

# RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

Revised by the Montana Supreme Court October 14, 2015  
(The Office of Disciplinary Counsel can be reached at (406) 442-1648.)

The Supreme Court of the State of Montana (hereinafter referred to as "Supreme Court" or "Court") declares that it possesses original and exclusive jurisdiction and responsibility under Article VII, Section 2(3), of the 1972 Montana Constitution and the provisions of Chapter 61, Title 37, Montana Code Annotated, in addition to its inherent jurisdiction, in all matters involving admission of persons to practice law in the State of Montana, and the conduct and disciplining of such persons. In the exercise of that jurisdiction, the Court hereby adopts and promulgates the following Rules for Lawyer Disciplinary Enforcement. These rules shall be referred to as the Rules For Lawyer Disciplinary Enforcement (2002) or RLDE (2002).

## I. STRUCTURE AND SCOPE

### RULE 1 - COMPREHENSIVE LAWYER REGULATION SYSTEM

The Court hereby establishes a comprehensive lawyer discipline and disability system, consisting of an Office of Disciplinary Counsel and a Commission on Practice. The Office of Disciplinary Counsel shall perform central intake functions and shall process, investigate, and prosecute those complaints against lawyers which are within the disciplinary jurisdiction of the Court. The Commission on Practice, which shall be divided into Review and Adjudicatory Panels, shall hear and decide complaints and in appropriate cases, shall make recommendations to the Court for discipline. Prosecutorial and adjudicatory functions shall be separated and managed to secure responsiveness, efficiency, and fairness.

### RULE 2 - THE COMMISSION ON PRACTICE OF THE SUPREME COURT OF THE STATE OF MONTANA

A. Appointment. The Court shall appoint a fourteen-member commission to be known as "The Commission on Practice of the Supreme Court of the State of Montana," hereinafter referred to as the "Commission," which shall consist of nine practicing lawyers, who shall be residents of the State of Montana and licensed and admitted to practice in the state of Montana, and five nonlawyers. One of said lawyers shall be appointed from each of the areas hereinafter defined. One lawyer member shall be at large and may be appointed from any area set forth below. The nonlawyer members of the Commission shall be appointed at large, but they shall be residents of the state of Montana. The term of office of all members of the Commission shall be four years. The persons serving on the Commission on the effective date of these Rules shall continue to serve on the Commission for the remainder of the terms for which they were appointed, unless their membership on the Commission is terminated as hereinafter provided.

The areas from which the lawyer members of the Commission shall be appointed shall be comprised of the various judicial districts of the state of Montana, and are to be designated as follows:

**Area A** shall comprise the Fourth, Eleventh, Nineteenth, Twentieth, and Twenty-first Judicial Districts.

**Area B** shall comprise the Second, Third, and Fifth Judicial Districts.

**Area C** shall comprise the Eighth and Ninth Judicial Districts.

**Area D** shall comprise the Twelfth, Fifteenth, and Seventeenth Judicial Districts.

**Area E** shall comprise the First, Sixth, and Eighteenth Judicial Districts.

**Area F** shall comprise the Tenth and Fourteenth Judicial Districts.

**Area G** shall comprise the Thirteenth and Twenty-second Judicial Districts.

**Area H** shall comprise the Seventh and Sixteenth Judicial Districts.

Except for the at-large lawyer member, appointments to the Commission of the lawyer members shall be made by the Supreme Court from a list of three practicing lawyers in each Area having the three highest number of votes in an election by the Area members of the State Bar of Montana. The time, place, and method of such election shall be in accordance with the orders of this Court. In the event that said election is not held in any Area as ordered, the Supreme Court shall appoint a

member from that Area to serve on the Commission.

The nonlawyer members and the at-large lawyer member of the Commission shall not be subject to the election procedure, but shall be appointed by the Court.

In the event of a vacancy in the Commission, a successor shall be appointed by the Supreme Court for the unexpired term of the member whose office is vacated. Members of the Commission may terminate their membership at their pleasure, and their membership may be terminated by the Court at its pleasure.

B. Election of Officers. The members of the Commission shall annually elect lawyer members as chairperson, vice chairperson, and executive secretary. The chairperson, and in the absence of the chairperson, the vice chairperson, shall preside at meetings of the Commission except that in the conduct of disciplinary hearings the chairperson may appoint another lawyer member of the Commission to act as presiding officer. A presiding officer shall have all of the powers of the chairperson in any case in which he or she has been appointed.

C. Quorum. Eight members of the Commission shall constitute a quorum when the Commission is acting as a whole. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission.

