

# Idaho Bar Commission Rules

## Governing Admission to Practice and Membership in the Idaho State Bar

*As promulgated by the Board of Commissioners of the Idaho State Bar  
and adopted by Order of the Supreme Court of the State of Idaho.*

### \*SECTION V

#### Rules For Review Of Professional Conduct

*(\*Section V rescinded and replaced 2-19-08 – effective 7-1-08)*

##### **RULE 500. Jurisdiction - Effective Date**

- (a) **Power of Supreme Court.** The Supreme Court has the inherent power and the exclusive responsibility within the State to maintain appropriate standards of Professional Conduct and to structure and administer a system to review the Professional Conduct of each Lawyer in the State.
- (b) **Powers of Lower Courts.** These Rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.
- (c) **Effective Date.** These Rules shall become effective on July 1, 2008. Any proceeding then pending in which a Hearing Committee has been appointed shall be concluded pursuant to the Rules existing immediately prior to the effective date of these Rules.

##### **RULE 501. Definitions.** The following capitalized terms, as used in these Rules, shall have the meanings set forth below:

- (a) **Bar.** "Bar" means the Idaho State Bar.
- (b) **Bar Counsel.** "Bar Counsel" means any disciplinary counsel of the Idaho State Bar.
- (c) **Board of Commissioners.** "Board of Commissioners" means the duly elected governing body of the Idaho State Bar.
- (d) **Clerk.** "Clerk" means the Clerk of the Professional Conduct Board of the Idaho State Bar.
- (e) **Conviction.** "Conviction" means a plea of nolo contendere, a plea of guilty, a jury verdict of guilty or a court decision of guilt, whether a formal judgment of conviction has been entered, regardless whether sentence has been imposed, withheld or suspended.
- (f) **District Court.** "District Court" means a court of general jurisdiction in the State of Idaho.
- (g) **Formal Charges.** "Formal Charges" means any disciplinary action seeking the Sanction of disbarment, suspension, public censure or public reprimand.
- (h) **Grievant.** "Grievant" means anyone who files in the office of Bar Counsel a written statement alleging that a Lawyer has engaged in misconduct.
- (i) **Hearing Committee.** "Hearing Committee" means a three person committee of the Professional Conduct Board, as provided in Rule 503.
- (j) **Lawyer.** "Lawyer" means a person who meets the qualifications for and is duly admitted to the practice of law in the State of Idaho. When "lawyer" appears

in lowercase in these Rules, it shall mean a person who is no longer duly admitted to practice law in the State of Idaho.

- (k) **Professional Conduct.** "Professional Conduct" means conduct that occurs within or without the attorney-client relationship that reflects upon the Lawyer's fitness to practice law.
- (l) **Professional Conduct Board.** "Professional Conduct Board" means the Professional Conduct Board of the Bar, as provided in Rule 502.
- (m) **Respondent.** "Respondent" means a Lawyer whose Professional Conduct is under review or whose competency or disability status is under review.
- (n) **Rules.** "Rules" means Section V of the Idaho Bar Commission Rules, Rules for Review of Professional Conduct.
- (o) **Sanction.** "Sanction" means any of the disciplinary sanctions provided in Rule 506. "Sanction" also includes any other restriction upon a Lawyer's right to practice law authorized or approved by any duly authorized Professional Conduct enforcement authority in this or any other jurisdiction.
- (p) **Serious Crime.** "Serious Crime" means:
  - (1) any felony; or
  - (2) any lesser crime that reflects adversely on the Lawyer's honesty, trustworthiness or fitness as a Lawyer. Such lesser crimes include, but are not limited to, any crime that involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a Serious Crime.
- (q) **State.** "State" means the State of Idaho.
- (r) **Supreme Court.** "Supreme Court" means the Supreme Court of the State of Idaho.

##### **RULE 502. Professional Conduct Board**

- (a) **Membership of Board.** The Board of Commissioners shall appoint, with the approval of the Supreme Court, members to a board to be known as "The Professional Conduct Board of the Idaho State Bar." The Professional Conduct Board shall consist of no less than thirty members. Regardless of its size, approximately two-thirds of the Professional Conduct Board shall be comprised of members of the Bar in

good standing and the remaining members shall be non-lawyer citizens of the State. All appointments shall be for three-year terms, which are staggered, and which may be renewed. The Board of Commissioners, with the approval of the Supreme Court, shall fill any vacancies for the remainder of an unexpired term.

- (b) **Officers.** The Board of Commissioners shall designate one Lawyer member as Chair and another Lawyer member as Vice-Chair. The Chair (and when designated by the Chair, the Vice-Chair) shall supervise the general functioning of proceedings described by these Rules, may call meetings of the Professional Conduct Board, as necessary, and perform such other duties as may be authorized by the Board of Commissioners or the Supreme Court.
- (c) **Powers and Duties of Professional Conduct Board.** The Professional Conduct Board acting by itself, or through delegation to its Chair, Vice-Chair, or the Clerk, shall exercise the following powers and duties:
  - (1) Rule on procedural motions prior to the assignment of a matter to a Hearing Committee;
  - (2) Appoint Hearing Committees and appoint chairs from among the Lawyer members of the Hearing Committees;
  - (3) Appoint replacements for members of Hearing Committees who may be unable to serve due to conflict, disqualification, incapacity, or other inability to serve;
  - (4) Assign Professional Conduct matters to Hearing Committees;
  - (5) Appoint, with the specific approval of the Supreme Court, a Hearing Committee in cases in which misconduct is alleged against Bar Counsel;
  - (6) Have its Hearing Committees make findings of fact, conclusions of law and recommendations with regard to the cases assigned to such Hearing Committees;
  - (7) Have its Hearing Committees recommend, impose, and administer Sanctions; and
  - (8) Maintain records of matters brought before the Professional Conduct Board, as may be required by these Rules.
- (d) **Compensation and Expenses.** Members of the Professional Conduct Board shall receive no compensation for their services but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.

### **RULE 503. Hearing Committees**

- (a) **Establishment and Membership of Hearing Committees.** Each Hearing Committee shall consist of three members of the Professional Conduct Board, two of whom shall be members of the Bar in good standing, and one of whom shall be a non-lawyer. With regard to any assigned matter, no Lawyer member of the Hearing Committee shall reside or have his or her principal place of business within the same judicial district in which the Respondent has his or her principal place of business. Further, no Hearing Committee member shall be assigned to a Professional Conduct matter or petition for reinstatement if that

member has been assigned previously to a Professional Conduct matter involving the Respondent.

- (b) **Powers and Duties.** Hearing Committees shall exercise the following powers and duties:
  - (1) Conduct disciplinary proceedings assigned by the Professional Conduct Board in accordance with these Rules;
  - (2) Rule upon motions and other matters assigned by the Professional Conduct Board and/or delegate such rulings to the Hearing Committee chair;
  - (3) Request the further investigation of any matter assigned by the Professional Conduct Board;
  - (4) Make findings of fact, conclusions of law and recommendations with regard to the cases assigned by the Professional Conduct Board;
  - (5) Recommend, impose and/or administer Sanctions, as provided in these Rules;
  - (6) Recommend interim suspension, as provided in Rule 510(c); and
  - (7) Undertake other related tasks assigned by the Professional Conduct Board or the Supreme Court.
- (c) **Quorum.** Three members shall constitute a quorum for the purpose of hearing evidence and issuing findings and conclusions. All decisions of a Hearing Committee shall be by majority vote of the three Hearing Committee members. Participation by telephone or other electronic means shall constitute presence in person.
- (d) **Compensation and Expenses.** Members of Hearing Committees shall receive no compensation for their services but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.
- (e) **Conflict of Interest.** Hearing Committee members shall not take part in any proceedings in which a judge, similarly situated, would be required to recuse himself or herself.

### **RULE 504. Bar Counsel**

- (a) **Appointment and Qualifications.** Bar Counsel shall be appointed by the Board of Commissioners and shall be a member in good standing of the Bar.
- (b) **Powers and Duties.** With respect to the review of a Lawyer's Professional Conduct, Bar Counsel shall have the following powers and duties:
  - (1) To evaluate, investigate and dispose of grievances, as provided in Rule 509;
  - (2) To prosecute all Professional Conduct review proceedings before the Professional Conduct Board and the Supreme Court;
  - (3) To maintain records of Professional Conduct matters, as may be required by these Rules, keep the members of the Professional Conduct Board apprised of the status of disciplinary matters and compile statistics to aid in the administration of the system;
  - (4) To appoint such staff, and to incur such expenses as may be necessary to the performance of his or her duties, subject to any constraints that may be imposed by the Board of Commissioners; and

- (5) To perform all other duties and functions as may be required by these Rules, the Idaho Bar Commission Rules, the Board of Commissioners or the Supreme Court.

