
FIT TO PRACTICE CLE
LOUISIANA STATE BAR ASSOCIATION

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The following comments regarding disability are along three general lines.

Materials to be covered include judicial disability, lawyer disability and disability issues relating to admission to the Louisiana State Bar Association.

JUDICIAL DISABILITY

In re Alexander, 323 So.2d 448 (La.1975) - - Judge removed from office after suffering permanent disability that seriously impaired performance of duties.

In re Bonner, 638 So.2d 223 (La. 1994) - - Judge removed from office after suffering permanent disability that seriously impaired performance of duties.

LAWYER DISABILITY

In re Lewis B. Blanche, No. 12-B-0552

In re Gregory J. Avery, No. 12-B-0598

RULE XIX. RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

Section 21. Reciprocal Discipline and Reciprocal Disability Inactive Status.

A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status by another state disciplinary authority, a lawyer admitted to practice in Louisiana shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Louisiana has been disciplined or transferred to disability inactive status by another state disciplinary authority, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction: and

(2) An order directing that the lawyer or disciplinary counsel inform the court, within thirty days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this state would be unwarranted and the reasons for that claim.

C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this state shall be deferred until the stay expires.

D. Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(4) The misconduct established warrants substantially different discipline in this state; or

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

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final adjudication by another state disciplinary authority that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability

inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state. [Amended effective June 1, 2005]

Section 22. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated.

A. Involuntary Commitment or Adjudication of Incompetency. If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until the further order of the court. A copy of the order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian, or the director of the institution to which the lawyer has been committed.

B. Transfer to Disability Inactive Status When No Disciplinary Proceeding is Pending. Any lawyer claiming that he/she should be transferred to disability inactive status, when there is no disciplinary proceeding or investigation pending, shall file an appropriate pleading in this court. The lawyer shall append to the pleading pertinent information, documentation, and evidence which supports the lawyer's claim that he/she should be transferred to disability inactive status. The lawyer shall also certify in the pleading that there is no disciplinary proceeding or investigation pending against him/her. The pleading and attachments shall be filed under seal. A copy of the pleading, and any attachments thereto, shall be served upon disciplinary counsel.

Within fifteen days after being served with the lawyer's pleading, disciplinary counsel shall file under seal and certify to this court that no disciplinary proceeding or investigation is pending, and may file under seal an objection, concurrence, or other appropriate response to the lawyer's pleading. A copy of disciplinary counsel's filing shall be served upon the lawyer claiming that he/she should be transferred to disability inactive status.

The court may then summarily transfer the lawyer to disability inactive status, without the need for a hearing, or take any other action the court deems appropriate. [Amended, effective November 23, 1999]

C. Transfer to Disability Inactive Status When Disciplinary Proceeding is Pending. When a disciplinary proceeding or investigation is pending, a lawyer may not apply for disability inactive status unless he/she alleges an inability to assist in his/her defense due to mental or physical incapacity. When such an allegation is made, the court shall immediately transfer the lawyer to interim disability inactive status pending a hearing to determine the validity of the claim, and all disciplinary proceedings will be stayed

pending this determination. Any lawyer transferred to interim disability inactive status shall comply with the notice requirements of Section 26.

(1) The hearing shall be conducted before a hearing committee on an expedited basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, under seal, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the claim of inability to defend is valid, the disciplinary proceeding or investigation shall be deferred and the respondent shall be transferred to disability inactive status until the court subsequently considers a petition for transfer to active status. In the event the respondent is transferred back to active status, the interrupted disciplinary proceeding or investigation may be resumed.

(3) If the court determines the claim of inability to defend to be invalid, the disciplinary proceeding or investigation shall resume immediately. A finding by the court that the lawyer's claim of an inability to assist in his/her defense due to mental or physical incapacity was frivolous may be considered by the hearing committee in recommending discipline in the underlying proceeding. [Amended, effective November 23, 1999]

D. Transfer to Disability Inactive Status When Information Concerning the Incapacity of a Lawyer is Received from a Third Party. When disciplinary counsel receives information from a third party which relates to a lawyer's physical or mental condition and which adversely affects the lawyer's ability to practice law, disciplinary counsel shall investigate. If warranted by the investigation, disciplinary counsel shall file an appropriate pleading with the disciplinary board, requesting a hearing before a hearing committee to determine whether the lawyer shall be transferred to disability inactive status.