D. Meetings. Members of the Commission shall meet at times and places designated by the chairperson or, in the absence of the chairperson, by the vice chairperson, who shall determine the agenda for the meetings. Notice of any such meeting shall be given by mail or by telephone not less than seven calendar days in advance of the time for such meeting, except in cases of emergency or urgency requiring, in the judgment of the person calling the meeting, a shorter time of notice. Also, the Supreme Court may call a meeting of the members to be held at a time and place ordered by the Court. Notice of such meeting shall be given as above provided. The minutes of any meeting of the Commission shall state the form and time of notice of meeting given to the members.

E. Executive Committee. The chairperson, vice chairperson, and executive secretary of the Commission shall constitute the executive committee. The principal function of the executive committee shall be to attend to administrative matters during the interval between meetings of the Commission. The executive committee shall have such other duties and authority as the Commission shall determine from time to time.

F. Compensation and Expenses. Members of the Commission shall receive no compensation for their services, but may be reimbursed for travel and other expenses incidental to the performance of their duties.

G. Powers and Duties of the Commission. The Commission shall exercise the following powers and duties:

(1) Adopt rules or policies providing for the time and place of meetings, and such other procedural rules not in conflict with these rules, as may be necessary to expedite the conduct of its business;

(2) Periodically review the operation of the lawyer disciplinary system with the Supreme Court;

(3) Establish Review Panels pursuant to Rule 3;

(4) Establish Adjudicatory Panels pursuant to Rule 4;

(5) Appoint and supervise any Commission staff;

(6) Assure that a Review Panel member who sits on a particular case does not also sit on an Adjudicatory Panel for that case;

(7) Maintain all permanent records of disciplinary matters and proceedings;

(8) Exercise such other authority and perform such other duties as



## **RULE 6 - COSTS AND EXPENSES; FISCAL REVIEWS AND AUDITS**

A. Office of Disciplinary Counsel. The costs and expenses of the Office of Disciplinary Counsel shall be paid from an annual assessment of active members of the State Bar of Montana and of nonmembers admitted to practice under the Montana State Bar pro hac vice rules. The Supreme Court shall determine the amount of the annual member assessment.

B. Commission on Practice. The costs and expenses of the Commission shall be paid from legislatively-appropriated public funds.

C. Fiscal Reviews and Audits. The Court may direct fiscal reviews and audits of the components of the lawyer regulation system.

## **RULE 7 - JURISDICTION**

A. Any lawyer who is a member of the State Bar of Montana is subject to the disciplinary jurisdiction of the Supreme Court of Montana, regardless of where the lawyer's conduct occurs.

B. Any lawyer specially admitted by a Montana court for a particular proceeding, appearing by pleading or otherwise in any judicial or administrative proceeding in Montana, or otherwise engaging in the practice of law in Montana, is subject to the disciplinary jurisdiction of the Supreme Court of Montana, for conduct pertaining to his or her practice of law in Montana.

C. If a lawyer resigns as a member of the State Bar of Montana, or the lawyer's special admission or appearance in any judicial proceeding in Montana has terminated, the lawyer remains subject to disciplinary proceedings for conduct occurring prior to the effective date of the resignation or termination.

D. The grounds for disciplinary jurisdiction enumerated herein are in addition to those set forth in Rule 8.5, Montana Rules of Professional Conduct.

## **RULE 8 - GROUNDS FOR DISCIPLINE**

A. Reasons for Discipline. Discipline may be imposed for any of the following reasons:

(1) Acts or omissions by a lawyer, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct or the disciplinary rules adopted from time to time by the Supreme Court.

(2) Any act committed by an attorney contrary to the highest standards of honesty, justice, or morality, including but not limited to those outlined in Title 37, chapter 61, parts 3 and 4, MCA, whether committed in such attorney's capacity as an attorney or otherwise.

(3) Conduct which results in conviction of a criminal offense.

(4) Conduct which results in lawyer discipline in another jurisdiction.

(5) Violation of the terms of any discipline or disciplinary order.

(6) Failure to promptly and fully respond to an inquiry from Disciplinary Counsel, an investigator, or the Commission, or failure to justify such refusal or nonresponse.

(7) Willful contempt of court and failure to purge the contempt.

B. Relationship to Criminal Proceedings. Acquittal of a charge of crime, plea bargain, conviction of a lesser crime, or dismissal of a charge of crime after deferred imposition of sentence shall not constitute a bar to lawyer discipline for that act, nor shall conviction in a criminal proceeding be a condition precedent to the institution of disciplinary proceedings for that act.