**RULE 505. Grounds for Sanctions.** The following shall constitute misconduct and shall be grounds for imposition of Sanctions:

- (a) **General.** Acts or omissions by a Lawyer, individually or in concert with any other person or persons, which violate the Idaho Rules of Professional Conduct, as amended, or any other ethical canon or requirement adopted by the Supreme Court, whether the acts or omissions occurred in the course of an attorney-client relationship.
- (b) **Conviction of a Serious Crime.** Conviction of a Serious Crime, and/or the failure to report a Conviction as provided in Rule 512(a).
- (c) **Sanctions Imposed in Another Jurisdiction.** Any act or omission that results in a Sanction, as defined in Rule 501(o), which is authorized or approved by any duly authorized Professional Conduct enforcement authority in another jurisdiction.
- (d) **Violation of Rules and Orders.** Violation of any rule or order imposed as a result of review of a Lawyer's Professional Conduct, including a Lawyer's failure to pay restitution, costs or expenses imposed under Rule 506.
- (e) **Failure to Cooperate with or Respond to Disciplinary Authorities.** Failure, without justifiable grounds, to cooperate with or respond to a request from the Supreme Court, the Professional Conduct Board, a Hearing Committee or Bar Counsel.

**RULE 506. Sanctions.** Disciplinary Sanctions may consist of any one or more of the following:

- (a) **Disbarment.** Disbarment is the revocation of a lawyer's license or authority to practice law in this State or in any other jurisdiction. Only the Supreme Court may order disbarment in this State. A lawyer disbarred in this State who desires to again be admitted shall comply with all Bar admission requirements found in Section II of the Idaho Bar Commission Rules. A disbarred lawyer making such application shall have the burden of overcoming the rebuttable presumption of "unfitness to practice law." In no event shall a disbarred lawyer make application for admission to the Bar sooner than five years from the effective date of disbarment.
- (b) **Resignation in Lieu of Disciplinary Proceedings.** Any resignation in lieu of disciplinary proceedings in this or any other jurisdiction shall have the same effect as disbarment. A resignation in lieu of disciplinary proceedings cannot be issued by a Hearing Committee; rather, it is a negotiated Sanction between the Respondent and Bar Counsel. The Supreme Court must approve any resignation in lieu of disciplinary proceedings in this State. A lawyer who resigns in lieu of disciplinary proceedings and desires to again be admitted shall comply with all Bar admission requirements found in Section II of the Idaho Bar

Commission Rules. A lawyer making such application shall have the burden of overcoming the rebuttable presumption of "unfitness to practice law." In no event shall a lawyer who resigns in lieu of disciplinary proceedings make application for admission to the Bar sooner than five years from the effective date of his or her resignation.

- (c) **Suspension.** Suspension is the denial of the right to practice law for a specific period of time not to exceed five years. Only the Supreme Court may order a suspension in this State. A Lawyer who has been suspended and desires to again be admitted shall comply with the reinstatement procedures provided in Rule 518. Rule 510 shall govern interim suspensions.
- (d) **Public Censure.** Public censure is an official, written reprimand regarding a Lawyer's Professional Conduct, which shall be published in the Idaho Reports. A public censure declares the Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only the Supreme Court can issue a public censure. In addition to the Idaho Reports, all public censures shall be published in the official Bar publication, on the official website of the Bar, and in a newspaper of general circulation in the judicial district where the Lawyer maintains his or her principal place of business.
- (e) **Public Reprimand.** Public reprimand is a public, written reprimand regarding a Lawyer's Professional Conduct. A public reprimand declares the Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only the Professional Conduct Board may issue a public reprimand. All public reprimands shall be published in the official Bar publication and on the official website of the Bar.
- (f) **Probation.** Probation is the continued right to practice law subject to such conditions as may be imposed by a court or by a duly authorized Professional Conduct enforcement authority. In this State, only the Supreme Court may impose conditions of probation that limit the Lawyer's license to practice law. Conditions of probation that do not otherwise limit the Lawyer's license to practice law can also be imposed by the Supreme Court, the Professional Conduct Board or Bar Counsel. Probation must be imposed for a specific period; provided, however, probation may be renewed for an additional period by consent or after a hearing to determine if there is a continued need. Probation may be imposed independently or in conjunction with any other Sanction.
- (g) **Private Reprimand.** Private reprimand is a private, written reprimand that declares a Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only Bar Counsel may impose a private reprimand. A private reprimand becomes a part of the permanent files of the Bar, but is not published.
- (h) **Informal Admonition.** Informal admonition is private, written discipline that declares a Lawyer's conduct to have been improper but does not limit his or her right to practice law. In this State, only Bar

Counsel may informally admonish a Lawyer. An informal admonition becomes a part of the permanent files of the Bar, but is not published. An informal admonition is lesser in scope than a private reprimand and is the least severe form of discipline available.

- (i) **Restitution.** Restitution is the payment to persons financially injured and/or reimbursement to the Client Assistance Fund for claims paid from the fund for losses or claims resulting from a Lawyer's misconduct. Restitution may be imposed as a condition of any probation or in conjunction with any Sanction. Failure to pay imposed restitution establishes independent grounds for further discipline or Sanctions and/or may prevent reinstatement.
- (j) **Imposition of Costs.** Assessment of the expenses and costs of Professional Conduct investigations and proceedings may be imposed in conjunction with any other Sanction. Failure to pay imposed costs establishes independent grounds for further discipline or Sanctions and/or may prevent reinstatement.

### **RULE 507. Withheld Sanctions**

- (a) **Sanctions that may be Withheld.** The Sanctions imposed under Rule 506(c)-(f) may be withheld in whole or in part, contingent upon the Respondent's observance of conditions imposed by the disciplinary authority invoking such Sanction. Such conditions may include the publication of the withheld Sanction.
- (b) **Motion for Order to Show Cause.** Upon violation of the conditions of a withheld Sanction, Bar Counsel may file with the Professional Conduct Board a Motion for Order to Show Cause why the withheld Sanction should be imposed.
  - (1) The motion shall allege that the Respondent has not abided by the conditions set forth in the order disciplining the Respondent/
  - (2) The motion shall be served upon:
    - (A) the Respondent at his or her last known address, and
    - (B) the Respondent's counsel of record, if any.
  - (3) The Chair of the Professional Conduct Board shall appoint a Hearing Committee, which shall schedule a hearing to ascertain the truth of the allegations set forth in the motion.
  - (4) The Bar shall have the burden of proof that the Respondent has failed to adhere to the conditions set forth in the disciplinary order.
  - (5) Following the hearing, the Hearing Committee shall make findings and, if the Bar has carried its burden of proof, recommend or order that the withheld Sanction be imposed.
- (c) **Imposition of a Previously Withheld Sanction.** If the Bar carries its burden of proof on the Motion for Order to Show Cause, the previously withheld Sanction may be imposed:
  - (1) by order of the Hearing Committee, if the withheld Sanction was imposed originally by a Hearing Committee or by Bar Counsel; or
  - (2) by order of the Supreme Court, if the withheld Sanction was imposed originally by the Supreme Court.

### **RULE 508. Petitions Against Members of the Board of Commissioners, Professional Conduct Board or Bar Counsel**

- (a) **Board of Commissioners - Professional Conduct Board.** Grievances against a member of the Board of Commissioners or a Lawyer member of the Professional Conduct Board alleging grounds for the imposition of Sanctions, or against any non-lawyer member of the Professional Conduct Board alleging misconduct in the performance of his or her duties, shall be submitted directly to the Supreme Court. Upon receipt of a grievance under this Rule, the Supreme Court may:
  - (1) Consider the matter on the basis of the grievance;
  - (2) Appoint an investigator or independent counsel to investigate the matter and make a report to the Supreme Court;
  - (3) Issue an order from among the options listed in Rule 509(c)(1-4);
  - (4) Cause Formal Charges to be filed;
  - (5) Cause a petition for interim suspension to be filed; and/or
  - (6) Take such other steps as are necessary to facilitate the prompt resolution of the grievance.
- (b) **Bar Counsel.** Grievances, against Bar Counsel alleging grounds for the imposition of Sanctions shall be submitted directly to the Professional Conduct Board, which, with the approval of the Supreme Court, shall appoint a Hearing Committee to consider the grievance. Upon receipt of a grievance against Bar Counsel under this section, a Hearing Committee may:
  - (1) Consider the matter on the basis of the grievance;
  - (2) Require Bar Counsel to make a response;
  - (3) Appoint an investigator;
  - (4) Issue an order from among the options listed in Rule 509(c)(1-6); and/or
  - (5) Take such other steps as are necessary to facilitate the prompt resolution of the grievance.

