at 34.

Second, the opposition contends the proposal is contrary to recent rule changes that have separated the OLPR from the Board. Advisory Comm. Rep. at 80–81; OLPR Cmt. at 7–8. Given the current resources of the OLPR, the opposition asserts that the Board Chair will have to make decisions in many investigations about whether the 270-day period should be extended and that there could easily be disagreements about

whether good cause exists and how factors unrelated to the specific investigation at hand should be considered when determining if good cause exists. OLPR Cmt. at 7–8. According to the opposition, giving the Board Chair this much involvement in the operations of the OLPR, especially when the Director has no ability to challenge a decision not to extend the deadline for good cause, is contrary to the recent rule changes that eliminated supervisory authority the Board had over the OLPR and the Director. *Id.*; Advisory Comm. Rep. at 80.

Third, the opposition argues that the proposed deadline is unrealistic and will not be met unless the OLPR is given additional resources, in the form of both personnel and technology, or other rules are changed. Advisory Comm. Rep. at 80–81; OLPR Cmt. at 8–9. The opposition acknowledges that the OLPR has "rarely if ever" met its goal of having no more than 100 cases open more than one year without charges. Advisory Comm. Rep. at 80; OLPR Cmt. at 8. Although the proposed rule changes will improve the Rules on Lawyers Professional Responsibility, the opposition contends that most of the proposed rule changes will not create efficiencies in the investigation process, aside from the new diversion program, and that the diversion program's actual efficiencies are unknown at this time. Advisory Comm. Rep. at 80–81; OLPR Cmt. at 9. In addition, the opposition contends that excluding periods of non-cooperation, especially when that term is not defined and lawyers can "weaponize" the time period by partial cooperation or numerous requests for extensions of time to respond, will not reduce the number of investigations that are likely to extend beyond 270 days. Advisory Comm. Rep. at 80–81; OLPR Cmt. at 10.

Discussion - General

With the exception of the proposed modifications to Rule 8(a) to add a 270-day deadline for action by the Director—discussed further below—the modifications proposed in the Advisory Committee Report to Rules 6, 7, and 8 carry out the instructions we provided in the Order on the ABA Report. Again with the exception of the provisions related to the 270-day deadline, no commenter has objected. Accordingly, we will adopt them, with the exceptions and modifications discussed further herein.

Discussion – Modifications to Rule 8(a) to Provide 270-Day Deadline

We decline at this time to adopt or reject the Advisory Committee's proposed changes to Rule 8(a) to add a 270-day deadline for the Director to complete an investigation and issue a disposition. Instead, we will defer consideration of those proposed changes for two years. We do so for three reasons.

First, if we were to adopt a deadline—with dismissal of an investigation as a consequence of failing to meet the deadline—we would put Minnesota in a very small minority of states. As the Advisory Committee acknowledges, only "[a] handful of states have specific deadlines for complaint investigations," and it cites rules from three states that have such deadlines. Advisory Comm. Rep. at 55 & 55 n.27 (citing rules from Connecticut, Maryland, and Ohio).[8] But it appears that none of these states require a complaint to be dismissed because of the failure to meet the deadline, although one has

[8] The Advisory Committee also cites to Mississippi, but that state's rules require investigations to be "expeditiously conducted" and do not contain explicit deadlines. R. of Discipline for Miss. St. Bar, R. 5.

this as a possible consequence. *See* Conn. R. Super. Ct. Gen. Rules, ch. 2, R. 2-32(j) (stating that if the investigation is not completed "within the time provided in this section, the Statewide Grievance Committee shall … order that the panel take action on the complaint forthwith, or order that the complaint be forwarded to and heard by another panel or a reviewing committee designated by the Statewide Grievance Committee"); Md. R. Attorneys, Rule 19-711(d) (stating that if the time requirements for an investigation are not complied with, "the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation")[9]; Ohio Sup. Ct. Rules Governing Bar Proc., R. 5, § 9(D)(2) (stating that the "[t]ime limits set forth in this rule are not jurisdictional" and that "[n]o investigation or complaint shall be dismissed unless it appears that there has been an unreasonable delay and that the rights of the respondent to have a fair hearing have been violated"). It therefore appears that adopting the Advisory Committee's proposed changes to Rule 8(a) would make Minnesota the *only* state where an attorney discipline complaint must be dismissed if an investigation is not completed within the timeframes established in the applicable rules.

Second, we are reluctant to impose what may be an unrealistic deadline on the OLPR, given its available resources[10] and other responsibilities. Timely completion of

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[9] In its report, the ABA stated that "[r]esearch did not reveal any instances where the Maryland Grievance Commission used [the dismissal] sanction." ABA Rep. at 54.

[10] The OLPR is funded primarily by annual license fees paid by Minnesota lawyers. Any substantial increase in resources available to the OLPR, for example to increase staffing, would therefore likely require an increase in attorney licensing fees.

investigations serves the interests of both the lawyers and complainants involved, as well as the public at large. But we are not persuaded that a deadline that may result in investigations being dismissed pursuant to Rule 8(d)(1), prior to completion of those investigations, will serve those interests. We observe that recent data suggest that the number of complaints received by the OLPR is at record highs and increasing.[11] We are reluctant to impose a deadline that would result in automatic dismissal of certain files without recognition of the limitations to which the OLPR is subject. And we are unconvinced that the opportunity to extend the 270-day deadline for good cause, and the inclusion of a provision mandating that delays caused by a respondent's non-cooperation will not count toward the 270-day deadline, would lead to automatic dismissal being a "rare consequence," as the Advisory Committee contends. Advisory Comm. Rep. at 56. In addition, we find persuasive the argument that the extent of any efficiencies created by the proposed rules changes is uncertain at this time. To be sure, our decision to adopt a diversion program, in the form recommended in the Advisory Committee Report, may lead to greater efficiencies in the OLPR's investigation of complaints once the diversion program is established. But the exact extent of those efficiencies is currently unknown, and in any event, there is likely to be a substantial delay before any such efficiencies are secured. Neither the Advisory Committee nor the Board suggested that other proposed

[11] *See* Annual Report of the Lawyers Professional Responsibility Board & Annual Report of the Office of Lawyers Professional Responsibility, No. ADM10-8042, at 1 (July 1, 2026) ("Complaint filings in 2025 were 1,572 compared to 1,278 in 2024, an approximate 23 percent increase. No year in the past 25 years saw more complaints. New complaints in 2026 are up seven percent year over year.").

changes to the rules in the Advisory Committee report would lead to improved efficiency in investigations.

Third, we believe that there is some merit to the concern expressed in the minority report and by the OLPR that the proposed changes may extend beyond the scope of our referral to the Advisory Committee. In our Memorandum, we adopted the ABA's recommendation to "establish[] deadlines in the rules for responses to inquiries from the Director" and "ask[ed] the Advisory Committee to recommend amendments to the rules that will establish response deadlines and promote transparency on the status of an investigation." Mem. on ABA Rep. at 7–9. A deadline for the Director to complete an investigation appears to address a somewhat different issue. Rather, goals or deadlines for completing investigations would seem more naturally to fall within the subject of case processing standards. *See* ABA Rep. at 52–54 (discussing, in connection with its recommendations concerning case processing standards, three states that have rules containing goals or deadlines for completing investigations of attorney misconduct complaints). Consistent with that distinction, we ordered the Director and State Court Administration—not the Advisory Committee—to "gather[] the information needed to develop and make recommendations on case processing standards." Mem. on ABA Rep. at 34.

Accordingly, we will decline to adopt the proposal to add deadlines to Rule 8(a) at this time. But we acknowledge the concerns that led to the proposal. In the Memorandum on the ABA Report, we recognized that "specific case processing standards should be developed and implemented, for fairness, to promote public trust and confidence, and to

provide a periodic review of the efficiency of the system." *Id.* As discussed above, at that time, we ordered the Director and State Court Administration to "gather[] the information needed to develop and make recommendations on case processing standards." *Id.* We have not yet received any recommendations pursuant to this instruction. Accordingly, we reiterate our previous order to the Director and State Court Administrator, and we will further require them to provide a report on their efforts within one year of the date of this order.

Therefore, although we decline at this time to adopt the proposal to add deadlines to Rule 8(a), we will defer action on this proposal for two years from the date of this order, rather than reject it. And we will order the OLPR and the Board to provide written reports on the progress of case disposition during the two-year period. After receiving those reports, we will take appropriate action. If necessary, at that time we may empanel an ad hoc committee to review the data provided by the OLPR and the Board and to provide updated recommendations.

Discussion – Effective Date

As noted above, the Advisory Committee recommends that their proposed changes to Rules 6, 7, and 8 go into effect 90 days after we adopt them and that they apply to complaints filed or investigations commenced on or after the effective date. The Advisory Committee explains that the 90-day period would "allow the Director and the District Ethics Committees to adjust internal practices and procedures to accommodate the new deadlines, specifically, the new response deadlines, Rules 6(d), 7(a), RLPR, the required notice to the respondent lawyer, Rule 7(c), RLPR, and the deadline for

completion of the Director's investigation, Rule 8(a), RLPR." Mem. on ABA Rep. at 57. Although we are not adopting, at this time, the deadline for completion of the Director's investigation recommended in Proposed Rule 8(a)(3)–(8), we agree that the 90-day period would be useful to allow the Director and the District Ethics Committees to accommodate the new response and notice deadlines that we do adopt. Accordingly, we agree that the amendments should be effective on January 1, 2027—approximately 90 days after adoption.

Summary and Disposition

With the exception of the proposed amendments adding Rule 8(a)(3)–(8), RLPR, the amendments to Rules 6, 7, and 8, RLPR, as proposed in the Advisory Committee Report, carry out the instructions we provided in the Order on the ABA Report, and no public commenter has objected to them. Accordingly, we will adopt the proposed amendments in part III.5. of the Advisory Committee Report, with the exception of the proposed amendments to add Rule 8(a)(3)–(8), RLPR. These amendments will be effective on January 1, 2027, and will apply to complaints filed or investigations commenced on or after the effective date.

Consideration of the proposed amendments adding Rule 8(a)(3)–(8), RLPR, will be deferred for a period of two years. We will order the OLPR and the Board to provide written reports on the progress of case disposition during the two-year period, prior to the end of the two-year period.

We will again order the OLPR to gather the information needed to develop and make recommendations on case processing standards, and we will further order the OLPR to provide a report on its efforts within one year of the date of this order.

VI. Recommendation that Rule 28, RLPR, should be amended to update the language and clarify the procedures for transfers to disability status.

Rule 28 addresses disability inactive status. In present form, it has a general standard for when a lawyer is disabled and should be transferred to disability inactive status. Rule 28(a), RLPR. It then contains subparts that address the immediate transfer to disability inactive status based on a finding of disability in another court proceeding, Rule 28(b), RLPR; procedures for when a lawyer raises a disability as a defense or as mitigation in a discipline matter, Rule 28(c), RLPR; the reinstatement of a lawyer who has been transferred to disability inactive status, Rule 28(d), RLPR; and procedures for other situations where we can transfer a lawyer to disability inactive status, Rule 28(e), RLPR.

