

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1993

In the Matter of the Permanent Enactment of)
Amended Rule IV, As Further Amended Herein;)
and, the Amendment of Rules V, VI, VII and XVII,)
of the Disciplinary Code for the Wyoming State Bar)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

MAY 10 1993

JERRILL D. CARTER, CLERK
Jerry Carter
by DEPUTY

**ORDER PERMANENTLY ENACTING AMENDED RULE IV
AS FURTHER AMENDED HEREIN; AND,
ORDER AMENDING RULES V, VI, VII AND XVII,
OF THE DISCIPLINARY CODE FOR THE WYOMING STATE BAR**

The Board of Professional Responsibility and the Officers and Commissioners of the Wyoming State Bar having petitioned the court for permanent enactment of Amended Rule IV and for the further amendment of Rule IV, as amended herein; and further requesting the amendment of Rules V, VI, VII and XVII of the Disciplinary Code for the Wyoming State Bar, as set forth herein, and the court finding good cause therefore and deeming it necessary and proper to amend the same as set forth herein; it is therefore

ORDERED that existing amended Rule IV be enacted permanently and the further amendment of Rule IV as amended herein; and that Rules V, VI, VII and XVII, of the Disciplinary Code for the Wyoming State Bar shall be, and they are hereby, amended effective this date to read, as follows:

**RULE IV. APPOINTMENT, FUNCTIONS AND POWERS
OF BOARD AND BAR COUNSEL**

(d) Should a complainant appeal to the board the dismissal by bar counsel of the complaint, pursuant to Rule V(c), the quorum requirements of (b), above, do not apply. For such an appeal not less than three members shall constitute a quorum, with the chairman or vice chairman presiding. The decision of the majority is binding, and the matter is then deemed concluded with no further appeal.

- (d) (e) The Board shall have the following powers and duties:

(12) ~~As a condition of probation,~~ To require a respondent to make restitution to persons financially injured by the respondent's conduct and to require reimbursement to the client's security fund (see Rules of the Supreme Court regarding the client's security fund);

- (e) (f) Bar counsel shall have the following powers and duties:

(5) To employ and supervise (subject to the approval of the Wyoming State Bar) staff needed for the performance of prosecutorial functions and, when circumstances necessitate their use, appoint and supervise assistant bar counsel and special bar counsel for all functions of bar counsel ~~as designated in the powers and duties and these rules except formal disciplinary proceedings or trials, as designated in the powers and duties and these rules~~ the discretionary authority conferred solely upon bar counsel in Rule V(c) ~~herein below~~. Special bar counsel and any assistant bar counsel shall have immunity as set forth in Rule XII(a) for bar counsel while acting within the scope of their duties as assistant bar counsel or special bar counsel;

RULE V. INITIAL PROCEDURE

(b) Upon receiving a written complaint ~~and subject to the provisions of paragraph (c), below~~, bar counsel shall conduct an investigation into the allegations of the complaint which may include obtaining a statement from the respondent attorney.

(c) ~~Should the written complaint fail to set forth facts sufficient to establish a prima facie case in the sole discretion of bar counsel or upon receipt and review of the statement from the responding attorney should bar counsel's sole discretion conclude there is neither an ethical violation nor clear and convincing evidence of an ethical violation, bar counsel may dismiss the complaint and advise the complainant of such dismissal. Bar counsel shall also inform the complainant of the 30 days after receipt of such notice of dismissal to appeal the same to the board. In the event of an appeal, the board shall review the written complaint and file of bar counsel. If the board determines that the dismissal is proper, bar counsel shall notify the complainant and such other persons as the board may deem appropriate of such determination. If the board determines to set aside the dismissal, the board shall instruct bar counsel to proceed as provided in these rules and to notify the complainant and such other persons as the board may deem appropriate of the decision of the board and of the reinstatement of the complaint.~~

(e)(d) Upon completion of an investigation, bar counsel shall:

(2) If determined the complaint is meritorious, cause formal charges in a complaint for formal disciplinary proceedings to be drafted, supported by affidavit or other statement under oath, which shall be reviewed by the chairman of the board or

another member of the board designated by the chairman if the chairman has a conflict in a particular matter for determination of probable cause to proceed with the filing of formal charges. If the chairman or designee finds probable cause to file formal charges exists, bar counsel shall file the complaint for formal disciplinary proceedings with the board as provided in Rule IV(d)(e)(7) and (e)(f)(4). or

(3) ~~The board and the respondent may~~ Subject to board approval stipulate with ~~the respondent~~ to the imposition of private discipline or recommended public discipline before formal charges in a complaint for formal disciplinary proceedings are filed.