### **RULE 509. General Procedure for Disciplinary Proceedings**

- (a) **Evaluation.** Bar Counsel shall evaluate all information and grievances coming to his or her attention to determine the nature of the issue. Bar Counsel may refer the information or grievance to another entity if its subject matter falls outside the jurisdiction of these Rules or the Rules of Professional Conduct. If the information or grievance alleges facts that, if true, would constitute a violation of these Rules or the Rules of Professional Conduct, Bar Counsel shall conduct an investigation.
- (b) **Investigation.** All investigations shall be conducted by or under the authority and direction of Bar Counsel. Upon the conclusion of an investigation, Bar Counsel may:
  - (1) Disregard or dismiss the matter as unfounded, frivolous or beyond the purview of these Rules or the Rules of Professional Conduct and

- discontinue the investigation and proceedings concerning the matter; or
- (2) Take any of the disciplinary actions provided by Rule 509(c).
- (c) **Disposition by Bar Counsel.** If, after due investigation, Bar Counsel determines that a violation of these Rules or the Rules of Professional Conduct has occurred, Bar Counsel may:
- (1) Issue an informal admonition or private reprimand to the Respondent;
  - (2) Impose probation as provided by Rule 506(f) either as an independent Sanction or in conjunction with actions taken under subsection (c)(1) above;
  - (3) Impose restitution and/or costs as provided by Rules 506(i) and (j), either as an independent Sanction or in conjunction with actions taken under subsections (c)(1) or (c)(2) above;
  - (4) Seek, in appropriate circumstances, transfer to disability inactive status under Rule 515;
  - (5) File Formal Charges, with concurrence of the Board of Commissioners; and/or
  - (6) Petition for interim suspension, as provided in Rule 510.
- Bar Counsel shall not recommend a disposition other than dismissal without first providing the Respondent with written notice of the substance of the matter and affording him or her the opportunity to respond to the allegations. Bar Counsel shall also provide written notice to the Grievant regarding the disposition of the matter stating the reasons for the action taken.
- (d) **Request for Review.** Either the Grievant or Respondent may request review by a Hearing Committee of Bar Counsel's disposition under subsections (b)(1), (c)(1), (2), or (3) in the following manner:
- (1) **Mode and Content of Request.** A written request for such review, stating the reasons for the request, shall be sent to the Clerk of the Professional Conduct Board within 14 days following the receipt of notice by the Respondent or Grievant under subsection (c) of this Rule.
  - (2) **Service of Request.** The Clerk shall send a copy of the request for review to the Respondent or Grievant.
  - (3) **Assignment to Hearing Committee.** The Chair of the Professional Conduct Board shall appoint from among its approved membership a Hearing Committee to review the matter. Within 14 days of the assignment to a Hearing Committee, the Clerk shall notify the Grievant, Respondent and Bar Counsel of the assignment. The Clerk shall forward a copy of the request for review, together with the file concerning the matter, to the Hearing Committee, the Grievant and the Respondent.
  - (4) **Review by Hearing Committee.** The Hearing Committee shall review the matter upon the record before it, unless either party requests a hearing. If the party seeking review of the decision desires such a hearing, he or she shall so state in the request for review. If the other party

- desires a hearing, he or she shall make a request, in writing, to the Clerk of the Professional Conduct Board within seven days of being served with the request for review. All hearings shall be by telephone, unless the Hearing Committee prescribes another method. The Hearing Committee shall review the existing record prior to holding a hearing, if one is requested. If a hearing is held, the parties shall be permitted to file briefs and make oral argument related to the grievance under review, and the Hearing Committee may ask questions regarding the record before it. The Hearing Committee chair may limit the presentation at the hearing, in his or her sole discretion. All written materials related to the hearing shall be sent to the Clerk, who shall disseminate them to all parties and to the Hearing Committee.
- (5) **Decision.** The Hearing Committee, following its review, may:
    - (A) remand the matter, or any new matter arising from the hearing, to Bar Counsel for further investigation;
    - (B) approve Bar Counsel's disposition;
    - (C) reject Bar Counsel's disposition and dismiss the matter;
    - (D) recommend a modification and remand the matter to Bar Counsel for disposition; or
    - (E) recommend the filing of Formal Charges.
  - (6) **Time for Rendering Decision.** The Hearing Committee shall render its decision within 21 days following the date upon which the record is submitted to the Hearing Committee or the date of the telephonic hearing (if any), whichever is later.
  - (7) **Service of Decision.** The Hearing Committee chair shall enter an appropriate order reflecting the decision of the Hearing Committee and file the same with the Clerk, who shall then serve the order upon Grievant, Respondent and Bar Counsel.
  - (8) **Effect of Hearing Committee Decision.** If the Hearing Committee's decision results in no Sanction being imposed on the Respondent, its review of Bar Counsel's disposition shall be final. If the filing of Formal Charges is recommended by the Hearing Committee, subsequent proceedings shall be processed as provided in Rule 511.
  - (9) **Supreme Court Review.** If the Hearing Committee's decision results in a Sanction being imposed on the Respondent, either the Grievant or Respondent may seek Supreme Court review of the Hearing Committee's decision. A written petition for such review, stating the reasons for the request, shall be filed with the Supreme Court, within 21 days of service of the Hearing Committee's decision. The petition shall contain a simple statement of the reasons the Grievant or Respondent believes that the Hearing Committee decision is clearly erroneous or arbitrary and capricious. Upon receipt of a petition under this

subsection, the Supreme Court may, in its sole discretion, order briefing, allow oral argument or decide the matter upon the petition before it.

## **RULE 510. Interim Suspension**

- (a) **Grounds.** The Supreme Court may enter an order of interim suspension if:
  - (1) a Lawyer is convicted of a Serious Crime;
  - (2) a Lawyer's Professional Conduct poses a substantial threat of serious harm to the public, and the alleged conduct, if true, would subject the Lawyer to the imposition of Sanctions under Rule 505 or to transfer to disability inactive status as provided in Rule 515; or
  - (3) a Lawyer has failed, without justifiable grounds, to cooperate with or respond to a request from the Supreme Court, the Professional Conduct Board, a Hearing Committee or Bar Counsel.
- (b) **Petition for Interim Suspension by Bar Counsel.** At any time, Bar Counsel may file a petition with the Supreme Court, supported by affidavit setting forth the specific facts upon which the petition is based, requesting that the Lawyer be placed on interim suspension. Contemporaneously with the filing of the petition, Bar Counsel shall make a reasonable attempt to provide the Lawyer with notice that a petition for immediate interim suspension has been transmitted to the Supreme Court. Such notice may include personal service, service by mail, notice by telephone or notice by other electronic means.
- (c) **Recommendation by Hearing Committee.** At any point after the filing of Formal Charges, a Hearing Committee may give written direction to Bar Counsel to petition the Supreme Court for an order of interim suspension. The Hearing Committee shall base all recommendations concerning interim suspension upon the criteria set forth in subsection (a) of this Rule.
- (d) **Court Action.** Upon receipt of a petition for interim suspension, the Supreme Court may:
  - (1) order interim suspension;
  - (2) deny the petition for interim suspension;
  - (3) make an order of reference pursuant to Rule 525(j); and/or
  - (4) schedule the matter for oral argument.Any order of interim suspension shall be served upon the Respondent and Bar Counsel by the clerk of the Supreme Court.
- (e) **Limitations on Practice and Notice.** An interim suspension under this Rule shall constitute a suspension of the Lawyer for purposes of Rules 516 and 517.
- (f) **Motion for Dissolution or Amendment.** Any motion for dissolution or amendment of an order of interim suspension shall be filed with the Supreme Court.
  - (1) **Service and Content of Motion.** The motion shall be in writing, supported by affidavits setting forth specific reasons why the order of interim suspension should be dissolved or amended. A copy of the motion, together with the supporting affidavits, shall include proof of compliance with Rules 516 and 517 and shall be served upon the other party.

- (2) **Time for Filing.** The motion for dissolution or amendment may be filed at any time following the entry of the Supreme Court's order of interim suspension.

- (3) **Applicable Rules.** Any motion filed under this subsection shall be administered pursuant to the Idaho Appellate Rules.

- (g) **Injunction on Maintenance of Trust Funds.** Any order of interim suspension that restricts the Respondent's maintenance of a trust account in connection with his or her practice of law, when served on any bank maintaining such trust account, shall serve as an injunction to prevent such bank from making further payment from such trust account or accounts except in accordance with restrictions stated in the order.