We directed the Advisory Committee to review and make recommendations on updating or clarifying the language in Rule 28. Mem. on ABA Rep. at 31. We noted that in their comments to the ABA Report, the OLPR had proposed additional procedures for the proceedings authorized by Rule 28 and the MSBA had raised confidentiality concerns with respect to these types of proceedings. *Id.* We told the Advisory Committee to consider these issues when making its recommendations. *Id.*

The Proposals in the Advisory Committee Report

The Advisory Committee recommends changes to Rule 28 that are fully supported by the OLPR, the Board, and the MSBA. The proposed changes to Rule 28(a) update outdated and sometimes offensive language used in the definition of disabled lawyer. *See* Prop. Rule 28(a). They also add language to Rule 28(a) to distinguish between voluntary disability status, which a lawyer obtains through the Minnesota Office on Lawyer Registration, and disability inactive status, which is determined through a stipulation or an involuntary proceeding under Rule 28. *Id.* The proposed changes also narrow the Director's ability to act, requiring "the lawyer's disability [to] raise[] public protection issues." *Id.* The Advisory Committee indicates that this will mean that if a lawyer is not actively practicing but has a disability, that lawyer may not pose a risk to the public and action under Rule 28 may not be warranted. Advisory Comm. Rep. at 64.

Proposed Rule 28(b) adds a provision stating the effect of being transferred to disability inactive status—that the lawyer cannot practice law. Prop. Rule 28(b).

The proposals reorganize Rule 28 to have four sets of procedures related to a transfer to disability inactive status, which are all found in Rule 28(c): Proposed Rule 28(c)(1) addresses attorneys involved in non-disciplinary proceedings affecting competency, such as guardianships; Proposed Rule 28(c)(2) addresses attorneys who were transferred to disability inactive status in another jurisdiction; Proposed Rule 28(c)(3) addresses lawyers who the Director believes should be transferred to disability inactive status; and Proposed Rule 28(c)(4) addresses lawyers who raise disability as a defense or in mitigation during a disciplinary proceeding or investigation.

See Prop. Rule 28(c). The second category, addressing attorneys who were transferred to disability inactive status in another jurisdiction, is new. The other three categories take procedures currently found in Rule 28 and update them. *Compare* Rule 28(b), (c), (e), RLPR, *with* Prop. Rule 28(c).

In addition, Proposed Rule 28(e) addresses confidentiality. It calls for the parties to "work together to designate medical records as confidential" and for the Director to "seek such court orders as are necessary to protect against disclosure of the designated medical records of a lawyer." Prop. Rule 28(e).

Finally, the Advisory Committee proposes that the amendments to Rule 28 take effect immediately. Advisory Comm. Rep. at 65. Although much of the language is new, the Advisory Committee believes that the amendments reflect existing approaches and practices and can be applied to pending cases. *Id.*

Public Comments

One public comment was filed related to the proposed changes to Rule 28(a). The Minnesota State Board of Continuing Legal Education (CLE Board), which oversees the Rules of the Supreme Court on Lawyer Registration, notes one possible issue. BLE Cmt. at 3.[12] The first sentence in Proposed Rule 28(a) states: "Lawyers may voluntarily select inactive or permanent disability status through the Minnesota Lawyer Registration Office according to the Rules of the Supreme Court on Lawyer Registration." Prop. Rule 28(a).

[12] As noted above, Emily Eschweiler filed comments on behalf of the Minnesota Board of Law Examiners and the Minnesota State Board of Continuing Legal Education. We are citing to these as "BLE Cmt."

The CLE Board explains that there are actually three types of inactive status under the Rules of the Supreme Court on Lawyer Registration: inactive status, permanent disability status, and retired status.[13] BLE Cmt. at 3. It suggests clarifying the reference to the status that a lawyer may elect. *Id.*

Discussion - General

In general, the amendments to Rule 28, RLPR, proposed in the Advisory Committee Report, carry out the instructions we provided in the Order on the ABA Report. With one exception—the details identified in the CLE Board comment—no commenter has objected, or identified any other issue, with respect to them. Specifically, the new procedures for reciprocal transfers to disability inactive status are consistent with the procedures for reciprocal discipline found in Rule 12(d). And the proposed changes addressing procedures for the other three categories of cases reflect our current procedures and practices. We likewise agree with the Report that these amendments should be effective immediately upon enactment. Accordingly, we will adopt them, as discussed further herein.

Discussion – Inactive Statuses

The CLE Board is correct regarding the three types of inactive status under the Rules of the Supreme Court on Lawyer Registration. Accordingly, we will make the following additional change as compared to the Advisory Committee's Proposed Rule 28(a):

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[13] A lawyer on any of the inactive statuses is considered in good standing but may not practice law. *See* R. Sup. Ct. Lawyer Registration 2.B, 6–8.

* * *

(a) Scope of Rule and Standard for Transfer to Disability Inactive Status. Lawyers may voluntarily select inactive, ~~status~~ retired, or permanent disability status through the Minnesota Lawyer Registration Office according to the Rules of the Supreme Court on Lawyer Registration. For the purposes of this rule, the Director may proceed under this rule when a lawyer's disability raises public protection issues. A lawyer who has been judicially declared incompetent, is subject to a current order of commitment, is under guardianship, or whose physical, mental, or cognitive condition, including substance misuse, prevents the lawyer from fulfilling their professional obligations or defending a discipline proceeding is disabled, and may be involuntarily or by stipulation transferred to disability inactive status under this rule.

* * *

Summary and Disposition

The amendments to Rule 28, RLPR, proposed in the Advisory Committee Report, carry out the instructions we provided in the Order on the ABA Report. With the exception noted above, no commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.6. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to all cases pending on the effective date and all cases filed on or after the effective date.

VII. Recommendation that miscellaneous amendments should be made to update the Rules, conform the Rules to existing practices, and clarify procedures under the Rules.

The Advisory Committee Report made six separate recommendations for miscellaneous amendments to the Rules on Lawyers Professional Responsibility. In addressing the recommended proposals, we will continue to follow the structure of the

Advisory Committee Report, addressing each of the six recommendations in the Report, and in the same order.

A. Recommendation that Rule 11 should be amended to clarify the procedures for resigning from the Minnesota Bar.

Rule 11, RLPR, in its current form, acknowledges our authority to permit or prohibit a lawyer from resigning from the bar. Rule 11, RLPR. It also establishes procedures for a petition to resign, including service and filing requirements for a petition to resign and the Director's response to the petition. *Id.* Rule 11 does not expressly state when a lawyer is prohibited from resigning. *Id.*

We have addressed who may resign in our case law and practice. We "do[] not allow a lawyer to resign with charges pending." *In re Perez*, 688 N.W.2d 562, 567 (Minn. 2004). Lawyers cannot resign "when allegations of serious misconduct are pending because to do so 'would not serve the ends of justice nor deter others from legal misconduct.' " *In re Blomquist*, 958 N.W.2d 904, 911 (Minn. 2021) (quoting *In re McCoy*, 447 N.W.2d 887, 891 (Minn. 1989)) (rejecting lawyer's claim that disciplinary proceeding was moot because he wanted to resign from the bar). In instances where a lawyer attempts to resign while there is a pending disciplinary investigation, we have informed the lawyer that we would defer ruling on the petition to resign until the pending disciplinary investigation was resolved and that the lawyer could renew their request to resign if the investigation was resolved without a petition for disciplinary action.

The Proposals in the Advisory Committee Report

The Advisory Committee proposes several changes to Rule 11, which it intends to "codify and explain existing legal standards and [OLPR] practices." Advisory Comm. Rep. at 66. Among other things, the Advisory Committee recommends adding a legal standard for resignation. This standard would allow a lawyer "who is not suspended or disbarred in any jurisdiction" to resign if we grant their petition to resign. Prop. Rule 11. The Advisory Committee also proposes that, "[u]nless otherwise ordered by the court," a petition for resignation will not be granted in three circumstances: (1) while a lawyer is being investigated for misconduct, (2) if "charges of misconduct are pending that, if true, would warrant public discipline," or (3) if "the lawyer is not in good standing under the Rules for Admission to the Bar." *Id.* In addition, the Advisory Committee recommended updating the procedures that apply when a lawyer petitions to resign. Finally, the Advisory Committee recommends that the amendments should be effective immediately and should apply to petitions that are filed on or after the effective date. Advisory Comm. Rep. at 66.

Public Comments

The Board, the OLPR, and the CLE Board all filed public comments objecting to the final sentence of the Advisory Committee's proposed text for Rule 11 (involving circumstances in which we typically will not grant a petition for resignation). The CLE Board points out that the proposed amendments to Rule 11 refer to the Rules for Admission to the Bar when stating that unless we order otherwise, a petition to resign must not be granted if the lawyer is not in good standing. But the CLE Board points out

that the Rules for Admission to the Bar have no provision addressing when a lawyer is in good standing. Instead, "[g]ood [s]tanding is determined by the Lawyer Registration Office based on the lawyer's fee status, CLE status, and disciplinary status." BLE Cmt. at 2. The CLE Board suggests striking "under the Rules for Admission to the Bar" from the last sentence of the proposed amendments to Rule 11 and replacing it with "at the time of filing the petition with the Court." BLE Cmt. at 3. The OLPR concurs with this proposed change. OLPR Cmt. at 11 n.1.

The Board objects to a different part of the final sentence of Proposed Rule 11. Bd. Cmt. at 15. The Board agrees that Rule 11 should be amended to clarify that an attorney cannot resign while under investigation or while a petition for disciplinary action is pending. *Id.* "The Board disagrees, however, that a lawyer should not be able to resign 'when the lawyer is not in good standing under the Rules [of the Supreme Court on Lawyer Registration]." *Id.* (alteration in original).

According to the Board, this provision "unwisely and unjustly traps people into licensure they do not want or need." *Id.* The Board notes that a lawyer would not be in good standing if they had not paid their annual registration fee or had not complied with CLE requirements. R. Sup. Ct. Lawyer Registration 2.A, 2.B, 2.F. The goal of the CLE requirement—to ensure that practicing lawyers "can represent clients under modern conditions"—serves no purpose if a person wants to stop being a lawyer, the Board argues. Bd. Cmt. at 16. Because lawyer registration fees are forward-looking and allow a person to work as a lawyer during the ensuing year, the Board asserts that requiring the fee payment also serves no purpose if a person wants to stop being a lawyer. *Id.* at 17.

The Board further argues that this new provision is not supported by this court's case law, which does not prevent a person who is fee-suspended or CLE-suspended from resigning their law license. *Id.* at 18.

The CLE Board provides a reason why the prohibition on resigning when a lawyer is not in compliance with lawyer registration and CLE requirements might be added. BLE Cmt. at 2. According to the CLE Board, lawyers sometimes resign from the Minnesota bar without resolving their past-due lawyer registration fees or addressing their CLE obligations, but they may later seek to be admitted to practice in another jurisdiction and then need a certificate of good standing from Minnesota. *Id.* The CLE Board explains that these people cannot get a certificate of good standing because they were not in good standing when they resigned, and there is no provision in any rule that allows them to resolve these issues after they resign. *Id.* With the proposed rule change, lawyers would be required to resolve their registration-fee and CLE issues before being permitted to resign, or we could "waive this requirement in circumstances where warranted and the lawyer could be required to affirm that they understand the potential consequences," the CLE Board argues. *Id.* The need to be CLE compliant would also not "delay requests for resignation," the CLE Board asserts, because a lawyer would simply need to pay a fee to be transferred from involuntarily restricted CLE status (not in good standing) to voluntarily restricted CLE status (in good standing) and would not need to attend any CLE courses. *Id.* (citing R. Minn. St. Bd. Continuing Legal Educ. 12.E).