(1) The hearing shall be conducted before a hearing committee on an expedited basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, under seal, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the lawyer is incapacitated, the lawyer shall be transferred to disability inactive status until the court subsequently considers a petition for transfer to active status. Any disciplinary proceeding or investigation which is pending against the lawyer shall be held in abeyance. In the event the lawyer is transferred back to active status, any disciplinary

proceeding or investigation which had commenced prior to the transfer to disability inactive status may be resumed.

(3) If the court determines that the lawyer should not be transferred to disability inactive status, any pending disciplinary proceeding or investigation shall resume immediately. [Amended, effective November 23, 1999]

E. General Provisions. The board administrator shall provide adequate notice to the respondent of proceedings conducted pursuant to subparts C and D of this section. The hearing committee may take or direct whatever action it deems necessary or proper to determine whether the respondent is incapacitated, including the examination of the respondent by qualified medical experts. [Amended, effective November 23, 1999]

F. Public Notice of Transfer to Disability Inactive Status. The board shall cause a notice of transfer to disability inactive status to be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law. [Amended, effective November 23, 1999]

G. Transfer to Active Status from Disability Inactive Status.

(1) *Generally.* No respondent transferred to disability inactive status may resume active status except by order of this 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 court may direct in the order transferring the respondent to disability inactive status or any modifications thereof.

(3) *Examination.* Upon the filing of a petition for transfer to active status, the court may take or direct 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 court. In its discretion, the court may direct that the expense of the examination be paid by the respondent.

(4) *Required Information; Waiver of Doctor-Patient Privilege.* The respondent shall include with the petition for transfer to active status pertinent documentation, information and evidence which shows, by clear and convincing evidence, that the disability has been removed. The respondent shall disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status. The respondent shall

also furnish to this court written consent to the release of information and records relating to the disability if requested by the court or court-appointed medical experts.

(5) *Certification from Client Assistance Fund.* The respondent shall also include with the petition for transfer to active status a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the respondent's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the respondent shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund.

(6) *Learning in Law; Bar Examination.* The court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the bar examiners of successful completion of an examination for admission to practice.

(7) *Granting Petition for Transfer to Active Status.* The court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed and the receipt of the certification from the Client Assistance Fund.

(8) *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 court may dispense with further evidence that his disability has been removed and may immediately direct his transfer to active status upon terms as are deemed proper and advisable.

[Amended effective June 30, 2009]

BAR ADMISSION DISABILITY

Rule XVII. ADMISSION TO THE BAR OF THE STATE OF LOUISIANA

SECTION 5. Character and Fitness.

(A) Public Policy. The primary purpose of character and fitness screening before admission to the Louisiana State Bar is to assure the protection of the public and to safeguard the administration of justice. The attorney licensing process is incomplete if only testing for minimal legal competence is undertaken. The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation

that those who are admitted to the Bar are worthy of the trust and confidence clients may reasonably place in their attorneys.

(B) Good Moral Character and Fitness; Definitions. The term "good moral character" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, observances of fiduciary responsibility and of the laws of the State of Louisiana and of the United States of America, and a respect for the rights of other persons. The term "fitness" includes, but is not limited to, the mental or emotional suitability of the applicant to practice law in this state.

In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of admission.

(C) Panel on Character and Fitness. On behalf of the Committee, character and fitness determinations shall be made by the Panel on Character and Fitness. The Panel shall consist of the Director of Character and Fitness and two other members of the Committee. **[Repealed and reenacted effective August 1, 2008]**

(D) Good Moral Character and Fitness; Burden of Proof. The applicant bears the burden of proving his or her good moral character and fitness to practice law by clear and convincing evidence. **[Repealed and reenacted effective August 1, 2008]**

(E) Good Moral Character and Fitness; Factors and Considerations. While the Panel on Character and Fitness may consider any factor or circumstance in determining whether or not an applicant possesses the requisite moral character and fitness to practice law in this state, any of the following should be considered to be a basis for investigation and inquiry before recommending admission:

(1) Arrests or criminal charges, whether or not resulting in a conviction.