## **RULE 511. Formal Charge Proceedings**

- (a) **Action by Board of Commissioners.** Before a Formal Charge complaint shall be filed against a Lawyer by Bar Counsel, the Board of Commissioners must make a finding of probable cause and approve the filing.
- (b) **Complaint.** Bar Counsel shall institute Formal Charges by filing a complaint with the Clerk. The allegations of the complaint must be specific enough to inform the Respondent of the alleged misconduct. A copy of the complaint shall be served upon the Respondent, as provided in Rule 523(c).
- (c) **Assignment to Hearing Committee.** Upon the filing of a Formal Charge complaint, the Chair of the Professional Conduct Board shall appoint, from its approved membership, a Hearing Committee to conduct the matter. Upon assignment of the matter to a Hearing Committee, the Clerk shall send the notice of assignment, a copy of the complaint and any subsequent pleadings to the Hearing Committee members.
- (d) **Answer.** The Respondent shall file his or her written answer with the Clerk and serve the answer upon Bar Counsel within 21 days after service of the complaint, unless Bar Counsel has extended the time to answer. The Clerk shall send the answer to the Hearing Committee.
- (e) **Failure to Answer.** If the Respondent fails to answer the complaint within the prescribed time, or the time as extended, the factual allegations of the complaint shall be deemed admitted, unless Respondent demonstrates his or her failure to answer resulted from mistake, inadvertence, surprise or excusable neglect.
- (f) **Scheduling Order.** Within 21 days after the Hearing Committee has received the answer, the chair of the Hearing Committee shall hold a scheduling conference with the parties, for the purpose of establishing timetables for the completion of the case. Thereafter, the chair shall issue a scheduling order, declaring discovery deadlines, trial dates and any other significant dates for the conduct of the matter. If the Respondent has failed to answer the complaint within the time prescribed, or the time as extended, the scheduling order shall also specify that all factual allegations of the complaint have been deemed

admitted and/or may provide for the procedure to determine whether Respondent's failure to respond is due to mistake, inadvertence, surprise or excusable neglect. The Hearing Committee chair should seek to conduct the matter so the hearing is held within 120 days from the scheduling conference. The Clerk shall serve copies of the scheduling order upon all parties.

- (g) **Place and Manner of Hearing.** If a resident of Idaho, Respondent has the right to have the hearing held in the county of his or her residence provided he or she has requested the same in his or her answer. If not a resident of Idaho or if the Respondent has not requested to have the hearing held in the county of his or her residence in the answer, the hearing shall be at the place designated by the chair of the Hearing Committee. The hearing shall be conducted in the manner provided in Rule 525 and may be continued from time to time as the Hearing Committee, in its discretion, may permit.
- (h) **Hearing Committee Findings, Conclusions and Recommendations.** In every Formal Charge case assigned to it, the Hearing Committee shall issue its findings of fact, conclusions of law and recommendations.
- (1) **Service on Parties.** The Hearing Committee shall send to the Clerk, who shall serve upon all parties, the findings of fact, conclusions of law and recommendations within 28 days following the conclusion of the hearing.
- (2) **Motion to Alter or Amend.** A motion to alter or amend the findings and recommendations of a Hearing Committee may be filed by either party, not later than 14 days after those findings of fact, conclusions of law and recommendations have been served upon the parties. The Hearing Committee shall consider the motion, and shall, within 14 days of receipt of the motion:
- (A) alter or amend its findings of facts, conclusions of law, and recommendations;
- (B) deny the motion; or
- (C) schedule the motion for hearing.
- (3) **Filing with Clerk.** If no motion to alter or amend is filed, the findings of fact, conclusions of law, and recommendations become final within 14 days after they are issued by the Hearing Committee. If a motion to alter or amend has been filed, the findings of fact, conclusions of law, and recommendations become final within 14 days following disposition of such motion. The Clerk shall immediately serve a copy of the final findings of fact, conclusions of law and recommendations upon the parties.
- (i) **Recommendation of Public Reprimand.** If the final findings of fact, conclusions of law and recommendations of the Hearing Committee is to impose a public reprimand as provided in Rule 506(e), the public reprimand will be imposed unless either party appeals that recommendation. To appeal such recommendation, the party must file a notice of intent to appeal with the Clerk within 21 days of service of the recommendation. The Clerk shall file the record

with the Supreme Court within 21 days of receipt of the notice of intent to appeal. Upon the filing of the record with the Supreme Court, the appeal will proceed as set forth in subsection (k) of this Rule. If the Hearing Committee's recommendation to impose a public reprimand is not appealed within 21 days as set forth above, the public reprimand shall be imposed and published as provided in Rule 506(e).

- (j) **Recommendation of Public Censure, Suspension or Disbarment.** Within 21 days of service of the Hearing Committee's recommendation of a public censure, suspension or disbarment, the Clerk shall transmit all findings of fact, conclusions of law and recommendations to the Supreme Court, together with the entire record of the proceeding. In all cases in which a Hearing Committee recommends suspension or disbarment, it may recommend the Supreme Court immediately suspend the Respondent from the practice of law pending Supreme Court resolution of the matter. This subsection also applies in all cases where the Sanction of public censure and/or suspension has been withheld, as provided in Rule 507.
- (k) **Supreme Court Review.** In Formal Charge proceedings, the Respondent and/or Bar Counsel may appeal to the Supreme Court all Hearing Committee decisions that fully dispose of the entire proceeding.
- (1) **Appeal Filed.** Within 21 days following the filing in the Supreme Court of findings of fact, conclusions of law and recommendations, either party may file a Notice of Appeal with the Supreme Court. Such Notice shall be a brief statement indicating the party intends to contest any or all of the findings of fact, conclusions of law and recommendations of the Hearing Committee. The Notice shall be served on the other party. After the filing of the record and Notice of Appeal with the Supreme Court, the parties shall file briefs on the schedule to be provided by the Supreme Court. Oral argument, if desired by the Supreme Court, shall be at a time and place scheduled by the Supreme Court.
- (2) **No Appeal Filed.** If no appeal is filed with the Supreme Court within 21 days following the filing in the Supreme Court of the findings of fact, conclusions of law and recommendations, the Supreme Court may enter its decision or order review on its own motion. The Supreme Court may modify the Hearing Committee's recommendations upon notice and opportunity to be heard. The Supreme Court may also remand a case to the Hearing Committee for further consideration.

## **RULE 512. Lawyers Convicted of Serious Crime**

- (a) **Lawyer's Duty to Report.** Any Lawyer convicted of a Serious Crime in any jurisdiction shall report that fact to the Bar within 14 days of the occurrence of that Conviction. Failure to make such a report shall, in itself, constitute grounds for imposition of Sanctions under Rule 505.

- (b) **Determination of Serious Crime.** Upon being advised that a Lawyer has been convicted of a crime, Bar Counsel shall determine whether the crime constitutes a Serious Crime. If the crime is a Serious Crime, Bar Counsel shall begin Formal Charge proceedings against the Respondent, as provided in Rule 511. Bar Counsel may also petition the Supreme Court for interim suspension, as provided in Rule 510. If the crime is not a Serious Crime, Bar Counsel shall process the matter in the same manner as any other information coming to his or her attention.
- (c) **Conviction as Conclusive Evidence.** A certified copy of a judgment of Conviction constitutes conclusive evidence that the Lawyer committed the crime, and the sole issue in any hearing regarding the Conviction shall be the nature and extent of the Sanction to be imposed.
- (d) **Dissolution or Amendment of a Sanction upon Vacation or Reversal of Criminal Conviction.** If an appeals court vacates or reverses a Lawyer's Conviction of a Serious Crime, or if a trial court enters an order granting a motion for a new trial, a motion for judgment of acquittal, or a motion to withdraw a plea of guilty that removes a Lawyer's Conviction of a Serious Crime, which Conviction was a basis for a Sanction under these Rules, the Lawyer may file with the Clerk a motion for dissolution or amendment of the Sanction, which shall be handled, as provided in Rule 509(d). Any reinstatement or readmission resulting from a dissolution or amendment of a Sanction may provide for such conditions as the Supreme Court deems appropriate in the interest of justice, the public, the Respondent, the Bar and/or the former or prospective clients of the Respondent. The dissolution or amendment of a Sanction will not automatically terminate any formal proceeding then pending against the Lawyer, the disposition of which shall be determined by the Hearing Committee on the basis of the available evidence other than Conviction.

### **RULE 513. Reciprocal Sanctions**

- (a) **Duty of Lawyers.** All Lawyers upon whom a Sanction has been imposed in another jurisdiction shall so inform Bar Counsel within 14 days of the imposition of the Sanction. Failure to make such a report shall, in itself, constitute grounds for imposition of Sanctions under Rule 505.
- (b) **Private Discipline in Another Jurisdiction.** Upon being informed that private discipline has been imposed upon a Lawyer in another jurisdiction that is the equivalent of a private reprimand or an informal admonition under Rule 506(g) or (h), Bar Counsel may issue a private reprimand or informal admonition in this State with or without further investigation.
- (c) **Public Discipline in Another Jurisdiction.** Upon being informed that a Sanction has been imposed upon a Lawyer, Bar Counsel may seek an ex parte order from the Chair of the Professional Conduct Board directing the Lawyer to show cause, if any, why the identical Sanction should not be imposed in this State.
- (d) **Hearing Committee Procedures.** The Chair of the Professional Conduct Board, following the issuance of

the order to show cause, shall assign the matter to a Hearing Committee to conduct the show cause hearing.