Discussion - General

In general, and with the exceptions we discuss below, the amendments to Rule 11, RLPR, proposed in the Advisory Committee Report, update terminology and clarify procedures under that Rule. Specifically, the new procedures largely codify and explain existing legal standards and practices. With the exceptions noted above, no commenter has objected, or identified any other issue, with respect to them. We likewise agree with the Report that these amendments should be effective immediately upon enactment. Accordingly, we will adopt them, with the exceptions noted further herein.

Discussion – Standard for Resignation

The proposal to expressly state in Rule 11 that unless we order otherwise, a petition to resign cannot be granted if the lawyer is the subject of a pending disciplinary investigation or pending disciplinary charges that would result in public discipline, is consistent with our case law and past practice. That is not true for the proposal to preclude lawyers from resigning if they are CLE- or fee-suspended. We routinely allow lawyers in these circumstances to resign. And we are persuaded by the Board's comment that precluding lawyers who are CLE- or fee-suspended from resigning would inappropriately prevent attorneys who no longer wish to be admitted to the bar in Minnesota from resigning. Although we recognize that lawyers who resign while CLE- or fee-suspended may experience the problems the CLE Board identifies, the Advisory Committee's proposal would not solve those problems. As the CLE Board explains it, the proposed prohibition would not really operate as a prohibition because lawyers in these circumstances could still resign as long as they attest they are aware of the consequences

of resigning while not in good standing. For these reasons, we will not include language in Rule 11 stating that a petition to resign shall not be granted when the lawyer is not in good standing under the Rules of the Supreme Court on Lawyer Registration.

Similarly, the first sentence of Proposed Rule 11 provides that "[a] lawyer who is not suspended or disbarred in any jurisdiction may resign." Prop. Rule 11. A lawyer who is CLE- or fee-suspended is "suspended … in any jurisdiction," namely Minnesota. To avoid confusion, Rule 11 should specify that the limitation on lawyers resigning while suspended applies only to disciplinary suspensions.

Accordingly, we will make the following additional changes to the Advisory Committee's Proposed Rule 11:

* * *

RULE 11. RESIGNATION

A lawyer who is not subject to a disciplinary suspension~~suspended~~ or disbarred in any jurisdiction may resign from the Minnesota bar by serving a copy of a~~the~~ petition to resign, substantially in the form provided by the Director, upon the Director and filing the petition, along with proof of the service, with the Court.

…

Unless otherwise ordered by the Court, no petition to resign from the Minnesota bar shall be granted while a lawyer is under investigation for misconduct or when one or more charges of misconduct are pending that, if true, would warrant public discipline~~, or when the lawyer is not in good standing under the Rules for Admission to the Bar~~.

* * *

Summary and Disposition

With the exceptions noted above, the amendments to Rule 11, RLPR, proposed in the Advisory Committee Report, update terminology and clarify procedures under that

Rule, as we provided in the Order on the ABA Report. With the exceptions noted above, no commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.7.a. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to petitions to resign that are filed on or after the effective date.

B. Recommendation that Rule 14 should be amended to eliminate the panel option for a discipline petition and update the language for proceedings before the supreme court.

The Proposals in the Advisory Committee Report

In the Memorandum on the ABA Report, we adopted the ABA's recommendation to eliminate the option to use a Board panel, rather than a referee, to conduct a hearing on a petition for disciplinary action. Mem. on ABA Rep. at 15 n.10. As a result, the Advisory Committee proposes deleting paragraph (f) of Rule 14, which contains this option. Advisory Comm. Rep. at 68.

In our order creating the Advisory Committee, we authorized the Advisory Committee to recommend "housekeeping amendments that, for efficiency and clarity purposes, should be made now." Appointment Order at 2. The Advisory Committee proposes housekeeping amendments to Rule 14(g), which addresses proceedings before us on a petition for disciplinary action. These changes are intended to eliminate obsolete language and reflect our current practices. Advisory Comm. Rep. at 68.

Public Comments

No public comments specifically addressed these proposed amendments.

Discussion

The Advisory Committee's proposed deletion of Rule 14(f) carries out our instruction in the Order on the ABA Report to eliminate the option to use a Board panel, rather than a referee, to conduct a hearing on a petition for disciplinary action.

In general, the Advisory Committee's proposed changes to Rule 14(g) carry out our instruction in the Order on the ABA Report to eliminate obsolete provisions related to colors for brief cover pages, and they substantially reflect our current practices. One recommended change, however, is not consistent with our current practices. And one important current practice has been omitted.

First, the Advisory Committee proposes that a briefing order state whether oral argument will be held. This is not uniformly consistent with our existing practice, because we do not always have sufficient information when we issue those orders to make this determination. For example, whether the lawyer files a brief may affect whether oral argument is held. Accordingly, we will revise the proposed rule to eliminate this requirement from briefing orders. In addition, the current practice is for the Director to make a recommendation on which party should file the first brief when the Director informs us that a briefing order is needed. We lack sufficient information to make this determination on our own in all cases. Accordingly, we will revise the proposed rule to add language requiring the Director to make a recommendation as to which party should file the first brief, along with an explanation for the recommendation.

In addition, we will make two additional changes to Rule 14. First, Rule 14(g) does not contain provisions about brief length and format, and instead our briefing orders typically state that Minnesota Rule of Civil Appellate Procedure 132, which addresses these topics, applies. We will therefore make further changes to Rule 14(g) stating that to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the length and formatting of briefs. Second, there is no rule that allows for motions before us in any type of proceeding filed under the Rules on Lawyers Professional Responsibility, but motions are regularly filed in these cases. We will therefore add a subpart to Rule 14 explaining that the provisions of the Rules of Civil Appellate Procedure governing motions apply to these proceedings.

Accordingly, we will make the following additional changes to the Advisory Committee's Proposed Rule 14:

* * *

(f) Motions before the Supreme Court. In any proceeding filed with the Court under these rules, Rule 127 of the Minnesota Rules of Civil Appellate Procedure governs motions filed with the Court, unless the Court orders otherwise.

(fg) Proceedings Before the Supreme Court. Unless the Court orders otherwise, within 30~~thirty~~ days after the referee's findings, conclusions and recommendations are filed, the Director must notify the Court, by a written request filed with the Clerk of Appellate Courts, whether a transcript has been ordered under paragraph (e) of this Rule and if so, whether appropriate financial arrangements for the transcript have been made. The Director must also make a recommendation about which party should be ordered to file the first brief and provide an explanation for that recommendation. The Court shall issue an order establishing a briefing schedule~~ and stating whether oral arguments will be held~~. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the length and formatting of briefs. The Court shall notify the parties whether oral

argument will be held. The matter shall be considered and decided upon the record, briefs, and if ordered, oral arguments.

* * *

The Advisory Committee recommends making its proposed amendments effective immediately and that they apply to all cases pending on or filed on or after the effective date. Advisory Comm. Rep. at 68. We are not aware of any panel acting in place of a referee, which means deleting former paragraph (f) will not impact any pending cases. The other proposed changes conform to current practices, and thus we will adopt the recommendation that they can take effect promptly.

Summary and Disposition

With the exceptions noted above, the Advisory Committee's proposed changes are generally consistent with our instructions in the Order on the ABA Report. No commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.7.b. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to all cases pending on or filed on or after the effective date.

C. Recommendation that Rule 19 should be amended to clarify the admissibility of evidence of prior misconduct.

We directed the Advisory Committee to review and propose amendments to Rule 19, which addresses the admissibility of prior disciplinary charges. Mem. on ABA Rep. at 31. The ABA had noted that sub-paragraphs (1) and (2) of Rule 19(b) seemed inconsistent. ABA Rep. at 70.

The Proposals in the Advisory Committee Report

After reviewing Rule 19, the Advisory Committee agrees with the ABA's assessment and proposes that the appropriate fix is to delete paragraph (b)(2) in its entirety. Advisory Comm. Rep. at 69. Because the Advisory Committee is not aware of a recent case in which Rule 19(b) was at issue and is not aware of a pending case in which this rule has been asserted, it recommends making the amendment effective immediately and that it apply to all cases pending on or filed on or after the effective date. *Id.*

Public Comments

No public comments specifically addressed this proposed amendment.

Discussion and Disposition

We agree with the Advisory Committee's proposed solution to the inconsistency identified by the ABA, and no commenter has objected to that solution. We likewise agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.7.c. of the Advisory Committee Report. These amendments will be effective on November 1, 2026, and applied to all cases pending on or filed on or after the effective date.

D. Recommendation that Rule 24 should be amended to clarify the procedures for taxing costs and disbursements.

The Proposals in the Advisory Committee Report

Consistent with our instructions to make recommendations for updating or clarifying Rule 24, which addresses costs and disbursements, *see* Mem. on ABA Rep. at

31, the Advisory Committee recommends several amendments to Rule 24. The Advisory Committee suggests we retain language in Rule 24 allowing a lawyer to tax costs and disbursements, but that we clarify that a lawyer may do so only when the lawyer totally prevails and we determine that no discipline is warranted. Advisory Comm. Rep. at 70. This will prevent a lawyer from seeking costs and disbursements when they prevail on some, but not all, of the charges in a petition for discipline. *Id.* The Advisory Committee also proposes non-substantive or technical amendments, such as consistently using "lawyer" throughout this rule. *Id.* at 71. The Advisory Committee suggests these amendments be made effective immediately and apply to cases pending on or filed on or after the effective date. *Id.*

Public Comments

No public comments specifically addressed these proposed amendments.

Discussion - General

In general, the Advisory Committee's proposed changes to Rule 24 carry out our instructions in the Order on the ABA Report. And no commenter has objected to them. We also agree with the Advisory Committee that these should be made effective promptly.

Discussion – Prevailing Party

We agree with the Advisory Committee's evident intent to clarify that the Director may tax costs and disbursements when discipline is imposed or conditional admission is revoked and that a respondent lawyer may tax costs and disbursements only when we conclude that no discipline is warranted. But we are concerned that by removing the

phrase "prevailing party" from Rule 24(a) and 24(b), the proposed amendments may create ambiguity. Under the proposed amendments, it is not clear who can tax costs and disbursements in the circumstances identified in the rule. We will therefore make additional amendments to clarify the proposed amendments to Rule 24(a) and 24(b) by expressly stating the circumstances in which the Director, or the lawyer, may tax costs and disbursements. Specifically, we will make the following additional changes to the Advisory Committee's Proposed Rule 24:

* * *

(a) Costs. Unless this Court orders otherwise, the Director in any proceeding decided by this Court ~~under these rules~~ in which discipline is imposed~~,~~ or conditional admission is revoked, or the lawyer in any proceeding in which this Court concludes that no discipline is warranted, shall recover costs in the amount of $900 ~~shall be recovered~~.

(b) Disbursements. Unless this Court orders otherwise, the Director in any proceeding decided by this Court in which discipline is imposed~~,~~ or conditional admission is revoked, or the lawyer in any proceeding in which this Court concludes that no discipline is warranted, shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12 ~~may be recovered~~. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court, together with those which are normally recoverable by the prevailing party in civil actions in the district court.

* * *

Summary and Disposition

With the modifications noted above, the Advisory Committee's proposed changes are generally consistent with our instructions in the Order on the ABA Report. No commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly,

we will adopt the proposed amendments in part III.7.d. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to all cases pending on or filed on or after the effective date.

E. Recommendation that Rule 15 should be amended to include possible conditions for public probation.

The ABA made recommendations on probation that we adopted "in one narrow aspect." Mem. on ABA Rep. at 33. Specifically, we acknowledged that transparency and accountability would be promoted if specific terms for public probation were included in a rule, but we also recognized the need for flexibility to impose terms of probation that are tailored to a particular case. *Id.* We asked the Advisory Committee to provide "input on probation terms that would benefit from codification in a governing rule." *Id.* We stated that we would then determine if a rule could be created to "guide the decision to impose public probation under specific terms and conditions" based on the facts and circumstances of a particular case. *Id.* at 34.