(2) Any unlawful conduct.

(3) Making or procuring any false or misleading statement or omission of relevant information including any false or misleading statement or omission during the application process for admission to the Bar of this state or any other state.

- (4) Misconduct in employment.
- (5) Acts involving dishonesty, fraud, deceit or misrepresentation.
- (6) Commission of an act constituting the unauthorized practice of law.
- (7) Violation of the honor code of the applicant's law school or any other academic misconduct, including undergraduate misconduct.
- (8) Membership in an organization which advocates that the United States Government be overthrown by force, if the applicant indicates a present intent that such be done.
- (9) Abuse of process.
- (10) Litigation.
- (11) Neglect of financial responsibilities.
- (12) Neglect of professional obligations.
- (13) Violation of an order of a Court, including child support orders.
- (14) Military misconduct.
- (15) Evidence of mental or emotional instability.
- (16) Evidence of drug or alcohol misuse, abuse or dependency.
- (17) Denial of admission to the Bar in any other jurisdiction on character and/or fitness grounds.
- (18) Disciplinary action by a lawyer disciplinary agency of any jurisdiction.
- (19) Disciplinary action by a disciplinary agency or governing body of a profession or organization of which the applicant is or was a member.
- (20) Conduct of a kind which has been considered by the Court as grounds for suspension or revocation of the privilege to practice law in Louisiana.
- (21) Conviction or a plea of guilty or "no contest" to any misdemeanor or felony, including juvenile proceedings.

(22) Any other conduct which reflects adversely upon the character or fitness of the applicant.

[Repealed and reenacted effective August 1, 2008]

(F) Good Moral Character and Fitness; Past Conduct; Rehabilitation. The Panel on Character and Fitness shall consider whether or not the past conduct of the applicant is likely to be repeated in the future and whether the applicant's past conduct evidences the applicant's character and fitness to practice law. If the applicant is found to have engaged in conduct which at that time would have constituted grounds for an unfavorable recommendation, then the applicant must show by clear and convincing evidence that his or her character has been rehabilitated and that such conduct, inclination or instability is unlikely to recur in the future. The mere fact that there has been no repeat of any such conduct, instability or inclination shall not in and of itself be sufficient to constitute rehabilitation or proof of good moral character and fitness.

While the Panel is not limited to the factors it considers or weight it will give to prior incidents reflecting upon an applicant's character or fitness, the following factors are deemed important by the Panel in assigning the weight and significance given to prior conduct:

- (1) The applicant's age at the time of the conduct.
- (2) The amount of time which has elapsed since the occurrence of such conduct.
- (3) The reliability of the information concerning the conduct.
- (4) The seriousness of the conduct.
- (5) The factors underlying the conduct.
- (6) The cumulative effect of the conduct or information.
- (7) The applicant's positive social contributions since the conduct.
- (8) The applicant's candor and cooperation in the admissions process.
- (9) The materiality of any omissions or misrepresentations.
- (10) The evidence of rehabilitation.

[Repealed and reenacted effective August 1, 2008]

(G) Investigation. The Panel on Character and Fitness shall make or cause to be made an investigation of the character and fitness of all applicants. The Panel shall have the authority and power to take all steps necessary to investigate any relevant information pertaining to an applicant's character and fitness to practice law including, but not limited to, issuing investigatory subpoenas, obtaining pertinent documentary evidence, directing that an applicant submit to an independent medical, psychiatric or psychological examination and conducting interviews and obtaining sworn statements. **[Repealed and reenacted effective August 1, 2008]**

(H) Factors Not Considered. In determining an applicant's character and fitness to practice law in this state, the Panel shall not consider factors which do not directly bear a reasonable relationship to the practice of law, including, but not limited to, the following impermissible factors:

(1) The age, sex, race, color, national origin, religion, or sexual orientation of the applicant; or

(2) A physical disability of the applicant that does not prevent the applicant from performing the essential functions of an attorney.