- (1) **Show Cause Hearing.** Within ten days following the issuance of the Chair's assignment order, the Hearing Committee chair shall hold a scheduling conference with the parties to schedule a hearing on the order to show cause. Thereafter, the Hearing Committee chair shall issue a scheduling order with notice to all parties.
- (2) **Effect of Sanction in Another Jurisdiction.** A final determination of misconduct by the Respondent in another jurisdiction is conclusive and shall not be subject to relitigation in this State. Any resignation in lieu of disciplinary proceedings in any jurisdiction shall be deemed a final determination of misconduct by the Respondent.
- (3) **Scope of Hearing.** After hearing, the Hearing Committee shall recommend the imposition of an identical Sanction in this State unless the Hearing Committee finds that Respondent has shown by clear and convincing evidence that it appears clearly, from the face of the record from which the Sanction is predicated, that:
  - (A) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
  - (B) imposing an identical Sanction in this State would result in grave injustice.
- (4) **Procedure Following Hearing.** After the show cause hearing (regardless whether the Respondent appears before the Hearing Committee), the Hearing Committee shall issue its findings of fact, conclusions of law and recommendations and proceed as provided in Rule 511(h).
  - (A) **Recommendation of Public Reprimand.** If the Hearing Committee recommends the imposition of a public reprimand, the case shall proceed as provided in Rule 511(i).
  - (B) **Recommendation of Public Censure, Suspension or Disbarment.** If the Hearing Committee recommends the imposition of a public censure, suspension or disbarment, the case shall proceed, as provided in Rule 511(j).
- (e) **Effect of Stay of Discipline in Other Jurisdiction.** If the Sanction imposed in the other jurisdiction has been stayed there, any reciprocal Sanction imposed in this State shall be deferred until the stay expires.
- (f) **Appeals.** All appeals of the imposition of reciprocal Sanctions shall proceed as provided in Rule 511(k).

### **Rule 514. Imposition of Sanctions by Stipulation**

- (a) **Stipulation Contents.** Following the filing of Formal Charges against a Respondent, the Respondent and Bar Counsel may resolve the matter by stipulation. Any stipulation shall set forth a summary of the Formal Charge allegations, admitted factual



allegations, admitted violations of the Idaho Rules of Professional Conduct, charges being dismissed, if any, and the agreed upon Sanction. Bar Counsel and the Respondent shall sign the stipulation. Each stipulation shall also provide either:

- (1) if the Hearing Committee or the Supreme Court rejects the stipulation, Sanction or recommendation, each party has the right to withdraw from the stipulation and proceed to a hearing on the merits; or
  - (2) if the Hearing Committee or the Supreme Court rejects the stipulation, Sanction or recommendation, the parties agree that the Supreme Court may impose the Sanction it deems appropriate on the record or may take whatever action the Supreme Court deems appropriate.
- (b) **Consideration by Hearing Committee and Supreme Court.** After the stipulation has been executed, either party shall file it with the Clerk, who shall forward copies of it to the Hearing Committee. The Hearing Committee will consider the stipulation and enter its decision or order a hearing on its own motion.
- (1) **Public Reprimand.** If the stipulated Sanction is a public reprimand, and the Hearing Committee agrees that a public reprimand is the appropriate Sanction, the Hearing Committee shall issue an order imposing the public reprimand.
  - (2) **Public Censure, Suspension or Disbarment.** If the stipulated Sanction is a public censure, suspension, withheld public censure, withheld suspension or disbarment, and the Hearing Committee agrees that the stipulated Sanction is appropriate, the Hearing Committee shall issue a recommendation to the Supreme Court. The Supreme Court will then consider the recommendation as set forth in Rule 511(k)(2) and enter its decision or order a hearing on its own motion.

## Rule 515. Disability Inactive Status

- (a) **Involuntary Commitment or Adjudication of Incompetence.** If a Respondent has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order immediately transferring the Respondent to disability inactive status for an indefinite period until further order of the Supreme Court. A copy of the order shall be served, in the manner the Supreme Court may direct, upon the Respondent, his or her guardian and/or the director of the institution to which the Respondent has been committed.
- (b) **Inability to Properly Defend.** If a Respondent alleges in the course of a disciplinary proceeding an inability to assist in his or her defense due to mental or physical incapacity, Bar Counsel shall petition the Supreme Court to immediately transfer the Respondent to disability inactive status pending determination of the incapacity.

- (1) If the Supreme Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the Respondent retained on disability inactive status until the Supreme Court subsequently considers a petition for transfer of the Respondent to active status. If the Supreme Court grants the petition, the interrupted disciplinary proceeding shall resume as provided in these Rules.
  - (2) If the Supreme Court determines the claim of inability to defend to be invalid, the disciplinary proceeding shall resume. The Respondent may immediately be placed on interim suspension pending the final disposition of the matter.
- (c) **Proceedings to Determine Incapacity.** Bar Counsel shall investigate information relating to a Lawyer's physical or mental condition that adversely affects the Lawyer's ability to practice law and, where warranted, report that information to the Board of Commissioners.
- (1) **Petition.** The Board of Commissioners, upon reasonable cause, shall direct Bar Counsel to petition the Supreme Court to determine whether the Lawyer is unable to adequately practice law because of mental illness, senility, excessive use of alcohol or drugs, or other mental or physical incapacity.
  - (2) **Service.** A copy of the petition shall be served upon the Respondent by Bar Counsel concurrently with the filing of the petition.
  - (3) **Action by Supreme Court.** Upon receipt of the petition, the Supreme Court may take such action as it deems appropriate, including but not limited to:
    - (A) Reference of the matter to a person or committee for hearing and fact-finding pursuant to Rule 525(j);
    - (B) Provision for an examination of the Respondent, at the expense of the Bar, by such qualified medical experts as the Supreme Court, or any person or committee to which the matter has been referred, may designate; and/or
    - (C) Abatement, upon its own motion or the motion of either party, of any pending disciplinary proceedings against the Respondent.
- (d) **Notice of Transfer to Disability Inactive Status.** Bar Counsel shall give notice to the public of Respondent's transfer to disability status by:
- (1) causing a notice of the transfer to disability inactive status to be published in the official Bar publication and in a newspaper of general circulation in each judicial district in which the Respondent maintained an office for the practice of law; and
  - (2) transmitting (by electronic means or otherwise) a certified copy of the Supreme Court order transferring Respondent to disability inactive status to the administrative judge and trial court administrator of each judicial district in the State, to each district court judge and magistrate in the

judicial district where the Respondent maintained an office for the practice of law, and to such other persons, entities or organizations as may be indicated to protect the interests of the public and the clients of the Respondent.

- (e) **Reinstatement from Disability Inactive Status.**
- (1) **Generally.** No Respondent transferred to disability inactive status may resume active status except by order of the Supreme Court.
  - (2) **Petition.** Any Respondent transferred to disability inactive status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the Supreme Court may direct.
  - (3) **Medical Examination.** Upon the filing of a petition for transfer to active status, the Supreme Court may take whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the Respondent by qualified medical experts designated by the Supreme Court. In its discretion, the Supreme Court may direct the expense of the examination be paid by the Respondent.
  - (4) **Waiver of Doctor-Patient Privilege.** With the filing of a petition for reinstatement to active status, the Respondent shall be required to disclose the name of each psychiatrist, psychologist, physician, and hospital or other institution or health care provider by whom or in which the Respondent has been examined or treated since the transfer to disability inactive status. The Respondent shall furnish to the Supreme Court written consent to the release of information and records relating to the disability if requested by the Supreme Court or the court-appointed medical experts.
  - (5) **Proof of Legal Competence.** The Supreme Court may also direct the Respondent to establish proof of legal competence, which proof may include certification by the Board of Commissioners of successful completion of the Idaho bar examination.
  - (6) **Granting Petition for Transfer to Active Status.** The Supreme Court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed.
  - (7) **Judicial Declaration of Competence.** If a Respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the Supreme Court may dispense with further evidence that his or her disability has been removed and may immediately direct his or her reinstatement to active status upon terms as are deemed proper and advisable.
- (f) **Notice of Reinstatement.** Following entry of the Supreme Court's order reinstating the Respondent to active status, the Board of Commissioners shall:
- (1) cause a notice of reinstatement to active status to be published in the official Bar publication; and

- (2) transmit promptly a certified copy of the order of reinstatement to active status to the presiding judge of the court of each judicial district in which the Respondent is entitled to practice law in this State before his or her transfer to disability inactive status.