The Proposals in the Advisory Committee Report

The Advisory Committee proposes a reorganization of the dispositions listed in Rule 15(a) so that the specific discipline sanctions are first, followed by additional terms that are tailored to a specific case, and concluding with a reference to our general discretion to "make such other disposition as this Court deems appropriate." Prop. Rule 15(a). For the subpart addressing probation, the Advisory Committee recommends including a nonexclusive list of commonly imposed probation terms and monitoring terms. Advisory Comm. Rep. at 72. This list includes passing the Multistate Professional

Responsibility Examination (MPRE) within a specified period of time. Prop. Rule 15(a). The Advisory Committee acknowledges that we decided to eliminate the requirement currently found in Rule 18(e)(3), RLPR, for a suspended lawyer to pass the MPRE, either in order to be reinstated (if they have to petition for reinstatement) or within one-year of their suspension order (if they are reinstated by affidavit). Advisory Comm. Rep. at 72 n.32 (citing Mem. on ABA Rep. at 18 n.11). But the Advisory Committee notes that we did not suggest that the requirement to pass the MPRE had to be removed from Rule 15 as a possible disposition in a discipline case. *Id.* The Advisory Committee proposes that a subpart be added stating that the lawyer may be ordered to pay restitution. *Id.* at 73. Finally, the Advisory Committee proposes some technical, housekeeping amendments, such as putting all the references to costs and disbursements in one subpart. *Id.* Because none of these provisions change the law, the Advisory Committee recommends that they be effective immediately and that they apply to cases pending on or filed on or after the effective date. *Id.*

Public Comments

No public comments specifically addressed these proposed amendments.

Discussion and Disposition

We agree with the Advisory Committee's proposed reorganization of the dispositions listed in Rule 15(a), which are consistent with our case law and practices, and no commenter has objected. We likewise agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.7.e. of the Advisory

Committee Report. These amendments will be effective on November 1, 2026, and applied to all cases pending on or filed on or after the effective date.

F. Recommendation that the time-computation rule from the Minnesota Rules of Civil Procedure should be incorporated into the Rules on Lawyers Professional Responsibility.

The Proposals in the Advisory Committee Report

Because many of the Rules on Lawyers Professional Responsibility use time periods measured in days for certain events—as do our orders and opinions in discipline cases—the Advisory Committee believes it would be beneficial to have a specific statement on time computation, similar to that used in other court rules. Advisory Comm. Rep. at 74. The Advisory Committee proposes that Rule 1 be amended to incorporate the time computation standard from the Rules of Civil Procedure in a new Rule 1(13). *Id.*; Prop. Rule 1(13). It recommends that this amendment be effective immediately, and apply "to pending investigations, cases, and complaints, and public discipline cases filed on or after" the effective date. Advisory Comm. Rep. at 74.

Public Comments

No public comments specifically addressed this proposed amendment.

Discussion

We agree that it is helpful to provide a method for computing applicable periods of time in attorney discipline matters, and that Minn. R. Civ. P. 6.01 is a good method to use, in general, in attorney discipline matters. And we agree that this is an amendment that can be made effective promptly.

But there is one instance in which using Minn. R. Civ. P. 6.01 is problematic. Under Minn. R. Civ. P. 6.01, a period of time is extended if it would end on a Saturday, Sunday, or legal holiday. This is sound when computing how long a lawyer has to file an answer or a party has to file a brief because the period of time is extended to the benefit of the party who needs to take action. But as proposed, the new rule would also apply to suspensions, because the length of a suspension is a "period of time prescribed by order of the court." This method of computing time, however, is inappropriate when determining how long a suspension should last because it would cause a suspension to be longer than we ordered, to the detriment of the lawyer. We will therefore modify this proposed amendment to indicate that the last day of a suspension will not be extended pursuant to Minn. R. Civ. P. 6.01(a)(1)(C) if that day is a Saturday, Sunday, or legal holiday.

Specifically, we will make the following additional changes to the Advisory Committee's Proposed Rule 1(13):

* * *

(13) In computing any period of time prescribed or allowed by these rules or order of court, the method of computation specified in Rule 6.01, Minnesota Rules of Civil Procedure, shall be used, except that the last day of a suspension ordered by the Court will not be extended pursuant to Minn. R. Civ. P. 6.01(a)(1)(C) if that day is a Saturday, Sunday, or legal holiday.

* * *

Summary and Disposition

With the modifications noted above, the Advisory Committee's proposed changes are sensible and consistent with our instructions in the Order on the ABA Report. No

commenter has objected to them. And we agree with the Report that it is appropriate to make these amendments effective as soon as is practicable upon enactment. Accordingly, we will adopt the proposed amendments in part III.7.f. of the Advisory Committee Report, as further modified herein. These amendments will be effective on November 1, 2026, and applied to all investigations, cases, complaints, and public discipline cases pending, or commenced or filed, on or after the effective date.

VIII. Recommendation that amendments should be made to other rules to conform to the changes recommended here.

The Proposals in the Advisory Committee Report

The Advisory Committee Report identifies provisions that it recommends be amended to conform their language to the other amendments it proposes. Advisory Comm. Rep. at 74. These proposed amendments to Rules 6Z, 8, 20, and 21, RLPR, involve (1) changing "probable cause" to "reasonable cause" and updating the rule references to a "reasonable cause" determination, and (2) "adding provisions regarding the proposed diversion program for consistency in treatment" in the rules addressing confidentiality and immunity. Advisory Comm. Rep. at 74–75; Prop. Rules 6Z, 8, 20, 21. The Committee recommends that the amendments related to "reasonable cause" be effective immediately but that the amendments related to the diversion program have the effective date adopted for the diversion program. Advisory Comm. Rep. at 75.

Public Comments

No public comments specifically addressed these proposed amendments.

Discussion and Disposition

Given our decision to adopt the proposed amendments to Rules 1 and 9, RLPR, and to adopt proposed new Rule 31, RLPR, these additional proposed amendments are appropriate. Accordingly, we will adopt the proposed amendments in part III.8. of the Advisory Committee Report. The amendments to Rules 6Z, 20(a), and 20(c) will be effective on November 1, 2026, and applied to proceedings initiated before a panel, and to complaints received, on or after that date. The amendments to Rules 8(d)(6), 20(b)(5), and 21(b) will be effective on October 1, 2027.

* * *

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules on Lawyers Professional Responsibility (RLPR) are hereby adopted. The Advisory Committee comments are included with the rules for convenience and do not reflect court approval of the comments.

2. The amendments to Rules 1(3)-(12) and Rule 9, RLPR, are effective on November 1, 2026, and will apply to proceedings initiated before a panel, and to complaints received, on or after that date.

3. The amendment adding Rule 1(13), RLPR, is effective on November 1, 2026, and will apply to all investigations, cases, complaints, and public discipline cases pending, or commenced or filed, on or after the effective date.

4. The amendments to Rules 4 and 5, RLPR, are effective on November 1, 2026.

5. The amendments to Rules 6, 7, and 8, RLPR, with the exception of the amendment adding Rule 8(d)(6), RLPR, are effective January 1, 2027, and will apply to complaints filed, or investigations commenced, on or after the effective date.

6. Consideration of the proposal in the Advisory Committee Report to adopt Proposed Rules 8(a)(3)–(8) is deferred for two years. Within one year of the date of this order, the OLPR must file a report on its efforts to develop and make recommendations on specific case processing standards. Within two years of the date of this order, the OLPR and the Board must separately file reports on the progress of case disposition during the two-year period.

7. The amendments to Rules 6Z, 20(a), and 20(c), RLPR, are effective on November 1, 2026, and will apply to proceedings brought before a panel on or after that date.

8. The amendment adding Rule 8(d)(6), RLPR, and the amendments to Rules 20(b)(5) and 21(b), RLPR, are effective on October 1, 2027.

9. The amendments to Rule 11, RLPR, are effective on November 1, 2026, and will apply to all petitions to resign that are filed on or after the effective date.

10. The amendments to Rule 14, RLPR, are effective on November 1, 2026, and will apply to all cases pending on, or filed on or after, the effective date.

11. The amendments to Rule 15, RLPR, are effective on November 1, 2026, and will apply to all cases pending on, or filed on or after, the effective date.

12. The amendments to Rule 18, RLPR, are effective on November 1, 2026, and will apply to lawyers suspended or disbarred on or after that date.

13. The amendments to Rule 19, RLPR, are effective on November 1, 2026, and will apply to all cases pending on, or filed on or after, the effective date.

14. The amendments to Rule 24, RLPR, are effective on November 1, 2026, and will apply to all cases pending on, or filed on or after, the effective date.

15. The amendments to Rule 28, RLPR, are effective on November 1, 2026, and will apply to all cases pending on, or filed on or after, the effective date.

16. The amendments adding Rule 31, RLPR, and modifying Rules 20(e)(1) and 20(f), are effective on October 1, 2027.

17. Within three years of the date of this order, the OLPR and the Board must separately file reports evaluating experience under the diversion program created in Rule 31, RLPR, and making recommendations regarding any proposed changes.

Dated: September 30, 2026

BY THE COURT:



Natalie E. Hudson
Chief Justice

AMENDMENTS TO THE RULES ON
LAWYERS PROFESSIONAL RESPONSIBILITY

[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

RULE 1. DEFINITIONS

As used in these Rules:

* * *

(3) "Count" means an alleged course of unprofessional conduct, designated as such in the Director's Charges of Unprofessional Conduct, and alleged to have violated one or more rules of professional conduct.

(43) "Executive Committee" means the committee appointed by the Chair under Rule 4(d).

(54) "Director" means the Director of the Office of Lawyers Professional Responsibility.
(65) "District Bar Association" includes the Range Bar Association.

(76) "District Chair" means the Chair of a District Bar Association's Ethics Committee.

(87) "District Committee" means a District Bar Association's Ethics Committee.

(98) "Notify" means to give ~~personal~~ notice a) ~~or to mail~~ by U.S. Mail or email to the person at the person's last known street address or email address; b) by U.S. Mail or email to the person ~~or the~~ at the street address or email address maintained in ~~on~~ this Court's attorney registration records; or c)~~, or~~ by U.S. Mail or email to the person's attorney if the person is represented by counsel.

(109) "Panel" means a panel of the Board as further described in Rule 4(e).

(11) "Panel Chair" means the chair of a Panel assigned to a matter.

(12) "Reasonable Cause" means facts sufficient to allow a person of ordinary care and prudence to believe that the alleged misconduct occurred.

(13) In computing any period of time prescribed or allowed by these rules or order of court, the method of computation specified in Rule 6.01, Minnesota Rules of Civil

Procedure, shall be used, except that the last day of a suspension ordered by the Court will not be extended pursuant to Minn. R. Civ. P. 6.01(a)(1)(C) if that day is a Saturday, Sunday, or legal holiday.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) Composition. The Board shall consist of:

* * *

(2) Thirteen lawyers having their principal office in this state, one~~six~~ of whom the Minnesota State Bar Association may nominate, and nine nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms ~~shall~~may be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. * * *

* * *

(c) Duties. The Board is responsible for administering these rules, and for establishing the policies that govern the lawyer discipline system and disability system~~, and for providing recommendations and guidance to the Director regarding the operations of the Office of Lawyers Professional Responsibility~~. The Board may, from time to time, issue opinions on questions of professional conduct. The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system. The ~~Board~~ Chair may ~~elect~~ appoint a Vice-Chair and specify the Vice-Chair's duties. Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause.