## **RULE 9 - DISCIPLINE AND SANCTIONS**

A. Forms of Discipline. Discipline may take one or more of the following forms:

(1) Disbarment. "Disbarment" means the unconditional termination of any privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(2) Suspension from the practice of law for a definite period of time or for an indefinite period of time with a fixed minimum term. "Suspension" means the temporary or indefinite termination of the privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

(3) Public censure.

(4) Admonition administered by an Adjudicatory Panel of the Commission.

(5) Probation.

(6) Requirement of restitution to persons financially injured.

(7) Reimbursement to the Lawyers' Fund for Client Protection.

(8) Assessment of the cost of proceedings, investigations, and audits. Whenever costs of proceedings are assessed by the Supreme Court as part of the discipline imposed upon a lawyer, the Disciplinary Counsel shall assemble and serve upon the lawyer an itemized list of those costs. The lawyer shall then have ten days thereafter in which to file written objections with the Commission on Practice and, if so desired, request a hearing before an Adjudicatory Panel on whether the amount of such costs is reasonable and necessary. An Adjudicatory Panel shall thereafter recommend an amount of costs to be imposed, and shall file its recommendation with the Supreme Court, which shall then issue an appropriate order assessing costs.

(9) Interim suspension pending final determination of discipline.

B. Discipline Criteria. The following factors shall be considered in determining discipline to be recommended or imposed:

(1) The gravity and nature of the duty violated, including whether the duty is owed to a client, to the public, to the legal system, or to the profession;

(2) The lawyer's mental state;

(3) The actual or potential injury caused by the lawyer's misconduct;

(4) The existence of aggravating or mitigating factors; and

(5) The existence of prior offenses.

C. Probation. A lawyer against whom disciplinary proceedings are pending may be placed on probation by the Supreme Court or, with the lawyer's concurrence, by an Adjudicatory Panel. The probation shall be for such time and upon such terms and conditions as are determined appropriate in the case. Discipline may be imposed for violation of any of the terms and conditions of such probation, including satisfactory completion of a diversion or treatment program.

D. Procedure for Discipline for Willful Contempt of Court and Failure to Purge the Contempt. Upon receipt of a certified copy of an order of contempt that has become final, the Supreme Court may, in its discretion, issue an order to show cause why the lawyer's license to practice law should not be suspended or other discipline should not be imposed. The lawyer against whom such an order has been entered in district court shall not have the right or opportunity to re-litigate the merits of the contempt order, the right to hearing and due process having been afforded him or her in the district court.

In the alternative, the Supreme Court may direct an Adjudicatory Panel to issue the order to show cause or direct the lawyer to appear before the Adjudicatory Panel. In that event, the Adjudicatory Panel shall make a written recommendation to the Supreme Court regarding suspension of the lawyer's license or other discipline.

An attorney who has been purged of the contempt order may be reinstated to practice law. Prior to reinstatement, the lawyer shall be required to pay the costs of any proceedings before the Commission on Practice.

## **II. PROCEDURE**

### **RULE 10 - OFFICE OF DISCIPLINARY COUNSEL PROCEDURE**

A. Central Intake and Evaluation. The Office of Disciplinary Counsel shall perform central intake functions including, but not limited to, the following:

(1) Receive information and complaints regarding lawyer's alleged misconduct;

(2) Make appropriate referrals regarding information and complaints while assuring that any member of the public who wishes to make a complaint against a lawyer is able to do so;

(3) Provide the complainant access to a packet of written materials containing forms, instructions, and information about Montana's lawyer disciplinary process; and

(4) Receive written complaints on the forms provided.

B. Preliminary Review and Processing of Complaints. The Office of Disciplinary Counsel shall conduct a preliminary review of each written complaint received by the Office and determine whether the complaint involves a matter that is within the disciplinary jurisdiction of the Court.



Adjudicatory Panel shall determine whether to impose the admonition publicly or privately after weighing, on a case-by-case basis, the lawyer's privacy interests and the public's right to know. The demands of the lawyer's individual privacy must clearly exceed the merits of public disclosure in order for an Adjudicatory Panel to impose a private admonition. An Adjudicatory Panel may do so, however, only after consulting Disciplinary Counsel and the lawyer subject to sanction, to apprise the interested parties of its reasoning for such decision and to allow for comment.