- (g) **Confidentiality.** The confidentiality of disability inactive records and proceedings shall be governed by Rule 521(d).

## **RULE 516. Duties after Limitations on the Right to Practice Law**

- (a) **Duties.** Unless otherwise specified, a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, shall be effective upon date of entry. After the date of entry, the Respondent shall:
- (1) not accept any new retainer or engage as a Lawyer for another in any new case or legal matter of any nature;
  - (2) have 14 days after the effective date of the order limiting the right to practice law to wind up and complete on behalf of any client, all matters pending on the entry date;
  - (3) refund any part of any fees paid in advance that have not been earned;
  - (4) move for leave to withdraw, or to substitute counsel in any pending litigation, and notify opposing counsel and adverse parties of such withdrawal or substitution of counsel;
  - (5) not use any sign or advertise that he or she, either alone or with any other person, has, owns, conducts or maintains a law office or office of any kind for the practice of law, or that he or she is entitled to practice law, and he or she shall promptly remove any sign indicating same;
  - (6) not use any stationery, bank accounts or checks whereon his or her name appears as a Lawyer or attorney at law;
  - (7) promptly remove his or her listing from any telephone directory indicating he or she is a Lawyer or attorney or holds a similar title;
  - (8) promptly contact the publishers of Martindale-Hubbell law directory and any other listing in which his or her name appears and cause the removal of any listing that states he or she is a member of the Bar in good standing;
  - (9) comply with the provisions of Idaho Code section 30-1309, concerning membership and participation in professional service corporations;
  - (10) not practice law, not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency and not share in any fee for legal service performed by himself or herself;
  - (11) not maintain a presence or occupy an office where the practice of law is conducted; and
  - (12) comply with any other requirement of the Supreme Court.

- (b) **Failure to Comply.** Failure to comply with the provisions of this section may be grounds for a further Sanction, the imposition of a previously withheld Sanction, the denial of a petition to dissolve an interim suspension or the denial of a motion to reinstate.

### **RULE 517. Notice of Limitations on the Right to Practice Law**

- (a) **Notice.** Notice of a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, shall be given or caused to be given by the Respondent or a person appointed by the Supreme Court to:
- (1) All clients being represented in pending matters;
  - (2) Any co-counsel in pending matters;
  - (3) Any opposing counsel in pending matters;
  - (4) All adverse parties in pending matters who are not represented by counsel; and
  - (5) Any other party and/or financial institution as may be necessary to protect the interests of clients or the public.
- (b) **Contents of Notice.** The notice shall state:
- (1) The Respondent is disqualified to act as a Lawyer in this State by reason of the order;
  - (2) The effective date of the order;
  - (3) The Respondent's residence or other address where communications can be sent;
  - (4) The place of residence of the client, in the case of notice to co-counsel, counsel for adverse parties, or an adverse party;
  - (5) The right of the client, and any counsel presently representing the client, to obtain any papers or other property to which they are entitled; and
  - (6) The times and places at which the papers and other property may be obtained, calling attention to any urgency for obtaining the papers and other property.
- (c) **Service of Notice.** The notice required by this Rule shall be given by registered or certified mail, return receipt requested, as soon as practicable after the entry of the Supreme Court's order.
- (d) **Filing of Lawyer's Affidavit.** Within 14 days after the entry of a Supreme Court order imposing interim suspension, suspension, disbarment, resignation in lieu of disciplinary proceedings or transfer to disability inactive status, the Respondent must file with the Supreme Court and serve upon Bar Counsel an affidavit containing a statement that he or she has complied fully with the provisions of this Rule.
- (e) **Failure to Comply.** Failure to comply with the provisions of this section may be grounds for a further Sanction, the imposition of a previously withheld Sanction, the denial of a petition to dissolve an interim suspension or the denial of a motion to reinstate.
- (f) **Notice to Public.** Bar Counsel shall give notice to the public of a Respondent's interim suspension, suspension, disbarment, or resignation in lieu of disciplinary proceedings by promptly:

- (1) causing a notice of the Sanction to be published in the journal of the official Bar publication and in a newspaper of general circulation in each judicial district in which the Respondent maintained an office for the practice of law; and
- (2) transmitting (by electronic means or otherwise) a certified copy of the Supreme Court order imposing a Sanction to the administrative judge and trial court administrator of each judicial district in the State, to each district court judge and magistrate in the judicial district where the Respondent maintained an office for the practice of law, and to such other persons, entities or organizations as may be indicated to protect the interests of the public and the clients of the affected Respondent.

### **RULE 518. Reinstatement after Suspension**

- (a) **Reinstatement after Suspension of 90 Days or Less.** A lawyer who has been suspended for 90 days or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the Supreme Court and serving upon Bar Counsel an affidavit stating he or she has complied fully with the requirements of the suspension order and has paid any required fees and costs.
- (b) **Reinstatement after Suspension for More Than 90 Days.** A lawyer suspended for more than 90 days may be readmitted upon showing that he or she has the moral qualifications, competency and learning in the law for admission to practice law in this State, that his or her resumption of the practice of law within this State will not be detrimental to the integrity of the Bar, to the administration of justice or against the public interest, and that he or she has complied with all the terms of his or her suspension.
- (1) **Petition.** A petition for reinstatement by a suspended lawyer may be filed no sooner than 90 days prior to the end of his or her term of suspension. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed on behalf of the same lawyer.
- (2) **Place of Filing.** Petitions for reinstatement by a suspended lawyer shall be filed with the Clerk and served upon Bar Counsel.
- (3) **Advance Cost Deposit.** Such petitions shall be accompanied by an advance cost deposit in an amount of not less than \$1500 to cover anticipated costs of the reinstatement proceeding. If the costs of the proceeding are less than the deposit, any unused amounts shall be returned to the suspended lawyer at the conclusion of the proceedings. If the costs of the proceeding exceed the advance cost deposit, the suspended lawyer must reimburse such costs prior to reinstatement.
- (4) **Processing Petition.** Within 14 days following receipt of the petition, the Chair of the

Professional Conduct Board shall assign the petition to a Hearing Committee.

(A) **Hearing.** The Hearing Committee shall schedule a hearing to be held within a reasonable time after the matter is assigned. The Clerk shall serve a copy of the notice of hearing upon suspended lawyer and Bar Counsel at least 14 days in advance of the hearing, stating the date, time and place of hearing. The notice shall advise the suspended lawyer that he or she is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his or her own behalf.

(B) **Burden of Proof.** The suspended lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met the requirements, as herein above set forth or as set forth in the Supreme Court order of suspension, for reinstatement to the practice of law in this State.

(C) **Report of Hearing Committee.** The Hearing Committee shall file a report containing its findings of fact, conclusions of law and recommendations, together with the record, with the Clerk. A copy of the Hearing Committee's report shall be served on the suspended lawyer and Bar Counsel

(D) **Time of Decision.** The Hearing Committee's decision shall be rendered within 21 days after the matter is fully submitted.

(E) **Submission to Court.** The Professional Conduct Board shall cause the Clerk to submit the entire record of the proceedings before the Hearing Committee to the Supreme Court and serve a copy thereof on the suspended lawyer and Bar Counsel.

(F) **Procedure After Submission.** In all reinstatement proceedings, the suspended lawyer and/or Bar Counsel may appeal to the Supreme Court all Hearing Committee findings of fact, conclusions of law and recommendations.

(1) **Appeal Filed.** Within 21 days following the filing in the Supreme Court of findings of fact, conclusions of law and recommendations, either party may file a Notice of Appeal with the Supreme Court. Such Notice of Appeal shall be a brief statement indicating the party intends to contest any or all of the findings of fact, conclusions of law and recommendations of the Hearing Committee. The Notice of Appeal shall be served on the other party. After the filing of the record and the Notice of Appeal with the Supreme Court, the parties shall file briefs on the schedule to be provided by the Supreme Court. Oral argument, if

desired by the Supreme Court, shall be at a time and place scheduled by the Supreme Court

(2) **No Appeal Filed.** If no appeal is filed with the Supreme Court within 21 days following the filings in the Supreme Court of the findings of fact, conclusions of law and recommendations, the Supreme Court may enter its decision or order further proceedings. The Supreme Court may modify the Hearing Committee's recommendations upon notice and opportunity to be heard. The Supreme Court may also remand a case to the Hearing Committee for further consideration.

(G) **Order of Court**

(1) **Adverse Determination.** If the suspended lawyer is determined by the Supreme Court to be not fit to resume the practice of law, the petition shall be denied.