(d) Executive Committee. The Executive Committee, consisting of the Chair, and ~~two~~ one lawyer~~s~~ and ~~two~~ one nonlawyer~~s~~ designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules. The Executive Committee shall act on behalf of the Board between Board meetings. ~~If requested by the~~ The Executive Committee~~, it~~ shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(e) Panels. The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-Chair for each Panel. Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned to a matter in which disqualification would be required of a judge under ~~Canon 3~~ Rule 2.11 of the Code of Judicial Conduct. The Board's Chair or the Vice-

Chair may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board, excluding members of the Executive Committee.

(f) Assignment to Panels. The ~~Director~~ Chair shall assign matters to Panels ~~in rotation~~ randomly. The Executive Committee may, however, redistribute case assignments to balance workloads among the Panels, appoint substitute panel members to utilize Board member or District Committee member expertise, and assign appeals of multiple admonitions issued to the same lawyer to the same Panel for hearing.

* * *

RULE 5. DIRECTOR

(a) Appointment. The Director is an employee of the Judicial Branch, appointed by and serving at the pleasure of this Court. The State Court Administrator will evaluate the Director's performance~~, with input from the Board,~~ annually or at such other times as this Court directs. ~~Every 2 years the State Court Administrator and the Board shall make recommendations to this Court concerning the continuing service of the Director.~~

(b) Duties. The Director is responsible for the day-to-day operations of the Office of Lawyers Professional Responsibility, shall supervise the employees of that Office, shall prepare and submit to the ~~Board~~ Court an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the ~~Board as the Board or this Court through the Board~~ Court that it may require the Director to provide.

(c) Employees. The Director ~~when authorized by the Board~~ may employ, on behalf of this Court, persons at such compensation as the ~~Board shall recommend and as this~~ Court may approve.

(d) Client Security Board Services. Subject to the approval of this court, ~~the Client Security Board and the Lawyers Board,~~ the Director may provide staff investigative and other services to the Client Security Board. Compensation for such services may be paid by the Client Security Board to the Director's office upon such terms as are approved by the ~~Lawyers Board~~ Court and the Client Security Board. ~~The Lawyers Board and the Client Security Board may also establish further terms for the provision by the Director of such services.~~

RULE 6. COMPLAINTS

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability that are investigated shall be investigated pursuant to these Rules. No District Committee investigator shall investigate a matter in which disqualification would be required of a judge under ~~Canon 3~~ Rule 2.11 of the Code of Judicial Conduct. No employee of the ~~office~~ Office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under ~~Canon 3~~ Rule 2.11 of the Code of Judicial Conduct.

* * *

(d) ~~Opportunity~~ Time to ~~r~~Respond ~~to statements~~. The District Committee or the Director's Office shall afford the respondent an opportunity to respond to the complaint, and the complainant an opportunity to reply to the lawyer's response to the complaint. Any such response or reply must be provided to the District Committee or the Director within 14 days after the date of a written notice that requests a response or reply, unless an extension is granted in writing by the District Committee Investigator or the Director. If the notice and request for a response or reply is sent to the respondent or the complainant by United States Mail, 3 days shall be added to the response period.

RULE 6Z. COMPLAINTS INVOLVING JUDGES

* * *

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

* * *

(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If ~~probable~~ reasonable cause has been determined under Rule 9(a)~~(j)(ii)~~ of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) Assignment; Assistance. The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the Director's assistance in making the investigation. The investigation may be conducted by means of written and telephonic communication and personal interviews. Any response to

a request for information or a reply to a response must be provided within the time established by Rule 6(d) of these Rules.

* * *

(c) Time. The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the ~~90 day~~90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association. The Director shall notify the respondent of the District Committee's recommendation within 14 days of receipt of the Committee's report and recommendation.

* * *

RULE 8. DIRECTOR'S INVESTIGATION

(a) ~~Initiating~~ Investigation.

(1) At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers~~; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee~~.

(2) Any response to a request for information or a reply to a response must be provided within the time established by Rule 6(d) of these Rules.

(b) Complaints ~~by Criminal Defendants~~ Against Court-Appointed Counsel. No investigation shall commence on a complaint by or on behalf of a party represented by court-appointed counsel, insofar as the complaint against the court-appointed attorney alleges incompetent representation by the attorney in the pending matter. * * *

* * *

(d) Disposition.

* * *

(3) Stipulated Probation.

(i) In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and that a private probation is appropriate, and the Board Chair or Vice-Chair approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chair or Vice-Chair's approval, the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair ~~chosen in rotation~~, file a petition for disciplinary action under Rule 12. A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

* * *

(6) If, in a matter, with or without a complaint, the Director determines that diversion under Rule 31 of these Rules is appropriate, the Director shall proceed as provided in that rule.

(e) Review by Lawyers Board. If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2), or (3), the complainant may appeal the matter by notifying the Director in writing within 14~~fourteen~~ days. The Director shall notify the ~~lawyer~~ Chair of the appeal and the Chair shall assign the matter by rotation to a ~~board~~ member of the Board, other than an Executive Committee member~~, appointed by the Chair~~. The reviewing Board member may:

(1) approve the Director's disposition; or

(2) direct that further investigation be undertaken; or

~~(3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or~~

(3~~4~~) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

RULE 9. PANEL PROCEEDINGS

~~(a) Charges~~Public Discipline. If a ~~the~~ matter is ~~to be~~ submitted to a Panel under Rule 8(d)(4)(i) or (iii) of these rules, it ~~the matter~~ shall proceed as follows:

(1) The Director shall prepare ~~c~~Charges of ~~u~~Unprofessional ~~c~~Conduct, request a Panel assignment from the Board Chair~~assign them to a Panel by rotation~~, and notify the lawyer of the Charges~~, the name, address, and telephone number of the Panel Chair and Vice Chair,~~ and ~~the provisions of~~ this Rule. Within 14 days after being ~~the lawyer is~~ notified of the Charges, the lawyer shall submit ~~an answer to the Charges~~ to the Panel ~~Chair~~ and the Director an Answer that admits, denies, or otherwise responds to each allegation in the Charges~~and may submit a request that the Panel conduct a hearing~~. Within 10~~ten~~ days after the lawyer submits an A~~a~~nswer, the Director and the lawyer may submit to the Panel and the opposing party memoranda with affidavits or ~~and~~ other documents that~~in~~ support or refute the Director's ~~of their positions~~allegations. Submissions shall be made pursuant to the Director's instructions.

(2) Within 40 days after the lawyer is notified of the Charges, t~~T~~he Panel shall determine if reasonable cause as defined in Rule 1(12) exists based on the Charges, Answer, and other documents submitted. Absent exceptional circumstances, the Panel shall make its determination without oral argument or an evidentiary hearing. A request for an evidentiary hearing or oral argument must be made in the Answer and include evidence or information supporting the assertion of exceptional circumstances. If the Panel grants a request for oral argument or an evidentiary hearing under this paragraph, the Panel shall issue an order setting the date of the argument or hearing and the procedures governing the proceeding. ~~shall make a determination in accordance with paragraph (j) within 40 days after the lawyer is notified of the Charges based on the documents submitted by the Director and the lawyer, except in its discretion, the Panel may hear oral argument or conduct a hearing. If the Panel orders a hearing, the matter shall proceed in accordance with subdivisions (b) through (i). If the Panel does not order a hearing, subdivisions (b) through (i) do not apply.~~

(3) The Panel shall issue a written decision setting forth a reasonable cause determination or no reasonable cause determination as to each count in the Charges. A determination of reasonable cause or no reasonable cause is not a decision on the merits and does not involve the weighing of contrary evidence. The Panel shall instruct the Director to file in this Court a petition for disciplinary action for each count on which it finds reasonable cause. ~~The Panel Chair may extend the time periods provided in this subdivision for good cause.~~

(4) If the Panel (i) finds by clear and convincing evidence that misconduct occurred, and (ii) determines that all such misconduct is isolated and non-serious, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel finds reasonable cause that any count in the Charges alleges serious or non-isolated misconduct, it shall not issue an admonition as to any other count in the Charges.

(b) Revocation of Conditional Admission. If the Director determines under Rule 8(d)(4)(iv) of these rules that a matter will be submitted to a Panel, the matter will proceed as set forth in subdivision (a)(1)-(3) of this rule, except if the Panel finds reasonable cause, the Panel shall instruct the Director to file a Petition for Revocation of Conditional Admission. ~~**Setting Pre Hearing Meeting.** If the Panel orders a hearing, the Director shall notify the lawyer of:~~

~~(1) The time and place of the pre-hearing meeting; and~~

~~(2) The lawyer's obligation to appear at the time set unless the meeting is rescheduled by agreement of the parties or by order of the Panel Chair or Vice-Chair.~~

~~**(c) Request for Admission.** Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing meeting or within ten days thereafter. The Rules of Civil Procedure for the District Courts applicable to requests for admissions govern, except that the time for answers or objections is ten days and the Panel Chair or Vice-Chair shall rule upon any objections. If a party fails to admit, the Panel may award expenses as permitted by the Rules of Civil Procedure for District Courts.~~

~~**(d) Deposition.** Either party may take a deposition as provided by the Rules of Civil Procedure for the District Courts. A deposition under this Rule may be taken before the pre-hearing meeting or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by number or randomly selected initials in any District Court proceedings.~~

~~**(c) Pre hearing Meeting.** The Director and the lawyer shall attend a pre hearing meeting. At the meeting:~~

~~(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing; and~~

~~(2) Each party shall mark and provide the other party with a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Civil Procedure for the District Courts. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel's permission.~~

~~**(f) Setting Panel Hearing.** Promptly after the pre hearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:~~

~~(1) The time and place of the hearing;~~

~~(2) The lawyer's right to be heard at the hearing; and~~

~~(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by agreement of the parties or by order of the Panel Chair or Vice Chair. The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, and of the prehearing statement. Each party shall provide to each Panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the prehearing meeting, unless the parties agree otherwise or the Panel Chair or Vice Chair orders to the contrary.~~

(c) Admonition Appeal. When the Director issues an admonition under Rule 8(d)(2) of these rules, and the lawyer makes a demand under Rule 8(d)(2)(iii), the matter shall proceed as follows:

(1) The Director shall prepare Charges of Unprofessional Conduct, request a Panel assignment from the Board Chair, and notify the lawyer of the Charges and this Rule. Within 14 days after being notified of the Charges, the lawyer shall submit to the Panel and the Director an Answer that admits, denies, or otherwise responds to each allegation in the Charges, and explains the reasons the admonition is unwarranted.

(2) Within 14 days after the lawyer's Answer is submitted, the parties must confer to identify mutually agreeable dates, which are not later than 120 days after the lawyer's Answer is submitted, when the parties, their counsel, and any witnesses authorized under subdivision (c)(4) of this Rule will be available for a hearing before the

Panel, and when the parties will exchange exhibits and make written submissions to the Panel. The written submission must be made at least 10 days before the hearing. At the same conference, the parties must confer regarding the need for and proposed use of any discovery. The Director shall then promptly notify the Panel Chair of the mutually agreeable hearing dates, the schedule for the exchange of exhibits and written submissions, and any discovery agreements. Once the Panel has selected a hearing date, the Panel Chair shall issue a Scheduling Order reflecting the date exhibits will be exchanged and written submissions are due, the hearing date, and any discovery agreements.