[Enacted effective August 1, 2008]

(I) Cooperation. An applicant whose character and fitness is under investigation shall cooperate with the investigation. An applicant who fails to cooperate in the investigation may be denied admission due to his or her lack of cooperation. **[Enacted effective August 1, 2008]**

(J) Communications with the Committee. In all communications by applicants with the Committee or its staff, applicants shall be courteous and respectful. Discourteous or disrespectful behavior may be considered by the Panel in its investigation of the character and fitness of the applicant. **[Enacted effective August 1, 2008]**

(K) Notice of Failure to Meet Requirements. If the Panel determines that the applicant does not possess the requisite good moral character and fitness to practice law in the state and that the applicant will not be certified to the Court for admission to the Bar, it shall notify the applicant in writing of such determination and the reason(s) therefor. The Notice of Failure to Meet Requirements shall be served upon the applicant as described in Section 9 of this Rule. **[Enacted effective August 1, 2008]**

(L) Petition to the Court. Any applicant aggrieved by the determination of the Panel may petition the Louisiana Supreme Court within thirty (30) days of the date of the Notification of Failure to Meet Requirements as described in Section 9 of this Rule. **[Enacted effective August 1, 2008]**

(M) Conditional Admission. The Panel, with the consent of the applicant, may recommend to the Court that the applicant be admitted on a conditional basis.

(1) Circumstances Warranting Conditional Admission. An applicant whose record shows conduct that may otherwise warrant denial due to present or past substance misuse, abuse or dependency, physical, mental or emotional disability or instability, or neglect of financial responsibilities, may consent to be admitted subject to certain terms and

conditions set forth in a conditional admission consent agreement. Only an applicant whose record of conduct evidences a commitment to rehabilitation and an ability to meet the essential eligibility requirements of the practice of law may be considered for conditional admission.

(2) Consent Agreement. The consent agreement shall set forth the terms of conditional admission, be approved by the Panel and be signed by the Director of Character and Fitness and by the applicant. In confecting the consent agreement, the Director of Character and Fitness may confer with the Office of Disciplinary Counsel to create appropriate terms, conditions and monitoring criteria.

(3) Terms of Consent Agreement. The consent agreement shall contain specific conditions of admission to be fulfilled at the applicant's expense, including but not limited to, requiring alcohol or drug treatment, medical care, psychological or psychiatric care, random chemical screening, professional office practice or management counseling, practice supervision, payment plans and debt management counseling, participation in the Lawyer's Assistance Program, and/or professional audits or reports, and in all cases, the assignment of a probation monitor. By consenting to conditional admission, the applicant waives any confidentiality pertaining to the matters which are the subject of the consent agreement unless the applicant seeks and is granted a protective order by the Court.

(4) Joint Petition. The Director of Character and Fitness and the applicant shall jointly file with the Court a Petition Seeking Conditional Admission, attaching the consent agreement.

(5) Court Action Required. No conditional admission shall be effective unless and until approved by the Court. The Court may in its discretion, approve, modify or reject the conditional admission or remand the conditional admission to the Panel for further action as the Court instructs, or appoint a Commissioner to take evidence and make a recommendation to the Court. Should the Court appoint a Commissioner, the procedure shall conform with the procedures set forth in Section 9.

(6) Monitoring of Consent Agreement by Office of Disciplinary Counsel. If the Court approves the conditional admission, the conditionally admitted lawyer's compliance with the terms of the consent agreement shall be monitored by a probation monitor assigned by the ODC. Cooperation with the probation monitor is required and failure of the conditionally admitted lawyer to cooperate may be grounds for the revocation of the conditional admission.

(7) Failure to Fulfill the Conditional Terms. Failure to fulfill the terms of the consent agreement may result in the suspension or revocation of the conditional admission or

such other action as is appropriate under the Louisiana Rules of Professional Conduct and Louisiana Supreme Court Rule XIX.

(N) Probation Imposed by the Court. Regardless of any recommendation made by the Panel, in any matter in which the Court deems it appropriate, the Court may admit an applicant on a conditional basis subject to a probationary period. [**Enacted effective August 1, 2008**]