(2) **Reinstatement.** If, however, suspended lawyer is found to be fit to resume the practice of law, the order of the Supreme Court may provide for reinstatement upon such conditions as the Supreme Court deems appropriate in the interest of justice, the public, the suspended lawyer, the Bar and/or former or prospective clients of the suspended lawyer. Conditions on reinstatement may include, but need not be limited to, payment of the costs and expenses of the proceedings had in the case; restitution to parties harmed by the suspended lawyer's misconduct that constituted grounds for the suspension in his or her case; and/or the suspended lawyer's furnishing to the Supreme Court such proof of competency as it may require, which proof may include certification by the Board of Commissioners that the suspended lawyer, subsequent to the date of such conditional order of reinstatement, has completed successfully the Idaho bar examination.

(c) **Reinstatement after Vacation or Reversal of Criminal Conviction.** If an appeals court vacates or reverses a lawyer's Conviction of a Serious Crime or if a trial court enters an order granting a motion for a new trial, a motion for judgment of acquittal or a motion to withdraw a plea of guilty that removes a lawyer's Conviction of a Serious Crime, which Conviction was a basis for suspension under these Rules, the lawyer may file a petition for reinstatement following the procedures set forth in Rule 512(d).

(d) **Reinstatement or Readmission after Reciprocal Reinstatement or Readmission.** Where the Supreme Court has imposed a suspension or disbarment solely

on the basis of imposition of discipline in another jurisdiction, and where the suspended lawyer gives notice to the Supreme Court that he or she has been reinstated or readmitted in the other jurisdiction, the Supreme Court shall determine whether the suspended lawyer should be reinstated or readmitted. Unless Bar Counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the Supreme Court shall reinstate or readmit a suspended lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred.

## **RULE 519. Protection of Clients' Interests**

- (a) **Order of Appointment.** If a Respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 517, and no partner, executor or other responsible party capable of conducting the Respondent's affairs is known to exist, the administrative judge in the judicial district in which the Respondent maintained a practice (the administrative judge), upon proper proof of the fact, shall enter an order of appointment. Such order may include the appointment of a Lawyer or Lawyers (appointee(s)) to inventory the files of the Respondent, an injunction prohibiting all financial institutions holding all trust and operating accounts of the Respondent from disbursing monies on the signature of the Respondent or at his or her direction, and direction to take such action as seems indicated to protect the interests of the Respondent and his or her clients.
- (b) **Nondisclosure of Client Information.** No appointee shall be permitted to disclose any information contained in any files except as permitted by Idaho Rule of Professional Conduct 1.6. The attorney-client privilege and Idaho Rule of Professional Conduct 1.6 confidentiality protection shall be extended so that review of the file by the appointee(s) is not deemed to be disclosure to a third party.
- (c) **Powers and Duties of Appointee(s).** After obtaining access to and custody of the Respondent's files, the appointee(s) shall:
- (1) Notify each client of his or her right to obtain any papers or other property to which he or she is entitled and the times and places at which the papers or other property may be obtained, calling attention to any urgency for action on the client's part;
  - (2) Release to each client, upon request and the signing of proper releases, the papers and other property to which he or she is entitled;
  - (3) Place fee-generating work with other Lawyers consistent with Rule 519(g); and
  - (4) Within 90 days after appointment, file a final report with the Supreme Court, the administrative judge and Bar Counsel, including a request for release from the order of appointment and for

disposition of any and all files that remain in the control and custody of such appointee(s).

- (d) **Trust and Operating Accounts.** The Bar Counsel or the appointee(s) shall serve a copy of the order of appointment on all financial institutions holding the trust and operating accounts of the Respondent, including all accounts on which the Respondent is principal or trustee. Service of the order of appointment on a financial institution shall permit the appointee(s) to substitute his or her authority for that held previously by the Respondent in all respects with regard to such accounts.
- (e) **Duty of Lawyers.** It shall be the duty of all licensed Lawyers to share cooperatively in the provision of services under this Rule and, when necessary, to do so without remuneration, though it shall not be their duty to bear expenses or costs incident to such services.
- (f) **Compensation of Appointee(s).** Any costs incurred by the appointee(s) for work done under this Rule shall be paid from fees owing to the Respondent or by the Bar. This Rule shall not be construed to limit or preclude the administrative judge from allowing reasonable fees in proper cases for work done under this Rule, which fees may be accepted without waiver of or prejudice to the qualified immunity provided in Rule 520(c), so long as the fees are not privately negotiated.
- (g) **Referral of Fee-Generating Work.** In administering this Rule, it is intended that as a general rule, fee-generating work that can be placed by the appointee(s) with private practitioners for handling under reasonable and customary arrangements for remuneration will be so placed and will not be retained by the appointee(s), and all exceptions thereto shall be approved by the administrative judge. This Rule shall not be applied to force representation upon any objecting client.

## **RULE 520. Immunity**

- (a) **Grievants - Witnesses.** Grievances, complaints, testimony and other presentation or arguments submitted to the Professional Conduct Board, a Hearing Committee, any member of the Professional Conduct Board or of any Hearing Committee, or Bar Counsel, all proceedings and conduct maintained or engaged in under these Rules, and all testimony and showings with respect to any such matters shall be absolutely privileged, and no civil litigation predicated thereon may be instituted or maintained.
- (b) **Disciplinary Authorities.** Members of the Professional Conduct Board, members of the Hearing Committees, Bar Counsel, members of the Board of Commissioners, and members of their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.
- (c) **Appointees.** Any appointee under these Rules shall be immune from civil liability for acts and omissions in the performance of his or her duties, except for demonstrated fraudulent or malicious conduct, so long as the appointee is acting

- (1) Pursuant to any order made under or pursuant to these Rules;
- (2) Pursuant to any like or similar order directing or providing for legal assistance to clients or persons adversely affected by the Respondent; or
- (3) Pursuant to any written direction by Bar Counsel to act in the public interest or for the protection of any member of the public.

**\*RULE 521. Access To Information**

- (a) **Availability of Information.** All proceedings and records relating to Professional Conduct, except the work product of Bar Counsel, a Hearing Committee or the Professional Conduct Board, shall be available to the public after the filing and service of Formal Charges, unless the Grievant or Respondent obtains a protective order for specific testimony, documents or records.
- (b) **Confidentiality.** Prior to the filing and service of Formal Charges, a Professional Conduct matter is confidential within Bar Counsel's Office, except that the pendency, subject matter and status of a Professional Conduct matter may be disclosed by Bar Counsel if:
  - (1) the Lawyer has waived confidentiality in writing;
  - (2) the matter is based upon allegations that include either the conviction of a crime or reciprocal discipline;
  - (3) the matter is based upon allegations that have become generally known to the public; or
  - (4) there is a need to notify another person or organization, including the Client Assistance Fund, in order to protect the public, the administration of justice, or the legal profession.
- (c) **Public Hearings.** After the filing and service of Formal Charges or a petition for reinstatement, the proceedings in a Professional Conduct matter are public, except for:
  - (1) deliberations of a Hearing Committee, Professional Conduct Board, or Court; or
  - (2) information with respect to which the Hearing Committee has issued a protective order.
- (d) **Disability Inactive Proceedings.** Except as otherwise permitted by Rule 515, all proceedings and records relating to any transfer to or from disability inactive status are confidential. All orders transferring a Lawyer to or from disability inactive status are public.
- (e) **Protective Orders.** In order to protect the interests of a Grievant, witness, third party, Lawyer or Respondent, the Hearing Committee to which a matter is assigned, or Chair of the Professional Conduct Board if the matter has yet to be assigned to a Hearing Committee, may, upon application of any person and for good cause shown, issue a protective order. The protective order shall prohibit the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

- (f) **Request for Nonpublic Information Relating to Discipline.** A request for nonpublic information other than that authorized for disclosure under subsection (b) above shall be denied unless the request is from one of the following agencies:
  - (1) an agency authorized to investigate qualifications for admission to practice law;
  - (2) a lawyer disciplinary enforcement agency;
  - (3) an agency authorized to investigate qualifications for government employment; and
  - (4) any other agency designated by the Supreme Court.
- (g) **Disclosure with Notice to Lawyer.** Except as provided in subsection (h), if Bar Counsel decides to provide nonpublic information to a requesting agency, and if the Lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the Lawyer shall be notified in writing at his or her last known address of the information that has been requested and the agency making the request, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the Lawyer that the information shall be released at the end of 14 days following mailing of the notice unless the Lawyer objects to the disclosure. If the Lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.
- (h) **Disclosure Without Notice to Lawyer.** If an otherwise authorized requesting agency has not obtained a waiver from the Lawyer to obtain nonpublic information and requests that the information be released without giving notice to the Lawyer, the requesting agency shall certify that:
  - (1) the request is made in furtherance of an ongoing investigation into misconduct by the Lawyer;
  - (2) the information is essential to that investigation; and
  - (3) disclosure of the existence of the investigation to the Lawyer would seriously prejudice that investigation.
- (i) **Notice to National Discipline Data Bank.** Bar Counsel shall transmit notice of all public discipline imposed against a Lawyer, transfers to or from disability inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.
- (j) **Scope of Duty.** All officials and employees of the agency authorized to receive information under these Rules, shall conduct themselves so as to maintain the confidentiality mandated by this Rule.
- (k) **Order by Supreme Court to Make Public.** Notwithstanding any other provisions of these Rules, the Supreme Court may provide by order that review of Professional Conduct proceedings and/or records in a particular case, in all cases or in any class or group of cases, are open to the public, subject to special or protective orders of the Supreme Court. Bar Counsel and any other member of the Bar or the public shall have standing to petition the Supreme Court for a determination leading to the waiver of confidentiality in such proceedings and/or records in particular cases,

and the Supreme Court may grant or deny such petitions in whole or in part as, in its discretion and in the interests of justice, it deems proper.