(3) If the parties cannot agree on a matter concerning discovery, they shall submit their disagreement in writing to the Panel Chair, who will resolve the matter without oral argument. Absent exceptional circumstances, no interrogatories, requests for admissions, or expert depositions will be allowed. Except as modified herein, the Minnesota Rules of Civil Procedure applicable to discovery shall govern, except that the time for answers or objections is 10 days and the Panel Chair or Panel Vice-Chair shall rule upon any objections or requests for extensions of time. The District Court of Ramsey County shall have jurisdiction to issue subpoenas for depositions and testimony at Panel hearings, and to rule on motions arising from depositions. The lawyer shall be denominated by randomly selected initials in any District Court proceedings.

(4) The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for live testimony by: (i) the lawyer; (ii) a complainant or client of the lawyer if different; and (iii) a witness whose testimony the Panel Chair or Vice-Chair has authorized for good cause.

If live testimony is authorized, it shall be subject to cross-examination and the Minnesota Rules of Evidence. A party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Minnesota Rules of Civil Procedure. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by randomly selected initials in any District Court proceedings.

(5) The Panel shall affirm the admonition if it (i) finds by clear and convincing evidence that the lawyer engaged in the alleged unprofessional conduct and (ii) determines that the conduct is isolated and non-serious. If the Panel does not find by clear and convincing evidence that the lawyer engaged in unprofessional conduct, then the Panel shall reverse the admonition. If the Panel finds reasonable cause to believe that public discipline is warranted, the Panel shall reverse the admonition and instruct the Director to file a petition for disciplinary action in this Court.

(d) Extensions. The Panel Chair may extend the time periods provided in this Rule for good cause.

(eg) Referee Appointment~~Probable Cause Hearing~~. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, due to~~because of~~ exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct the proceedings authorized by this Rule ~~a probable cause hearing~~ acting as a Panel would under this Rule. ~~, or~~ The Court may also remand the matter to a Panel under this Rule with instructions~~,~~ or ~~the Court~~ may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a District Court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is reasonable ~~probable~~ cause ~~as to any charge and a petition for disciplinary action is filed in this Court~~, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the ~~probable~~ cause proceeding~~hearing~~, the referee's determination from that proceeding ~~a transcript of that hearing~~ shall be made part of the public record.

~~**(h) Form of Evidence at Panel Hearing.** The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:~~

~~(1) The lawyer;~~

~~(2) A complainant who affirmatively desires to attend; and~~

~~(3) A witness whose testimony the Panel Chair or Vice Chair authorized for good cause. If testimony is authorized, it shall be subject to cross examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by number or randomly selected initials in any district court proceedings.~~

~~**(i) Procedure at Panel Hearing.** Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:~~

~~(1) The Chair shall explain the purpose of the hearing, which is:~~

~~(i) to determine whether there is probable cause to believe that public discipline is warranted, and the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause;~~

(ii) if an admonition has been issued under Rule 8(d)(2) or 8(e), to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court; or

(iii) to determine whether there is probable cause to believe that a conditional admission agreement has been violated, thereby warranting revocation of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

(7) The Panel shall either recess to deliberate or take the matter under advisement.

(j) Disposition. The Panel shall make one of the following determinations:

(1) In the case of charges of unprofessional conduct, the Panel shall:

(i) determine that there is not probable cause to believe that public discipline is warranted, or that there is not probable cause to believe that revocation of a conditional admission is warranted;

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition;

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and nonserious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition.

~~If the Panel issues an admonition based on the parties' submissions without a hearing, the lawyer shall have the right to a hearing de novo before a different Panel. If the Panel issues an admonition following a hearing, the lawyer shall have the right to appeal in accordance with Rule 9(m); or~~

~~(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.~~

~~(2) If the Panel held a hearing on a lawyer's appeal of an admonition that was issued under Rule 8(d)(2), or issued by another panel without a hearing, the Panel shall affirm or reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.~~

(f~~k~~) Notice of Disposition~~Notification~~. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, ~~that has the complaint,~~ of the Panel's disposition under this Rule. ~~The~~ A notice ~~notification~~ to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (g~~l~~) of this Rule. If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (h~~m~~) of this Rule.

(g~~l~~) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the complainant may within ~~14~~ 30 days after the date of the Director's notice under subdivision (f) of this Rule file with the Clerk of the Appellate Courts a petition for review. The complainant shall, prior to or at the time of filing, serve a copy of the petition for review upon the lawyer ~~respondent~~ and the Director and ~~shall~~ file an affidavit of service with the Clerk of the Appellate Courts. The lawyer~~respondent~~ shall be denominated by ~~number or~~ randomly selected initials in the proceeding, which shall be captioned "In re Panel Proceeding Number []" and reference the Director's file number for the matter. This Court will grant review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the filing of a petition for disciplinary action or a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

(h~~m~~) Lawyer's ~~Respondent's~~ Appeal to Supreme Court. The lawyer may appeal a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal, with proof of service, with the Clerk of the Appellate Courts and by serving a copy on the Director within 30 days after the date of the Director's notice

under subdivision (f) of this Rule~~being notified of the Panel's action~~. The lawyer ~~respondent~~ shall be denominated by ~~number or~~ randomly selected initials in the proceeding, which shall be captioned "In re Panel Proceeding Number []" and reference the Director's file number for the matter. The Director shall notify the complainant, if any, of the lawyer's ~~respondent's~~ appeal. This Court may review the matter on the existing record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, ~~the~~ this Court may either affirm the decision or make such other disposition as it deems appropriate.

(~~i~~n) Manner of Recording. When a hearing is held under this Rule, an official court record by ~~The Director shall arrange for~~ a court reporter shall be made ~~to make a record of the proceedings~~ as in civil cases.

~~**(o) Panel Chair Authority**. Requests or disputes arising under this Rule before the Panel hearing commences may be determined by the Panel Chair or Vice Chair. For good cause shown, the Panel Chair or Vice Chair may shorten or enlarge time periods for discovery under this Rule.~~

2024 Advisory Committee Comment

The amendments adopted on [date] require a Panel acting under subdivision (a) of this rule to make a cause determination based on "reasonable cause", which is now defined in Rule 1(12), RLPR. Previously, Rule 9 used "probable cause" as the standard for the panel's determination, and "probable cause" was undefined in the rules. The two standards have been interpreted similarly, with reasonable cause used more often in the civil context. *See Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 406 (Minn. 1998) (noting in the context of a civil action under the Vulnerable Adults Act that "reasonable cause" means "probable cause" in a criminal case, and the terms have been used synonymously); *State v. Childs*, 269 N.W.2d 25, 27 (Minn. 1978) ("Reasonable cause is, of course, synonymous with probable cause."); *In re Schultz*, 375 N.W.2d 509, 513 (Minn. App. 1985) (applying a probable cause standard in a dental discipline matter).

RULE 11. RESIGNATION

A lawyer who is not subject to a disciplinary suspension or disbarred in any jurisdiction may resign from the Minnesota bar by serving a copy of a petition to resign, substantially in the form provided by the Director, upon the Director and filing the petition, along with proof of the service, with the Court.

The~~is~~ Director shall notify the Court, in writing, of any objections to the petition within 14 days after service of the petition. The Court will consider the Director's objections, if any, to the petition and may at any time, ~~with or without hearing and~~ with any conditions it may deem appropriate, grant or deny the ~~a~~ lawyer's petition to resign from the bar. The Court may also submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

Unless otherwise ordered by the Court, no petition to resign from the Minnesota bar shall be granted while a lawyer is under investigation for misconduct, when one or more charges of misconduct are pending that, if true, would warrant public discipline.

~~A copy of a lawyer's petition to resign from the bar shall be served upon the Director. The petition with proof of service shall be filed with this Court. If the Director does not object to the petition, the Director shall promptly advise the Court. If the Director objects, the Director shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.~~

Advisory Committee Comment

The 2024 amendment to Rule 11 clarifies the existing practice that resignation while under investigation is typically not allowed, and encompasses the standard expressed in other cases. *See In re Mose*, 993 N.W.2d 251, 264 n.12 (Minn. 2023) (stating that a lawyer is not allowed to resign when allegations of serious misconduct are pending or when the lawyer is not in good standing); *In re Jones*, 383 N.W.2d 303, 307 (Minn. 1986) (stating that a lawyer is not allowed to resign when allegations of misconduct that would warrant public discipline are pending).

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

* * *

~~**(f) Panel as Referee.** Upon written agreement of an attorney, the Panel Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).~~

(f) Motions before the Supreme Court. In any proceeding filed with the Court under these rules, Rule 127 of the Minnesota Rules of Civil Appellate Procedure governs motions filed with the Court, unless the Court orders otherwise.

(g) ~~Hearing~~ Proceedings Before the Supreme Court. Unless the Court orders otherwise, ~~This Court~~ within 30~~thirty~~ days after ~~of~~ the referee's findings, conclusions and recommendations~~,~~ are filed, the Director must notify the Court, by a written request filed with the Clerk of Appellate Courts, whether a transcript has been ordered under paragraph (e) of this Rule and if so, whether appropriate financial arrangements for the transcript have been made. The Director must also make a recommendation about which party should be ordered to file the first brief and provide an explanation for that recommendation. The Court shall issue an order establishing a briefing schedule. ~~set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray.~~ To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the length and formatting of briefs. The Court shall notify the parties whether oral argument will be held. The matter shall be considered and decided ~~heard~~ upon the record, briefs, and if ordered, oral arguments~~.~~

* * *

RULE 15. DISPOSITION~~; PROTECTION OF CLIENTS~~

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend the lawyer indefinitely or for a stated period of time;

(3) ~~Order the lawyer to pay costs;~~ Reprimand the lawyer;

(4) Place the lawyer on probation, either supervised or unsupervised, ~~probationary status~~ for a stated period ~~of time~~ or until further order of this Court~~, with such conditions as this Court may specify and to be supervised by the Director;~~. Among other terms, probation terms may include requirements for law office management assistance, continuing legal education courses, trust account education, ethics education, successful completion within a specified time of the written examination required for applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility, participation in a lawyer assistance program, assessment of and treatment for medical or behavioral health issues including mental health and substance

use issues, verified attendance at abstinence recovery meetings, self-assessments, and mentorship;

~~(5) Reprimand the lawyer;~~

(5) Issue a private admonition or dismiss the petition for disciplinary action, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed;

~~(6) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;~~

(6) Order the lawyer to pay restitution;

~~(7) Make such other disposition as this Court deems appropriate;~~

(7)~~(8)~~ Order ~~Require~~ the lawyer to pay costs and disbursements~~;~~ pursuant to Rule 24 of these rules. In ~~in~~ addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees;

~~(9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed; or~~

(8)~~(10)~~ Revoke, modify, or extend a conditional admission agreement~~.~~, or dismiss a petition for revocation of conditional admission; or

(9) Make such other disposition as this Court deems appropriate.

RULE 18. REINSTATEMENT

(a) ~~Petition for~~ Reinstatement By Affidavit. Unless the Court orders otherwise when imposing discipline, a lawyer who has been ordered to be suspended for 180 days or less and who has not previously been subject to a disciplinary suspension may seek reinstatement by filing an affidavit with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(1) of this Rule have been satisfied, and serving ~~A copy of~~ a copy of the affidavit ~~a petition~~ for reinstatement ~~to practice law shall be served upon~~ the Director. Serving the affidavit by U.S. Mail or email is sufficient. ~~The petition, with~~ Pproof of service of the affidavit~~,~~ shall ~~then~~ be filed with this Court. ~~Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall~~

~~pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings. Applications for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.~~

(b) ~~Investigation; Report.~~Reinstatement By Petition.