An Adjudicatory Panel's decision to close an adjudicatory hearing and/or impose an admonition, either publicly or privately, shall be final unless, within ten days of the Adjudicatory Panel's decision, the lawyer subject to sanction, Disciplinary Counsel, or a member of the public, files a petition with the Clerk of the Supreme Court asking the Court to review the Adjudicatory Panel's decision. The Court shall conduct an in-camera review of the Adjudicatory Panel's decision in which it evaluates the lawyer's privacy interest and the public's right to know.

A private admonition should be imposed only in cases of minor misconduct, when there is little or no injury to the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer. A private admonition informs the lawyer that his or her conduct is unethical, but does not unnecessarily stigmatize a lawyer from whom the public needs no protection.

**RULE 14 - REQUEST FOR REVIEW BY COMPLAINANT OF A REVIEW PANEL'S DECISION**

A. Dismissal of complaint. Upon review of Disciplinary Counsel's dismissal of a complaint pursuant to Rule 10C(3), if a Review Panel affirms the dismissal, the Commission shall notify the complainant in writing that the complainant may, within thirty-five days of the date on which the notice was sent, request in writing to the Commission, review of the disposition by the Supreme Court.

B. Review discretionary. The Supreme Court may, in its sole discretion, review the Panel's disposition.

**RULE 15 - EX PARTE COMMUNICATIONS PROHIBITED**

Disciplinary Counsel and members of Review Panels, Adjudicatory Panels, the Commission, and the Supreme Court shall not communicate ex parte among themselves or with others regarding the merits of a pending or impending investigation or a disciplinary proceeding except as permitted by the Rules for Lawyer Disciplinary Enforcement. Communications for purposes of scheduling, administration, and procedural matters shall not be prohibited but shall be conducted to assure fairness to all parties.

**RULE 16 - REVIEW BY THE SUPREME COURT AFTER CONTESTED CASE HEARING**

After service of a copy of the Commission's findings of fact, conclusions of law, and recommendation, a party shall have thirty days from date of service within which to file with the Court objections to the findings of fact, conclusions of law, and recommendation. The objecting party shall serve upon the opposing party a copy of any such objections. The opposing party shall have thirty days after date of service of such objections within which to file with the Court a written brief in opposition to such objections. A copy of such brief shall be served upon the objecting party. The Court may, in its discretion, set the matter for oral argument. In the event objections are not filed, the matter shall be deemed submitted at the expiration of the time for filing objections. The Supreme Court shall consider the matter, issue its written decision, and impose such discipline, if any, as it considers appropriate.

**RULE 17 - IMMUNITY**

A. From Civil Suit. Communications or complaints, oral or written to, or from, the Commission and Office of Disciplinary Counsel, and testimony given in the proceedings are privileged, and no evidence thereof is admissible in any lawsuit against any complainant, witness, Commission member, Commission staff, Disciplinary Counsel, Office of Disciplinary Counsel staff, investigator, special counsel, or other person employed or retained by the Commission or the Office of Disciplinary Counsel. Waiver, if any, of such privilege by voluntary disclosure by a complainant or witness shall be determined under Rule 503, Montana Rules of Evidence. Members of the Commission, Commission staff, Disciplinary Counsel,

Office of Disciplinary Counsel staff, investigators, special counsel, any other person employed or retained by the Commission to represent it in Commission matters, staff members, and persons acting for the Commission shall be immune from suit for any conduct undertaken in good faith in the course of their official duties under these Rules. All of said persons are deemed officers and/or agents of the Court for all purposes mentioned in these Rules.

B. From Criminal Prosecution. Upon application of Disciplinary Counsel or the Commission and after reasonable notice to and written consent from the appropriate county attorney(s), the Supreme Court may order that a witness cannot be prosecuted or subjected to any penalty or forfeiture other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter, or thing concerning which the witness testified or produced in a lawyer disciplinary proceeding.

**RULE 18 - SERVICE [ABROGATED]**

**RULE 19 - OATHS, SUBPOENA POWER AND DISCOVERY**

A. Oaths. Any member of the Commission or other person authorized by law may administer oaths and affirmations in matters pending before the Commission.

B. Investigative Subpoenas.

(1) Before a formal Complaint has been filed, the chairperson of the Commission may cause subpoenas to be issued commanding the persons to whom they are directed to produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) An investigative subpoena may be issued upon the affidavit of Disciplinary Counsel showing good cause to believe that:

(a) the lawyer who is the subject of the investigation, or the person from whom information is sought, has failed to cooperate with Disciplinary Counsel's request for information in connection with that investigation;

(b) a violation of the Rules of Professional Conduct or these Rules has been committed; and

(c) the information relative to the commission of that violation is in the possession of the person or institution to whom the subpoena is directed.