(\*Rule 521 amended 2-25-16 – effective 7-1-16)

## **RULE 522. Retention of Disciplinary Records**

- (a) **Records Retention – Bar Counsel.** Except as otherwise provided in this Rule, Bar Counsel may permanently maintain all records related to any disciplinary process or matter.
- (b) **Records of Terminated Grievances.** Bar Counsel shall destroy all records or other evidence related to a grievance terminated under Rule 509(b)(1) after five years have elapsed from the date of termination; however, Bar Counsel may maintain a docket showing the names of the Grievant and Respondent and the date of the termination. After a file has been destroyed, any response to an inquiry requiring a reference to the matter shall state there is no record of the matter. A Lawyer may answer any inquiry requiring a reference to a destroyed matter by stating that no grievance was filed.
- (c) **Records Retention – Professional Conduct Board.** Professional Conduct Board members shall destroy all records in their possession related to any disciplinary process or matter upon conclusion of such process or matter, including any appeals or remands.

## **RULE 523. Service and Filing of Pleadings**

- (a) **Form of Pleadings.** The form, style and content of all pleadings shall conform to the provisions of Rule 10 of the Idaho Rules of Civil Procedure.
- (b) **Signing of Pleadings.** The provisions of Rule 11 of the Idaho Rules of Civil Procedure are incorporated into these Rules.
- (c) **Complaints and Petitions.** Service of complaints and petitions under these Rules shall be made by personal service under Idaho Rules of Civil Procedure 4(d)(1) and 4(d)(2) or by certified mail, return receipt requested, to the Lawyer's address, as filed with the Bar. If service cannot be made as above, service shall be made in the official Bar publication and shall be deemed complete 14 days after the date the official Bar publication is mailed to Lawyers.
- (d) **Answers, Responses and Other Pleadings.** Original answers, responses and other pleadings under these Rules shall be filed with the Clerk by personal delivery or mail. The Clerk's address is 525 W. Jefferson, Boise, Idaho 83702. Copies of original pleadings shall be served upon all parties by personal delivery, mail or electronic means.
- (e) **Service.** Whenever notice is required in these Rules, the Clerk shall promptly serve such notice by regular first class mail. Service shall be complete upon mailing.

## **RULE 524. Subpoena Power and Witnesses**

- (a) **Investigatory Subpoenas.** Before Formal Charges have been filed, Bar Counsel may compel by subpoena the attendance of witnesses, and the production of pertinent books, papers and documents, in accordance with Idaho Rule of Civil Procedure 45. Subpoenas issued by Bar Counsel during the course of an investigation shall clearly indicate on their face that they are issued in conjunction with a confidential investigation under these Rules and that it is regarded as contempt of court or grounds for discipline to breach confidentiality. Consultation with an attorney is not considered such a breach.
- (b) **Subpoenas for Deposition or Hearing.** After Formal Charges are filed, Bar Counsel or Respondent may, in accordance with Idaho Rule of Civil Procedure 45, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents at a deposition or hearing under these Rules. All subpoenas shall be issued in the name of the Professional Conduct Board.
- (c) **Enforcement of Subpoenas.** The District Court of the judicial district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.
- (d) **Quashing Subpoena.** Any attack on the validity of a subpoena so issued shall be heard and determined by the chair of the Hearing Committee before which the matter is pending or by the court wherein enforcement of the subpoena is being sought. Any resulting order is not appealable before entry of a final order in the proceeding.
- (e) **Witnesses and Fees.** The subpoena process, witness fees and mileage fees shall be the same as those provided for proceedings in the district courts of the State.
- (f) **Subpoena Pursuant to Law of Another Jurisdiction.** Whenever a subpoena is sought in this State pursuant to the law of another jurisdiction for use in Lawyer disciplinary or disability proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the chair of the Professional Conduct Board, upon petition for good cause, may issue a subpoena as provided in this Rule to compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. Service, enforcement or challenges to this subpoena shall be as provided in these Rules.

## **RULE 525. Additional Rules of Procedure**

- (a) **Nature of Proceedings.** Disciplinary proceedings are neither civil nor criminal but are sui generis.
- (b) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the provisions of the Idaho Rules of Civil Procedure shall not apply in disciplinary cases. Hearing Committee chairs shall have the discretion to allow dispositive motions that would expedite resolution of any disciplinary matter.

- (c) **Rules of Evidence.** The rules of evidence, generally applicable in civil actions in the District Courts of this State, shall apply during the proceedings under these Rules; except as may be otherwise provided by these Rules.
- (d) **Burden of Proof.** Bar Counsel shall have the burden of proof in proceedings seeking discipline or transfer to disability inactive status. The Respondent shall have the burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status. In any show cause proceeding under these Rules, the burden of proof shall be on the party required to show cause.
- (e) **Standard of Proof.** Any issue of fact shall be proved by clear and convincing evidence.
- (f) **Record Availability.** All proceedings of the Professional Conduct Board or of a Hearing Committee that are not reported by a court reporter, will be recorded. A court reporter shall report all evidentiary proceedings, together with any Formal Charge proceedings for which the Hearing Committee chair requests reporting. Any recording or transcript of any proceeding is available to the parties, but is only available to others subject to the provisions of Rule 521. Upon written request to the Clerk and with prior payment arrangements, the Clerk will make arrangements to have the court reporter's transcript or a transcription of any recording delivered to the requesting party. The Clerk may require the requesting party to make arrangements to order and pay for transcripts directly with the court reporter.
- (g) **Stay or Abatement.** Pending criminal or civil actions with substantial similarity to the material allegations of the alleged grounds for the imposition of Sanctions shall not stay the filing nor abate the processing of a review of a Lawyer's Professional Conduct under these Rules. Bar Counsel or the Professional Conduct Board may, in their discretion, permit such stay or abatement.
- (h) **Delay.** The unwillingness or neglect of the Grievant to file a complaint or a settlement between the Grievant and the Lawyer, shall not, in themselves, justify abatement of the processing of any grievance. The time between the commission of the alleged misconduct and the filing of the grievance predicated thereon may be pertinent to whether and to what extent a Sanction should be imposed, but does not limit Bar Counsel's power to investigate and prosecute.
- (i) **Time Requirements.** Except as is otherwise provided in these Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.
- (j) **References.** When the Supreme Court has occasion to make a finding of fact in proceedings under or in connection with these Rules, it may refer the matter to a special fact-finding committee or referee specially appointed for that purpose or may authorize the Professional Conduct Board or any Hearing Committee to so serve.
- (k) **Discovery.**
- (1) **When permitted.** Discovery shall be permitted and governed as provided by the Idaho Rules of Civil Procedure.
  - (2) **Non-filing of Discovery.** Discovery shall not be filed with the Clerk, but shall be served upon all parties as provided in Rule 523(d).
  - (3) **Disputes.** Disputes concerning the scope and other aspects of discovery shall be determined by the chair of the Hearing Committee before which the matter is pending. All discovery orders by the Hearing Committee are interlocutory and may not be appealed before the entry of the final order.
- (l) **Pre-Hearing Conference.** Hearing Committees may order such pre-hearing conferences as they deem necessary for the orderly conduct of any disciplinary proceeding.
- (m) **Judicial Notice.** A Hearing Committee may take judicial notice of facts entitled to such notice; provided, however that the facts judicially noticed shall be specified by the Hearing Committee either at the time of the hearing or at the time of declaring its findings of facts, whichever it deems appropriate.
- (n) **Oaths and Affirmations.** Any member of the Professional Conduct Board, any Lawyer member of a Hearing Committee in matters pending before it, and Bar Counsel in matters under investigation or prosecution by him or her may administer oaths and affirmations.
- (o) **Statute of Limitations.** Proceedings under these Rules shall be exempt from all statutes of limitations.