(1) Unless the Court orders otherwise when imposing discipline, a lawyer who has been disbarred, who has been ordered to be suspended for longer than 180 days, or who has been subject to a previous disciplinary suspension, may seek reinstatement by filing a petition with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(2) of this Rule have been satisfied, and serving a copy of that petition on the Director. Serving the petition by U.S. Mail or email is sufficient. Proof of service of the petition shall be filed with this Court.

(2) Together with the petition, the lawyer must pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings.

(3) The petition must include a statement confirming that the lawyer has obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Discipline Matters.

(c) Reinstatement Following Resignation from the Bar or Transfer to Disability Inactive Status. Application for reinstatement following resignation from the bar or transfer to disability inactive status under Rule 28 of these rules shall be made by petition filed with the Clerk of the Appellate Courts and serving a copy of the petition on the Director. Serving the petition by U.S. Mail is sufficient. Proof of service of the petition shall be filed with this Court. Together with the petition, the lawyer must pay to the Director a fee in the same amount as is required by Rule 12(B), Rules for Admission to the Bar, for timely filings. The petition must include a statement confirming that the lawyer has obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Resignation Matters, or the Director's Reinstatement Questionnaire for Transfer from Disability Inactive Status.

(d) Application for Admission Following Revocation of Conditional Admission. Application for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to the Rules for Admission to the Bar.

(e) General Requirements for Reinstatement.

(1) Reinstatement by affidavit. An affidavit for reinstatement filed under paragraph (a) of this rule must demonstrate that the suspended lawyer has complied with

Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. The affidavit for reinstatement may be filed no sooner than 14 days before the suspension period ends. Within 7 days after service of an affidavit that complies with the requirements of this paragraph, the Director shall file, and serve on the lawyer, a statement that addresses the lawyer's requested reinstatement including the compliance or lack thereof with the requirements for reinstatement, along with a proposed order. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

(2) Reinstatement by petition. A suspended lawyer who files a petition for reinstatement under paragraph (b) of this rule may file the petition no sooner than 60 days before the end of the suspension period. Any petition for reinstatement filed under paragraph (b) of this rule by either a disbarred or suspended lawyer must state that the lawyer is prepared to demonstrate, by clear and convincing evidence, satisfaction of the requirements in this paragraph for reinstatement. Within 30 days after service of a petition that complies with paragraph (b) of this Rule, the Director shall file, and serve on the lawyer, a statement addressing whether the requested reinstatement is opposed. To be reinstated, a suspended or disbarred lawyer must prove by clear and convincing evidence:

(i) That the lawyer has undergone moral change, meaning that the lawyer must show (A) remorse and acceptance of responsibility for the lawyer's misconduct; (B) a change in the lawyer's conduct and state of mind that corrects the underlying misconduct that led to the suspension or disbarment; and (C) a renewed commitment to the ethical practice of law; and

(ii) That the lawyer has the competence to practice law; and

(iii) That the lawyer has complied with the conditions of suspension or disbarment imposed by the court; and

(iv) That the lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with the requirements of this Rule 18.

(3) Reinstatement following Resignation or Transfer to Disability Inactive Status. A petition for reinstatement following resignation from the bar or transfer to disability inactive status under Rule 28 of these rules, filed under paragraph (c) of this rule, must demonstrate by clear and convincing evidence that the lawyer has the necessary competence, fitness, and character to practice law and is current in Continuing Legal Education requirements.

(4) Additional Requirement for Reinstatement after Disbarment. Unless such examination is specifically waived by this Court, no lawyer, after having been

disbarred by this Court, may petition for reinstatement until the lawyer has successfully completed and has a valid score on such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(5) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following disbarment, suspension, resignation, or transfer to disability inactive status under Rule 28 of these rules until the lawyer has satisfied any subrogation claim against the lawyer by the Client Security Board.

(f) Investigation of Petitions; Report.

(1) The Director shall publish an announcement of a~~the~~ petition for reinstatement in a publication of general statewide circulation to attorneys, soliciting comments regarding the appropriateness of the petitioner's reinstatement. Any comments made in response to such a solicitation shall be absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person making the statement.

(2) The Director shall investigate the petition for reinstatement. The Director shall meet with the lawyer and disclose the results of the Director's investigation, before ~~and~~ reporting the Director's investigation and conclusions to a Panel. The Director's Report of the investigation shall be filed with the Court following the conclusion of the Panel proceedings.

~~(c)~~(g) ~~Recommendation~~Proceedings Before the Panel.

(1) Upon the Clerk of the Appellate Court's docketing of a petition for reinstatement and assignment of a court file number, the Director shall provide notice to the Board Chair of the petition. The Board Chair shall assign the matter to a Panel and provide notice to the Director and petitioner of the assignment.

(2) Following receipt of the required statement from the Director under paragraph (e)(2) of this rule, the Panel Chair shall notify the petitioner and the Director of the date for a pre-hearing scheduling conference. Prior to the scheduling conference, petitioner and the Director shall confer to identify mutually agreeable dates when the parties, their counsel, if any, and their witnesses will be available for a hearing before the Panel, and when the parties will make written submissions to the Panel. The Panel Chair shall issue a scheduling order with a date certain for the hearing to be held before the Panel, and for any further pre-hearing conferences as the Panel Chair deems necessary for the fair and efficient disposition of the petition. The Scheduling Order may be modified for good cause shown upon motion made orally or in writing more than 30 days before the date of the panel hearing. Any motion to modify the scheduling order that is made less than 30 days before the panel hearing may only be granted upon a showing of exceptional circumstances or to prevent a manifest injustice.

(3) The Panel shall conduct a hearing on a petition for reinstatement filed under paragraphs (b) (c) of this rule. The Panel may waive the hearing for a petition for reinstatement filed under paragraph (c) of this rule. The Panel ~~may conduct a hearing and~~ shall make its findings of fact, conclusions, and recommendations, which ~~. The recommendations~~ shall be served upon the petitioner and the Director, and filed with this Court. Unless the petitioner or Director, within 10~~ten~~ days of the date of service, orders a transcript and so notifies this Court as set forth in paragraph (h), the Panel's findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions.

(h) Proceedings Before the Court. A party ordering a transcript of the proceedings before the Panel shall, within 10~~ten~~ days of the date the transcript is ordered, file with the clerk of the appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one for the petitioner and one for the Director. Failure to timely confirm that satisfactory financial arrangements have been made for the transcription shall result in the Panel's findings of fact and conclusions being deemed conclusive. No later than the time for filing the certificate as to transcript referenced in this rule, or if no transcript is ordered, promptly upon the conclusion of the 10-day period referenced in this rule, each party shall file with the Clerk of Appellate Courts the exhibits received into evidence at the Panel hearing, and the Director's Report of Investigation referenced in paragraph (f). At the same time, the Director shall also notify the Court, by a written request filed with the Clerk of Appellate Courts, whether a briefing schedule is needed. The Court shall issue an order notifying the parties of the briefing schedule. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions, and recommendations that are disputed.

~~(d) Hearing Before Court.~~Unless the Court orders otherwise, ~~There shall be~~ a hearing will be held before this Court on the petition ~~unless otherwise ordered by this Court~~. Should this Court determine that further consideration on the petition is necessary, this Court may appoint a referee and the same procedure shall be followed as under Rule 14~~, except subdivision (f) will not apply~~.

~~(e) General Requirements for Reinstatement.~~

~~(1) Unless such examination is specifically waived by this Court, no lawyer, after having been disbarred by this Court, may petition for reinstatement until the lawyer~~

shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(2) No lawyer ordered reinstated to the practice of law after having been suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of ninety (90) days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's resignation, suspension, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (1) the requirements imposed under the rules for Continuing Legal Education on members of the bar as a condition to a change from a restricted to an active status and (2) any subrogation claim against the lawyer by the Client Security Board.

(f) Reinstatement by Affidavit. Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of ninety (90) days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

* * *

(b) Disciplinary Proceedings.

(1) Conduct Previously Considered And Investigated Where Discipline Was Not Warranted. Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings, is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct, the cumulative effect of which constitutes an ethical violation~~, except as provided in subsection (b)(2)~~.

~~(2) **Conduct Previously Considered Where No Investigation Was Taken And Discipline Was Not Warranted.** Conduct in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings which was not investigated, is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.~~

(2~~3~~) Previous Finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(3~~4~~) Previous Discipline. The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

* * *

RULE 20. CONFIDENTIALITY; EXPUNCTION.

(a) General Rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

* * *

(2) After ~~probable~~ reasonable cause has been determined under Rule 9(a)~~(j)(1)(ii) or (iv)~~ or proceedings before a referee or this Court have been commenced under these Rules;

* * *

(b) Special Matters. The following may be disclosed by the Director:

* * *

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e), or a diversion agreement has been entered into under Rule 31 of these Rules;

* * *

(c) Records after Determination of ~~Probable~~ Reasonable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after ~~probable~~ reasonable cause has been determined under Rule 9(a)~~(j)(1)(ii) or (iv)~~ or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

* * *

(e) Expunction of Records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction Schedule. All records or other evidence of a dismissed complaint shall be destroyed three years after the dismissal, except that records of diversion agreements will be destroyed 5 years after successful completion of the diversion agreement, with the exceptions noted in Rule 31(c)(6);

* * *

(f) Advisory Opinions, Overdraft Notification Program Files, Diversion Program Files, and Probation Files. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, diversion programs, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

(1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, diversion program, or probation; or

(2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification, diversion program, or probation.

RULE 21. PRIVILEGE~~:~~; IMMUNITY

* * *

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations or diversion programs, shall be immune from suit for any conduct in the course of their official duties.

* * *

RULE 24. COSTS AND DISBURSEMENTS

(a) Costs. Unless this Court orders otherwise ~~or specifies a higher amount~~, the ~~prevailing party~~ Director in any ~~disciplinary~~ proceeding decided by this Court in which discipline is imposed or ~~revocation of~~ conditional admission is revoked, or the lawyer in any proceeding in which the Court concludes that no discipline is warranted, ~~decided by this Court~~ shall recover costs in the amount of $900.

(b) Disbursements. Unless ~~otherwise ordered by~~ this Court orders otherwise, the ~~prevailing party~~ Director in any ~~disciplinary~~ proceedings ~~or revocation of conditional admission proceedings~~ decided by this Court in which discipline is imposed or conditional admission is revoked, or the lawyer in any proceeding in which this Court concludes that no discipline is warranted, shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court, together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) Time and Manner for Taxation of Costs and Disbursements. The procedures and times governing the taxation of costs and disbursements and for making objection to same ~~and for appealing from the clerk's taxation~~ shall be as set forth in Rule 139 of the Rules of Civil Appellate Procedure.

(d) Judgment for Costs and Disbursements. Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, disbarment, or revocation of conditional admission is ordered. No suspended ~~attorney~~ lawyer shall be permitted to resume practice and no disbarred ~~attorney~~

lawyer may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

Advisory Committee Comment

The [date] amendments to Rule 24 clarify that the Director may tax costs and disbursements when discipline is imposed or conditional admission is revoked, while a respondent lawyer may tax costs and disbursements when the Supreme Court concludes that no discipline is warranted and therefore dismisses the Director's petition in its entirety.