(3) The lawyer who is the subject of the investigation need not be given advance notice of the investigative subpoena. Upon execution of the investigative subpoena, Disciplinary Counsel shall provide a copy of the investigative subpoena to the lawyer who is the subject of the investigation.

C. Subpoenas for Deposition or Hearing. After formal charges are filed, any member of the Commission may, at the request of Disciplinary Counsel or the lawyer, compel, by subpoena or order, the attendance of witnesses and the production of pertinent books, papers, and documents.

D. Enforcement of Subpoenas. Any person subpoenaed or ordered to appear and give testimony, or to produce pertinent books, papers, or documents, who fails or refuses to appear or to produce such books, papers, or documents, or any person having been sworn to testify, who refuses to answer any proper questions, may, upon request of the Commission or the Office of Disciplinary Counsel, be cited for contempt of the Supreme Court. The Commission or the Office of Disciplinary Counsel shall report to the Court the facts relating to any such contempt. Thereupon, proceedings before the Supreme Court shall be had as in cases of other contempts. The Supreme Court may, upon proper application, also enforce the attendance of any witness and the production of any documents subpoenaed.

E. Subpoena Pursuant to Law of Another Jurisdiction. Whenever a subpoena is sought in Montana pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings or investigations, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the chairperson of the Commission, upon request of Disciplinary Counsel (in a case where the request is by the disciplinary authority of the foreign jurisdiction) or an attorney admitted to practice in this jurisdiction (in a case where the request is by a respondent in a proceeding in the foreign jurisdiction), may issue a subpoena as provided in this section 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.



determined in the formal disciplinary proceedings conducted after a lawyer is convicted of a criminal offense which affects the lawyer's ability to practice law shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded unless the lawyer requests that the matter not be deferred.

D. Certificate of Conviction Conclusive. A certificate of conviction of a lawyer for a criminal offense shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the lawyer based upon the conviction.

E. Automatic Reinstatement From Interim Suspension Upon Reversal of Conviction. If a lawyer suspended solely under the provisions of paragraph B above demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any formal proceeding then pending against the lawyer, the disposition of which shall be determined by the Adjudicatory Panel on the basis of the available evidence.

F. Notice to Clients and Others on Interim Suspension. An interim suspension order entered pursuant to this Rule shall constitute a suspension of the lawyer for purposes of Rule 21.

**RULE 24 - FAILURE TO RESPOND TO THE OFFICE OF DISCIPLINARY COUNSEL OR THE COMMISSION**

If a lawyer subject to the jurisdiction of the Commission should fail or refuse to promptly and fully respond to a complaint or other inquiry communicated to such lawyer in writing by the Office of Disciplinary Counsel or the Adjudicatory or Review Panel before which the matter is pending, the Panel, in addition to other proceedings authorized by these Rules, may direct such lawyer to appear before the Panel and show cause why appropriate discipline or sanction should not be imposed for failure to respond or cooperate. If the matter is pending before a Review Panel, and the lawyer fails to show good cause, the Review Panel shall refer the matter to an Adjudicatory Panel. Notice of such show cause hearing shall be served upon the lawyer at least twenty days prior to the hearing. If at such hearing the lawyer shall fail to respond or show a just or reasonable cause for not responding, then in addition to the disciplines and sanctions otherwise provided by these Rules, the Adjudicatory Panel may, upon determination of its appropriateness, recommend to the Supreme Court the immediate interim suspension of such lawyer for a period not to exceed thirty days, or such earlier date as the attorney shall fully respond to and cooperate with the Disciplinary Counsel and the Commission on Practice.

**RULE 25 - CONDUCT CONSTITUTING THREAT OF HARM TO CLIENTS OR THE PUBLIC**

A. Petition for Interim Suspension. Upon receipt of evidence constituting probable cause that a lawyer subject to the disciplinary jurisdiction of the Supreme Court has committed a violation of the Rules of Professional Conduct or is incapacitated and, in either case, poses a substantial threat of serious harm to clients or the public, Disciplinary Counsel may file a petition with the Supreme Court to have the lawyer suspended pending proceedings. The clerk shall send the lawyer a copy of the petition to his or her last known address.

B. Interim Suspension. Upon review of the petition, the Supreme Court may either deny the petition or direct the lawyer to show good cause, if any, why the lawyer should not be suspended during the pendency of either criminal proceedings or disciplinary proceedings. After providing the lawyer with the opportunity to be heard, the Court may enter an order suspending the lawyer from the practice of law, or may order such other action as it deems appropriate.