~~(d)(e)~~ The complainant shall be advised of bar counsel's or the board's action within ~~ten~~ (10) days after the same has been completed and of the right to appeal such action as provided in Rule VII.

RULE VI. FORMAL DISCIPLINARY PROCEDURE.

(a) Upon completion of an investigation where formal charges are deemed warranted under Rule V(c)(2), bar counsel shall initiate the prosecution of the action, by the filing of a formal complaint with the board, and thereafter conduct the necessary steps to complete the prosecution of the action.

~~(e)~~ Except as provided in Rule V and section (d), above, all prehearing motions shall be determined by hearing before no less than three members of the board with the chairman or vice chairman presiding. The decision of the majority is binding.

~~(e)(f)~~

~~(f)(g)~~

(14) After the close of the hearing, the board shall proceed in accordance with subdivision ~~(g)~~ (h).

~~(g)(h)~~

(4)(B) Respondent's exceptions to said report stating the explicit reasons for the exceptions together with a brief prepared in accordance with Rule 57.01 of the Wyoming Rules of Appellate Procedure.

~~(h)(i)~~

RULE VII. JUDICIAL REVIEW

Upon the dismissal by the board of a complaint which the board determines has no merit, or upon the completion of ~~informal~~ proceedings against the attorney by the board in which the attorney has been privately reprimanded or informally admonished by the board, or upon the completion of ~~formal~~ proceedings against the attorney in which the complaint against the attorney has been dismissed by the board, the complainant may petition the ~~S~~supreme ~~C~~court for review of the board's action within ~~thirty~~ (30) days of notification of said action. The complainant must file a petition in the ~~S~~supreme ~~C~~court for review of the board's action. The complainant must file a petition in the ~~S~~supreme ~~C~~court which specifies the provisions of the ~~R~~ules of ~~P~~rofessional ~~C~~onduct allegedly violated by the attorney and also specifies the particular facts which should have led the board to a different conclusion. A full copy of the board's file in the matter, prepared at the expense of the complainant petitioning for review, shall be transmitted by the board to the ~~S~~supreme ~~C~~court. ~~Failure of the complainant to pay the costs of appeal within 20 days of notice thereof will result in dismissal of the appeal.~~

RULE XVII. TRANSFER TO DISABILITY INACTIVE STATUS

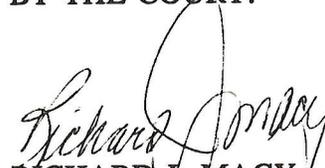
(e)(1) An attorney placed on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement once a year or at such shorter intervals as the court may direct in the order placing the attorney on disability inactive status or any modification thereof. The attorney must present the application in the initial instance to the board. Such application must show by clear and convincing evidence the attorney's disability has been removed and the attorney is fit to resume the practice of law. Upon such application, the board may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by such qualified medical experts as the board shall designate. In its discretion, the Board may direct that the expense of such an examination ~~or any other investigation~~ shall be paid by the attorney. Upon conclusion of its consideration of the application for reinstatement, the board shall make its recommendation to the court on the application. The court may take or direct any further action it deems necessary in consideration of the application.

(g) The filing of an application for reinstatement by an attorney placed on disability inactive status shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since the suspension; and the attorney shall furnish to the ~~court board~~ written consent to each to divulge such information and records as requested by ~~court board~~-appointed medical experts ~~or health care provider~~.

FURTHER ORDERED that this Order be published in the advance sheets of the Pacific Reporter and the Wyoming Reporter and thereupon be spread upon the journal of this Court.

DATED this 10th day of May, 1993.

BY THE COURT:


RICHARD J. MACY
CHIEF JUSTICE