* * *

RULE 28. LAWYER DISABILITY PROCEEDINGS ~~DISABILITY STATUS~~

(a) Scope of Rule and Standard for Transfer to Disability Inactive Status. Lawyers may voluntarily select inactive, retired, or permanent disability status through the Minnesota Lawyer Registration Office according to the Rules of the Supreme Court on Lawyer Registration. For the purposes of this rule, the Director may proceed under this rule when a lawyer's disability raises public protection issues. A lawyer who has been judicially declared incompetent, is subject to a current order of commitment, is under guardianship, or whose physical, mental, or cognitive condition, including substance misuse, ~~mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs~~ prevents the lawyer from fulfilling their professional obligations or defending a discipline proceeding ~~competently representing clients~~ is disabled, and may be involuntarily or by stipulation ~~shall be~~ transferred to disability inactive status under this rule.

~~**(b) Immediate Transfer.** This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.~~

(b) Effect. While a lawyer is on disability inactive status, the lawyer is prohibited from practicing law.

(c) Procedures for Transfers to Disability Inactive Status.

(1) Petition Premised on Order of Commitment, Guardianship, or Judicial Declaration of Incompetence. On learning that a lawyer is subject to a current order of commitment, is under guardianship, or has been judicially declared incompetent, and the lawyer continues to practice, the Director may file with the Court a petition seeking the

lawyer's transfer to disability inactive status, accompanied by proof of the basis for the petition. On receiving a properly supported petition, the Court shall immediately transfer the lawyer to disability inactive status. The Director must provide notice of the transfer to the lawyer or, where applicable, to the lawyer's guardian or the director of the facility to which the lawyer has been committed.

(2) Petition Premised on Reciprocal Disability.

(i) Duty to Notify. A lawyer who is transferred to disability inactive status in another jurisdiction must notify the Director of the transfer within 30 days of the order transferring the lawyer to disability inactive status.

(ii) Petition. Upon learning from any source that a lawyer has been transferred to disability inactive status in another jurisdiction, the Director may file a petition for the lawyer's transfer to disability inactive status, along with a copy of the order of the other jurisdiction. The Director must serve the lawyer with the petition and must file an affidavit of service. Personal service is not required.

(iii) Order to Show Cause. A final adjudication in another jurisdiction that a lawyer, whether admitted to that jurisdiction or not, has been transferred to disability inactive status conclusively establishes the disability for purposes of this rule. The Court shall issue an order to show cause as to why the reciprocal transfer to disability inactive status should not be ordered. The Court shall transfer a lawyer to disability inactive status after notice unless the procedures in the other jurisdiction were unfair such that the lawyer did not have notice of the intent to transfer to disability inactive status and the opportunity to present evidence of the absence of a disability. The Court may order such proceedings as it deems necessary to determine the fairness of the other jurisdiction's proceedings.

(3) Petition Initiated by the Director Without Court Order.

(i) Petition. If the Director reasonably believes that a lawyer is disabled under paragraph (a) of this rule, and that the lawyer's continued practice of law presents a risk to the public, the Director may, with the approval of the Board Chair, file a petition setting forth the basis for the Director's reasonable belief. The Director must serve the lawyer with the petition and must file an affidavit of service. Personal service is not required.

(ii) Answer. Within 20 days after service of the petition, the respondent lawyer shall file an answer to the petition in this Court, with proof of service on the Director. The answer shall set forth the reasons why the lawyer believes that transfer to disability inactive status is not warranted.

(iii) Referee proceedings. If the lawyer contests the transfer to disability inactive status, the Court shall appoint a referee with directions to make findings, conclusions and a recommendation regarding whether there is clear and convincing evidence to warrant transfer of the lawyer to disability inactive status. The referee may, in their discretion, hold a hearing and order the lawyer to submit to an independent medical examination or evaluation by a designated professional at the respondent lawyer's cost unless the lawyer is unable to pay for such examination, in which case the Director shall bear such cost. The referee may appoint counsel to represent the lawyer if the lawyer requests appointment of counsel and the lawyer is financially eligible for appointment of counsel.

(iv) Financial eligibility shall be determined by the referee in the same manner as eligibility for appointment of a public defender in a criminal case. The referee's findings, conclusions and recommendation may be challenged by following the process set forth in Rule 14.

(v) Adverse Inference. A lawyer may refuse to testify or produce records to the extent consistent with the lawyer's constitutional privilege against self-incrimination. The referee and the court may draw an adverse inference from a lawyer's decision not to testify, produce records, or comply with any order issued in a disability proceeding for reasons other than a valid invocation of the lawyer's constitutional right against self-incrimination.

(4) Asserting Disability in Disciplinary Proceedings. A lawyer~~'s assertion of~~ may assert a disability in defense or mitigation in a disciplinary proceeding or investigation, or a revocation of conditional admission proceeding or investigation. Such assertion shall be deemed a waiver of any applicable patient-treating professional ~~the doctor patient~~ privilege as it relates to the condition that is asserted as the basis of the disability or mitigation alleged. Where a referee has been appointed, t~~T~~he referee may order an examination or evaluation by such persons ~~or institution~~ as the referee designates. If a lawyer asserts a ~~alleges~~ disability ~~during a disciplinary investigation or proceeding or a revocation of conditional admission proceeding,~~ and ~~therefore~~ is unable to assist in the defense of an investigation or proceeding, the Director shall inform the Court ~~of the allegation and~~ of the Director's position regarding the allegation. The Court may:

(i~~1~~) Transfer the lawyer to disability inactive status;

(ii~~2~~) Order the lawyer to submit to a medical examination by a designated professional;

(iii~~3~~) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition

in the same manner as eligibility for appointment of a public defender in a criminal case;

(iv4) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;

(v5) Direct the Director to file a petition under Rule 12;

(vi6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;

(vii7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status from disability inactive status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed by petition as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Sshall be deemed a waiver of any applicable patient-treating professional the doctor-patient privilege as it relates to regarding the specific incapacity or disability.; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) Confidentiality. The provisions of Rule 20 govern the confidentiality of records in proceedings where a lawyer's disability is at issue. The lawyer and the Director shall work together to designate medical records as confidential, and the Director shall seek such court orders as are necessary to protect against disclosure of the designated medical records of a lawyer.

(e) Transfer Following Hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

RULE 31. DIVERSION

(a) Purpose. Diversion is not a form of discipline. The purpose of diversion is to protect the public by improving the professional competency of attorneys through educational, remedial, and rehabilitative programs so that attorneys modify practices, procedures, or other conduct that does not comply with the Minnesota Rules of Professional Conduct. Diversion is intended as an alternative to a disciplinary sanction. Diversion is designed to primarily address isolated, non-serious, or less harmful misconduct where a lawyer may benefit from guidance to improve the lawyer's skills, knowledge of the Rules of Professional Conduct, or to manage a behavioral health issue, including a mental health or substance use issue.

(b) Eligibility.

(1) A lawyer is eligible to participate in a diversion program only if it is unlikely that the lawyer will harm the public during the program, the Director can adequately supervise the terms of diversion, and the lawyer's participation in the program is likely to benefit the lawyer and serve the public interest.

(2) A matter generally should not be diverted under this section when:

(i) The typical level of discipline for the alleged misconduct is greater than public reprimand under Minnesota Supreme Court caselaw and past practices of the Office of Lawyers Professional Responsibility;

(ii) The conduct involves dishonesty, deceit, fraud, or intentional misrepresentation;

(iii) The conduct involves a felony conviction;

(iv) The conduct resulted in or is likely to result in a client's or another person's loss of money or property unless restitution is made a term of diversion;

(v) The lawyer has been publicly disciplined for any misconduct in the last five years;

(vi) The misconduct is of the same nature as misconduct for which the lawyer has been disciplined in the last five years.

(3) An admission of misconduct is not required as a condition of entry into or as a term of a diversion agreement; however, a lawyer may be required to admit facts related to the matter. Participation in a diversion agreement is voluntary.

(c) Diversion Agreement.

(1) Procedure.

(i) The Director, in their discretion, may offer the lawyer the opportunity to participate in a diversion agreement.

(ii) If the lawyer agrees, then the diversion agreement must be submitted to the Board Chair for approval. If the Chair rejects the agreement, then the investigation and disposition must proceed as otherwise provided in these rules.

(2) Contents.

(i) The terms of the diversion must be set forth in a written agreement between the lawyer and the Director. The agreement must specify the general purpose of the diversion, the facts that gave rise to the agreement, the terms and conditions of the diversion program, how compliance will be monitored, the length of the diversion period, required payment of costs, and any required payment of restitution.

(ii) Terms may include, but are not limited to, one or more of the following: mediation, fee arbitration, law office management assistance, continuing legal education courses, trust account education, ethics education, referral to a lawyer assistance program, assessment of and treatment for medical or behavioral health issues including mental health and substance use issues, verified attendance at abstinence recovery meetings, self-assessments, mentorship, and monitoring of the lawyer's practice or accounting procedures.

(iii) The Director must monitor the lawyer's compliance with the diversion agreement.

(3) Length. A diversion agreement may last no longer than 2 years, except the diversion agreement may be extended by one year with Board Chair approval.

(4) Notice. The Director must notify the complainant, if any, and the Chair of the District Committee that has investigated the complaint, if applicable, of a diversion agreement at the time of entry, and shall provide a copy of the diversion agreement to the complainant, if any, and District Committee, if applicable, provided that the copy of the diversion agreement provided to the complainant and District Committee, as applicable, shall be redacted to remove any private, sensitive, or personal health information, including, without limitation, any treatment, abstinence, or other mental health or substance use references, terms, conditions, or requirements.

(5) Appeal. Notwithstanding any other rule, a complainant cannot appeal a diversion agreement and cannot appeal a dismissal under Rule 8(d)(1) following successful completion of a diversion agreement.

(6) Record of Entry Into Diversion Agreement. At the time of entry into a diversion agreement, the lawyer and the Director together shall create, in a separate document from the diversion agreement, a record stating that the lawyer was offered and accepted diversion and describing the nature of the charge that led to the diversion agreement. This document need not contain all of the details that must be included in the written agreement of the diversion agreement under paragraph 31(c)(2). Upon successful completion by a lawyer of a diversion agreement, the Director shall create a record indicating that the diversion agreement was successfully completed. The records required to be created under this provision shall not be subject to destruction under Rule 20(e)(1).

(d) Effect of Diversion.

(1) Entry into a diversion agreement is not a finding of misconduct.

(2) When a diversion agreement is approved, the underlying disciplinary investigation is closed subject to reopening if the diversion agreement is not successfully completed. A lawyer participating in a diversion agreement is not under investigation and is not subject to a disciplinary proceeding while the agreement is in effect.

(3) Upon successful completion of a diversion agreement program, the Director must issue a determination that discipline is not warranted under Rule 8(d)(1).

(e) Material Breach of Diversion Agreement.

(1) If the Director believes that a lawyer had materially breached the diversion agreement, then the Director must notify the lawyer and give the lawyer an opportunity to respond in a reasonable amount of time.

(2) The Director then may decide that the agreement should remain in effect, offer to modify the diversion requirements, or terminate the diversion agreement, reopen the investigation, and proceed as otherwise provided by these rules.

(3) A breach of the diversion agreement is not a violation of the Rules of Professional Conduct but the conduct that caused the breach may be the basis for discipline.

(f) Confidentiality.

(1) Files and records relating to a matter in which diversion is entered may be disclosed only as permitted by Rule 20.

(2) The Director shall maintain statistics regarding the number, type, and terms of each diversion matter, including but not limited to whether diversion is successfully completed.