C. Notice to Clients. A lawyer suspended pursuant to this Rule shall comply with the notice requirements of Rules 30 and 32.

**RULE 26 - DISCIPLINE BY CONSENT**

A. Adjudicatory Panel Approval of Tendered Admission. A lawyer against whom formal disciplinary proceedings have been filed may tender a conditional admission to the complaint or to particular allegations therein in exchange for a stated form of discipline. The tendered admission shall be submitted to an Adjudicatory Panel. An Adjudicatory Panel may refer the tendered admission to the Disciplinary Counsel for recommendations. The Adjudicatory Panel may either approve or reject the tendered

admission. The Adjudicatory Panel may hold a private hearing for the purpose of obtaining information to aid the Adjudicatory Panel in determining whether to approve or reject the tendered admission. If the tendered admission is approved by the Adjudicatory Panel, such approval shall be final if the stated form of discipline is an admonition, probation imposed by an Adjudicatory Panel as provided in Rule 9C of these Rules, or both, with or without imposition of costs of the proceeding; but, in all other instances, the tendered admission shall be subject to approval or rejection by the Supreme Court. If the tendered admission is rejected by either the Adjudicatory Panel or the Supreme Court, the admission shall be deemed withdrawn and cannot be used against the lawyer in any subsequent proceedings.

B. Affidavit of Consent. A tendered admission shall include an affidavit stating the lawyer's consent to the discipline and that:

(1) The lawyer's consent is freely and voluntarily tendered, and that the lawyer is not being subjected to coercion or duress, and that the lawyer is fully aware of the implications of submitting the consent;

(2) The lawyer is aware that there has been a formal charge filed against the lawyer, the nature of which the lawyer shall specifically set forth; and

(3) The lawyer acknowledges that the material facts so alleged are true or the lawyer submits his or her consent because he or she knows that if the case proceeded to a formal hearing, he or she could not successfully defend himself or herself.

The final order of discipline shall be predicated upon the formal complaint, the conditional admission, the affidavit, and such other information and evidence to which the Disciplinary Counsel and the lawyer may have stipulated, or which may have been elicited at a private hearing referred to in Rule 26A.

C. Order of Discipline. If the discipline by consent is a form of discipline that may be imposed by the Adjudicatory Panel, the Adjudicatory Panel shall enter the order. In all other instances in which the proposed discipline has been approved, the Supreme Court shall enter the order. The order of discipline by consent shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be served upon the lawyer, the lawyer's counsel, the Commission, Disciplinary Counsel, and the complainant.

D. Confidentiality. All tendered admission proceedings prior to entry of a consent discipline order shall be confidential and subject to the provisions of Rule 20 of these Rules. Upon entry of an order imposing public discipline, the conditional admission and affidavit of consent shall be filed with the Clerk of the Supreme Court and made public.

**RULE 27 - RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS**

A. Office of Disciplinary Counsel to Obtain Order of Discipline or Disability/Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability/inactive status in another jurisdiction, a lawyer admitted to practice in Montana shall promptly inform the Office of Disciplinary Counsel of such action. Upon notification that a lawyer subject to the disciplinary jurisdiction of the Supreme Court has been disciplined or transferred to disability/inactive status in another jurisdiction, Disciplinary Counsel shall file a petition, attaching a certified copy of the order, with the Supreme Court.

B. Notice Served Upon the Lawyer. Upon receipt of Disciplinary Counsel's petition, the Court shall issue an order directing the lawyer to inform the Court, within thirty days from the date of service, of any claim by the lawyer predicated upon the grounds set forth in paragraph D of this rule, that the imposition of the identical discipline or transfer to disability/inactive status in the state of Montana would be unwarranted and the reasons therefor. A copy of the order from the other jurisdiction shall be attached to the order.

C. Effect of Stay of Discipline in Other Jurisdiction. In the event the discipline imposed in another jurisdiction has been stayed, any reciprocal discipline imposed in Montana may be deferred until the stay expires.

D. Discipline to be Imposed or Transfer to Disability/Inactive Status. Upon expiration of thirty days from service of the order pursuant to the provisions of paragraph B of this rule, the Supreme Court shall impose the identical discipline or transfer to disability/inactive status unless the lawyer demonstrates, or the Court finds that upon the face of the record from which the discipline was predicated it clearly appears that:

(1) The procedure was so lacking in notice or opportunity to be heard





